

# TIMBER BEND

## Section Nine (9)

### Restrictive Covenants

PHW DEVELOPMENT CORP., an Indiana corporation, by its president Paul T. Hardin and its secretary Russell M. Webb, Jr., does, by this indenture, and by those restrictive covenants and requirements entered for record in Miscellaneous Record \_\_\_\_\_, page \_\_\_\_\_, in said Recorder's office, restrict and covenant the lots and other areas within the boundary of Timber Bend, Section 9, to itself and its grantees, assigns, successors, legal representatives, and to any person, persons, corporations, banks and associations and/or anyone who may acquire title to any of said lots or other areas, as to the following terms, stipulations, conditions, restrictions, and covenants which shall apply in their entirety to all of said subdivision:

**1: DEFINITIONS.** "Developer" shall mean PHW Development Corp., an Indiana corporation. "Owner" shall mean the person or collection of persons, corporation, partnership, trust, or other entity who has or have acquired or is acquiring any right, title, or interest, legal or equitable, in and to a lot in this subdivision, but excluding those persons having such interest merely as security for the performance of an obligation.

"Committee" shall mean the Architectural and Environmental Control Committee composed of the officers and directors of PHW Development Corp., or their duly authorized representatives, all of whom shall serve without compensation for services performed as Committee members. In the event PHW Development Corp. is dissolved, the then existing Committee members shall appoint an owner to take said member's position on the Committee. Upon the death or resignation of any member of said Committee, the remaining member or members shall have full authority to perform the duties of the Committee, or to designate a representative with like authority, who must be an owner.

**2: LAND USE.** Lot use will conform with the regulations of the Hendricks County Area Plan Commission unless these covenants are more restrictive, in which case these covenants will control. All lots are restricted to residential use. See Section numbered 21 below. The subdivision of a lot is prohibited unless said division creates two building sites on three adjoining lots, which building sites comply with the Hendricks County zoning and subdivision regulations and with these covenants. Where a lot is subdivided, or where an owner acquires adjoining lots for the purpose of building one residence across the common lot line, the side lot line set back restrictions specified hereinabove and in Section numbered 5 below shall not apply to said common lot line. Construction of buildings across drainage easements and utility easements that coincide with lot lines is prohibited.

**3: RESIDENCE SIZE.** No residence shall be erected, altered, placed, or permitted to remain on any lot other than one single-family residence three stories or less in height. Every residence shall have an attached garage that is large enough to shelter two or more automotive vehicles. The ground floor area of the main structure of any one-story residence, excluding garages and porches, shall be not less than 2,000 square feet. The ground floor area of the main structure of any multiple-story residence, excluding garages

and porches, shall be not less than 1,200 square feet, with no less than a total of 2,200 square feet of finished floor space in such multiple-story structure. A residence with a "bonus room" or "loft" on a second story level will be treated as a multiple-story residence and shall meet all the above requirements for multiple-story residences. However, in calculating the square foot of such a "bonus room" and/or "loft" on a different level, no more than ten percent (10%) of the main level square footage shall be allowed for that "bonus room" and/or "loft" area. Lot owners and/or their Plot Plan preparers shall indemnify and hold harmless the Developer, his employees, agents, engineers, and surveyors from any liability due to loss, damages, injuries, or other casualties of whatever kind resulting from the location, design, or method of construction of basements and walk-in entrances thereto that violate County, State, and/or Federal laws or regulations, or disregard potential flooding elevations or flooding locations noted on the development plans filed in the office of the Hendricks County Area Plan Commission.

**4: ACCESSORY BUILDINGS.** A utility building, barn, or other accessory building will not be allowed on any lot, except one (1) gazebo-type structure and/or one (1) in-ground pool accessory building/bath house. Said accessory building/bath house must be erected as a part of and in conjunction with a privacy fence surrounding an in-ground pool as provided for in Section numbered 25 below. Before commencement of its construction, any building permitted by this Section numbered 4 must be approved as to location and design by the Committee as described in Section numbered 7 below.

**5: BUILDING SETBACK DISTANCES.** Between the front lot lines and the building lines shown on this plat, no buildings shall be erected, placed, altered or be permitted to remain. Further, no building shall be erected nearer to any side line of a lot than is permitted under current or future provisions of the Hendricks County R-1 zoning classifications. The minimum rear-yard setback distance is fifteen (15) feet. Setback dimensions are measured perpendicular to lot lines. Architectural appurtenances projecting not more than twenty-four (24) inches, stairways projecting not more than four (4) feet, unenclosed and unroofed porch slabs on the front sides of buildings, steps, and walks are exempt from these setback requirements.

**6: OCCUPANCY OF STRUCTURES.** No residence shall be occupied or used for residential purposes or human habitation until it has been fully completed upon the outside and substantially completed on the inside, and a Certificate of Occupancy has been issued therefor by Hendricks County. The use of any other structure or mobile home as a residence, either temporarily or permanently, is prohibited.

**7: ARCHITECTURAL DESIGN.** No building, wall, fence, or other structure shall be constructed, erected, placed, or altered in this subdivision until the location plan, building plans, and specifications have been first submitted to, and approved by, the Committee as to harmony with the exterior design, quality, and aesthetic appearance of structures already built, and as to conformity with grading plans, exterior architectural elevations, destruction of trees and other vegetation, and any other such matter as may affect the environment or ecology of the subdivision. The Committee's approval or disapproval as required in these covenants shall be in writing. If the Committee, or its

appointed representative, fails to approve or disapprove any plans and specification within fifteen (15) days after such plans and specifications are submitted to it or, in any event, if no suit to enjoin the construction has commenced before the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

**8: IMPROVEMENT LOCATION PERMIT.** In addition to the approval required in Section numbered 7 above, Hendricks County must issue an Improvement Location Permit before any structure, improvement, or land use may be altered, changed, placed, erected, or located in this subdivision. The Hendricks County Area Plan Commission has approved a soil and water conservation plan (erosion control plan) and a development plan showing house locations, first floor elevations, and an "emergency flood route" with slopes for positive surface drainage therefrom. Prior to the closing of the sale of a lot from the Developer to an owner, that owner shall inspect his lot to insure that the Developer's drainage facilities will remove all free standing water from the surface of the lot. He shall report at once to the Developer any deficiencies found. The owner shall develop his lot in a way that assures that finished slopes, grades, and erosion control measures comply with said soil, water, and development plans after completion of all improvements and landscaping. See Section numbered 23 below. Said plans may be inspected in the office of said Commission during regular office hours. Deviations from those plans require prior Commission approval and may necessitate a site reevaluation and redesign by a Registered Professional Engineer or Registered Land Surveyor at the time of improvement location permit and certificate of occupancy application, which engineer or surveyor shall certify positive surface drainage and that wastewater will gravity flow from the first floor of the residence to a sanitary sewer. In the improvement of any lot the owner thereof will be accountable to the Developer and the Hendricks County Drainage Board for damages caused by him or his contractors to drainage facilities built by the Developer. In the event of such damages, the owner will be given notice by certified or registered mail to repair said damages, after which time, if no action is taken by the owner, the Committee may use the procedure described in Section numbered 37 below.

The Table of Elevations appearing on said development plan shows, for each lot, recommended first floor elevations for houses if constructed at the locations shown on said development plan. *The entrance of ground water and surface water into basements shall be prevented by special designs and construction.* See also Section numbered 27 below.

**9: WATER SUPPLY SYSTEMS.** The central water supply system of the Indianapolis Water Company, in lieu of individual water wells, shall be used in this subdivision. The Hendricks County Area Plan Commission is hereby granted right of enforcement of this covenant.

**10: FENCES** require Committee approval before erection as provided in Section numbered 7 above. No fence shall be placed on any lot or boundary thereof that will obstruct reasonable light, air, or view, or will otherwise hinder or damage the aesthetics of the subdivision. Fences erected in the front yards of residences shall be open wood fences of a decorative type not exceeding four (4) feet in height. Galvanized and vinyl-coated chain link type fencing is prohibited. Swimming pools shall be properly fenced to protect the

safety of others as required by Section numbered 25 below. Such fences shall not be required if a properly-installed automated pool cover is maintained in place that will withstand and support a weight of four hundred (400) pounds or more and satisfies the requirements of all governmental authorities and is kept closed at all times when the pool is not in use or otherwise attended. Fences in easements are prohibited.

**11: CONSTRUCTION TIME.** Unless delayed by court injunction, war, or an act of God, any residence, fence, water line, sewer, ditch, or any structure on any lot, once approved and under construction, must be completed one (1) year from the date construction starts, after which time the Committee may, without notice, enter, take possession of said lot and sell the same together with improvements, and after payment of liens and expenses, pay the balance of the sale proceeds to the owner of the lot at the time of sale.

**12: STORAGE TANKS.** Oil, gasoline, and other storage tanks shall comply with the laws, rules, and regulations of the Indiana State Fire Marshall, the Environmental Protection Agency, and all other relevant governmental bodies. No portion of a storage tank shall be placed above ground level.

**13: SIGNS.** The only signs that lot owners may erect in this subdivision are: Those required by law, a single sign placed by a builder or financial institution to advertise a property during construction and sales period, a single yard sale or garage sale sign placed by the owner no more often than two days twice each year, a single sign placed by an owner to advertise the property for sale or rent or to prohibit hunting or trapping. No sign shall exceed sixteen (16) square feet in size.

**14: HUNTING AND TRAPPING** are prohibited in this subdivision.

**15: SIGHT DISTANCES.** At driveways no one may place, construct, plant, maintain, allow, or suffer any improvements, landscaping, or other obstructions to vision (excepting mailboxes) between 2 and 8 feet above the finished grade with the purpose that at least 150 feet of sight distance will be provided in both directions along streets from points in the driveways 25 feet from the street curb. Where the Committee determines that this rule for a driveway is impracticable or unreasonable, it may allow an alternative that offers the least hazard and interference with traffic.

**16: ANIMALS.** No more than two household pets such as cats and dogs are allowed to be kept or maintained on any lot. No animal shall be kept, bred, or maintained for commercial purposes. Household pets shall be kept quiet so as not to disturb the peace and tranquility of the neighborhood. No such animal shall be allowed to run at large. Should an animal be walked by leash, any debris or animal waste resulting therefrom shall be cleaned up, removed, and disposed of immediately by the owner of said animal.

**17: VEHICLE PARKING.** No trucks larger than pickup trucks, tractors, disabled vehicles, unused vehicles, campers, motor homes, trailers, recreational vehicles, boats, motorcycles, or similar vehicles shall be parked or repaired on any road, street, private

driveway, or lot in this subdivision unless it is screened in such a way that it is not visible to the occupants of the other lots in the subdivision. No vehicle of any kind shall be parked on any street or road in this subdivision excepting for a reasonable length of time. The Committee shall determine what constitutes adequate screening and reasonable length of time.

**18: LANDSCAPING.** The lot owner shall modify his lot for human use and enjoyment by grading and decorative planting within sixty (60) days following completion of a house thereon, weather permitting.

**19: MAINTENANCE OF LOTS AND IMPROVEMENTS.** Each lot owner shall maintain his lot and any improvements thereon to prevent the same from becoming unsightly by removing all debris, rubbish, dead trees, and other materials or conditions that reasonably tend to detract from or diminish the aesthetic appearance of the subdivision, and by keeping the exterior of all improvements in a good state of repair. Garbage, trash, and other wastes shall be kept in odorless and sanitary containers which shall be emptied weekly by a refuse collection service. At least twice during each of the months of April through September, lot owners or their designated representatives shall mow their lots, whether or not improved.

**20: NUISANCES.** No one shall carry out, or allow to be carried out, any noxious or offensive activity on any lot, nor shall anything be done or allowed to be done thereon which may become or be an annoyance or nuisance to the neighborhood.

**21: BUSINESSES.** No mercantile building shall exist, nor shall any manufacturing, wholesaling, retailing business, church, or school operate in this subdivision. Day-care and preschool facilities for no more than six (6) children twelve (12) years of age or younger are permitted. Home-occupancy businesses engaged in by permanent-resident lot owners are allowed so long as the activities conform with all laws, county ordinances, and other governmental regulations, and have no employees, independent contractors, signage, generate no additional vehicular traffic, and require no parking spaces beyond those needed by lot owners and their immediate families.

**22: DEDICATED EASEMENTS.** Each owner of a lot in this subdivision will take his title subject to the rights of utility companies, the developer, Hendricks County, the committee, and the other lot owners in those certain strips or areas of ground designated "utility easement," "drainage easement," and "landscape easement" that are reserved hereinabove. No permanent or other structures, may occupy said easements excepting the uses (including the slopes of street cuts and fills) for which the easements are reserved hereinabove. No facility shall occupy any easement in a position that will obstruct a property line or corner.

**23: LOT GRADING.** Lots shall be graded so as not to restrict the surface water runoff or cause ponding or stoppage of said runoff over any lot in this subdivision. See sections numbered 8 and 18 above.

**24: DRIVEWAYS AND ACCESS RIGHTS.** Residential driveways shall be constructed of portland cement concrete, asphalt, or other hard surface materials; however, driveways between the backs of curbs and street boundaries, as well as sidewalks, shall be constructed only of portland cement concrete. Pavement shall be a minimum of four (4) inches thick excluding subbase materials.

**25: SWIMMING POOLS.** No swimming pools, where the water level is either partially or completely above natural ground level, shall be permitted. Any in-ground swimming pool shall be properly fenced or covered to protect the safety of others. Before installation, such fence or cover shall receive committee approval as required by Section numbered 10 above.

**26: CRAWL SPACE, BASEMENT, AND FOUNDATION DRAINS.** No crawl spaces, basements, eaves troughs, gutters, downspouts, or foundation perimeter drains shall be constructed to discharge water onto a street. Crawl space drains, foundation drains, and basement drains intercepting and carrying only excess ground water may connect to subsurface drains already in place for that purpose. Should any such subsurface drain become blocked, partially blocked, or damaged with resulting damage to another lot owner and/or to the drainage system of any street, the owner causing said blocking and/or damage shall be liable for all damages to the injured party or parties, the Developer, or Hendricks County, and shall hold all contractors, engineers, developers, other lot owners, and said county harmless from liability therefrom. Extreme caution is mandatory when installing foundations drains and/or sump pumps at basements located on lots and/or in areas where a 100-year emergency flood route is shown on the development plans is present, even though said drains and/or sump pumps may be outside any special flood areas determined by the Indiana Department of Natural Resources.

**27: BASEMENTS.** Where a basement is constructed on any lot in this subdivision a pump ejector system for withdrawing wastewater from basement facilities, as well as other pumps for foundation drains, may be required.

**28: PROSCRIBED AND OTHER IMPROVEMENTS.** No improvements of any kind shall be permitted in a dedicated street right of way excepting erosion control, driveway entrances, sidewalks, landscaping, and mailboxes. No free-standing antennas or roof-top antennas shall be allowed in this subdivision. Satellite dishes or receivers shall be allowed only behind residences, and then only if approved beforehand in each instance by the Committee as to location and design.

**29: SANITARY SEWER CONNECTION.** Private sewage disposal systems are prohibited in this subdivision. Every lateral connecting between a residence and a public or semipublic sanitary sewer shall contain a check valve to prevent backflow. The installation and perpetual maintenance of such laterals and check valves is the responsibility of the lot owners.

**30: UTILITIES CONNECTION INSPECTION.** All materials and workmanship in the installation of connections between residences and utility facilities shall be subject to

access and inspection by the utility companies having jurisdiction, or by their duly authorized representatives or successors, who shall have the right to require correction of any defects discovered.

**31: SIDEWALKS.** Each initial lot owner taking his title from the Developer, by acceptance of a deed for his lot, even if not expressed in said deed, is deemed to covenant and agree to build (at the time of construction of the residence) and maintain in good condition a concrete sidewalk at the sides of all streets upon which his lot abuts. Sidewalks shall be constructed within two (2) years of the date of said deed if no residence is erected on the lot, or prior to the conveyance of title to another party, whichever first occurs. Said walks shall conform with the lines and grades established by the Committee. Each said owner shall be responsible for grading and finishing yard slopes, erosion control, and decorative landscaping as required by the Committee for sidewalk construction. Said walks shall conform with the development plans for the subdivision on file in the office of the Hendricks County Area Plan Commission and shall be placed on a 4-inch aggregate subbase.

**32: STAKING.** PHW Development Corp. will set lot corner stakes one time. Wherever possible to be driven, corner stakes will consist of ¾-inch metal pipes about 30 inches long set so as to leave about one or more inches of pipe protruding above ground unless a different type of monument appears on the recorded plat. Laths, with or without flagging, driven beside metal pipe stakes do not constitute corner stakes but serve only to signalize and identify corner stakes. Said corner stakes will not only furnish a means for determining lot boundaries, but may aid in the location and orientation of improvements to be constructed on the lots. Lot owners shall have charge and care of stakes marking their respective lots and shall be responsible for their preservation. Since such restoration will be at the lot owner's expense, said owners should become familiar with stake locations and do all things necessary to maintain and protect them. Lot owners may hire said corporation to replace stakes damaged or destroyed from any cause, or may engage any registered land surveyor to perform that work.

Accidental displacement of stakes and laths during the construction of public and private improvements, and intentional displacement due to vandalism, may cause conflicts between plat locations and staked locations of lot corners and lines. Neither PHW Development Corp. nor its engineers or surveyors express or imply any warranty with regard to the correctness of disturbed stakes. Therefore, lot owners and their independent contractors, including their engineers and surveyors, together with utility companies who may install facilities according to stakes in place, shall recognize and act not only by the actual notice on the ground to which they are exposed, but also by the constructive notice afforded by the recorded plat of the subdivision. Before starting any excavation, building, or other improvement, they shall be responsible for comparing all linear and angular measurements between corner stakes found at the site with such dimension exhibited on said recorded plat. They shall correct at once any discrepancies discovered in the stakes.

**33: MUD CONTROL.** Prior to, during, or after construction of any improvements on any lot, the owner of said lot or his agents shall construct a driveway or similar graveled or other improved surface on said lot for the delivery of supplies that will discourage or hinder the tracking of mud or other debris from the lot upon public streets. To further

prevent vehicles from distributing mud or other debris on the public streets or any area of Timber Bend, said owner or his agent shall line the lot side of any curb adjoining that lot with bales of straw, appropriate fencing, or erect any other barrier to block vehicles leaving the lot excepting at the driveway or other appropriately-surfaced area. Should mud or other debris be distributed on any public street or other area of Timber Bend, as a result of any activity on any lot, the owner of that lot shall be responsible for the removal of that mud or other material on the date of its placement. The Committee may enforce this provision by any mechanism or procedure described in Section numbered 37 below. The owner further holds PHW Development Corp. its agents, engineers, contractors, and Hendricks County, Indiana, harmless from any liability that might result from violation of or failure to conform with this or any other section of these restrictive covenants.

**34: MAILBOXES.** PHW Development Corp. will furnish specifications for a mailbox with post assembly. The owner or his contractor shall purchase and install said mailbox at the owner's expense. No other type of mailbox or mailbox post shall be erected or be permitted to remain at any lot unless approved beforehand by the Committee.

**35: INLET AND CATCH BASIN CASTINGS, CLEANING OF.** To facilitate storm water removal from streets and other areas, the Hendricks County Highway Department may keep castings of inlets and catch basins free of silt, debris, and the accumulation of any other foreign matter. However, if any such casting ponds water because said county has not cleaned it, it shall be the duty of the owner or owners whose lots contribute storm water to said inlet or catch basin, to clean said casting and properly dispose of any obstructing debris. Lot owners failing to clean said castings shall be solely liable for damages that may result.

**36: FOUNDATIONS AND SLABS ON GRADE.** All building foundations and floor slabs shall be placed on suitable soil. At the time of slab placement and excavation for the foundations, careful observation of the subgrade shall be made by a qualified professional. Any soils containing deleterious materials shall either be removed and replaced with engineered fill or the foundations shall be lowered to competent soil.

**37: ENFORCEMENT.** If the parties hereto, or any of them, or their heirs or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any person or persons owning any lot or lots in this subdivision to prosecute by any proceeding at law or equity the person or persons violating or attempting to violate any such covenant, and either prevent him or them from so doing or to recover damages or other dues for such violation. If any owner of a lot in this subdivision shall fail to maintain his lot and/or any improvements situated thereon, or to keep sight distances clear, or to construct and/or maintain sidewalks in accordance with these restrictive covenants, the Committee shall have the right, but not the obligation, by and through its agents and employees or contractors, to enter upon said lot and repair, mow, clean, or perform such other acts as may be reasonably necessary to make said lot, and or any improvements situated thereon, conform to the requirement of these restrictions. The Committee shall collect its cost thereof in any reasonable manner from the owner. Neither the Committee nor any of its agents, engineers, employees, or contractors shall be liable for any damage that may result



from any maintenance or other work performed hereunder. Any amount so assessed against any lot, together with interest and other charges or costs as hereinafter provided, shall become and remain a lien upon that lot subordinate only to the lien of a first mortgage previously recorded until paid in full, and shall also be a personal obligation of the owner or owners of that lot. Such charge shall bear interest at the rate of 18% per annum until paid in full. If, in the opinion of the Committee, such charge has remained due and payable for an unreasonably long period of time, the committee may institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing, in any court of competent jurisdiction. The owner of the lot or lots subject to the charge shall, in addition to the amount of the charge due at the time legal action is instituted, be obligated to pay any expenses or costs, including attorney's fees and court costs, incurred by the Committee in collecting the same. Every owner of a lot in this subdivision, and any person who may acquire any interest in such lot, whether as an owner or otherwise, is hereby notified, and by acquisition of such interest agrees, that any such liens which may exist upon said lot at the time of the acquisition of such interest are valid liens and shall be paid. Every person who shall become an owner of a lot in this subdivision is hereby notified that by the act of acquiring, making such purchase, or acquiring such title, such person shall be conclusively held to have covenanted to pay the Committee all assessments that shall be made pursuant to this paragraph. Any right, duty, or power designated herein to the committee shall likewise be extended to any lot owner damaged as a result of a violation of any covenant herein.

**38: TERM.** These covenants will run with the land and shall be binding on all parties, and all persons claiming under them until December 1, 2017, after which they shall be automatically extended for successive ten (10) year periods, unless, at any time, an instrument signed by at least three fourths ( $\frac{3}{4}$ ) of the then owners of the lots has been recorded agreeing to change said covenants in whole or in part.

**39: SEVERABILITY.** Invalidation of any one of these covenants by judgement or court order shall not affect any of the other provisions, which shall remain in full force and effect.

The undersigned persons, executing this instrument on behalf of PHW Development Corp., represent and certify that they are duly elected representatives of said corporation and have been fully empowered by proper resolution of the Board of Directors of said corporation to execute and deliver this dedication.

**In Witness Whereof,** the said PHW Development Corp., by Paul T. Hardin, President, and Russell M. Webb Jr., as Secretary, as owner and proprietor of the above-described real estate, has set its hand and seal this 8<sup>th</sup> day of October, 1998.

