

**TIMBER BEND**  
Section Nine (9)  
Retention Pond Use and Maintenance Covenant

**PHW DEVELOPMENT CORP.**, an Indiana Corporation by Paul T. Hardin and Russell M. Webb, Jr., President and Secretary, respectively, being the owner of lots 187, 188, 189, 190, 191 and 192 in Timber Bend, Section 9, a subdivision located in Washington Township, Hendricks County, Indiana as shown on the plat thereof entered for record in the Office of the Recorder of Hendricks County, Indiana, on October 21, 1998 in Plat Cabinet 1, slide 147, pages 1A through 1F, as Document #9800028098;

**DOES, BY THIS INDENTURE, RESTRICT AND COVENANT** the above described lots to itself and its grantees, assigns, successors, legal representatives, and to any person, persons, trusts, corporations, banks, and associations and/or anyone who may acquire title to any of said lots as to the following terms, stipulations, conditions, restrictions, and covenants which shall apply in their entirety to all the above described lots:

**RETENTION POND**

Since the retention pond constructed on lots 187, 188, 189, 190, 191 and 192 likely may not be maintained by the County of Hendricks or any other public agency, use and maintenance thereof shall be governed by the following provisions:

(a) The owner of any of such lots, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof from PHW Development Corp., or from a subsequent owner of said lot, shall conclusively be deemed to have accepted such deed or executed such contract, subject to the following conditions:

(b) The retention pond shown on the plats described above and referred to herein is defined as the area within the top of the side slopes bordering the pond and is a facility set aside for retaining storm water and for recreational use and enjoyment of the owners of the fee title or other interest underlying said pond.

(c) The owners shall take their titles subject to the rights of the Hendricks County Drainage Board in any drainage easement on said lot and subject to a nonexclusive easement in favor of the other owners upon whose lots the pond is located.

(d) No change may be made and no structure shall be installed in the pond or its inlet or outlet facilities that will obstruct or interfere with its retention of storm water or with its maintenance or free use by the owners of the easement thereon.

(e) The pond will be maintained perpetually in a safe, sanitary, and attractive condition by the owners as specified herein.

(f) "Maintenance" includes, without limitation, the cost and expense of all material, labor, equipment, and machinery required for cleaning out plant growth, seeding banks to prevent erosion, mowing side slopes, and landscaping together with the costs to remove debris from inlet and outlet structures.

(g) In determining the fraction of the cost of maintenance each owner must contribute, each lot will be assumed to have but one (1) owner having an undivided one sixth

(1/6) interest in the easement in the pond area, even if title to a lot is shared by two (2) or more grantees as tenants by the entirety, joint tenants, tenants in common or otherwise.

(h) Every grantee under one (1) ownership shall be jointly and severally liable for the ownership's proportionate share of the maintenance costs and expenses.

(i) An owner may serve notice by certified or registered mail to the other owners on the pond that maintenance is required.

(j) Such notice shall specify and describe the maintenance needed, estimate the cost thereof, and name any contractors solicited or propose a means for performing the work without a contractor.

(k) Unless the notified owners object in writing within thirty (30) days after receipt of said notice, the notifying owner may proceed with the cost-shared maintenance.

(l) If any notified owner objects in writing to the proposed maintenance, one (1) or more owners may bring an action at law or equity for adjudication, and judgement shall include reasonable attorneys' fees and costs of such action.

(m) Should the pond become incapable of receiving or retaining storm water, or if it becomes unsafe or unsanitary for any reason, an owner may (without giving notice as provided above) proceed with any emergency repairs or maintenance necessary to render said pond safe and able to serve the purposes for which it was constructed.

(n) The costs of repairing any and all damages to the pond caused by equipment and/or vehicles used in the construction of a house or other improvements on a lot, or caused by an owner's use of a pond, shall not be divided among the owners of the lots but shall be paid for solely by the owner whose house or other improvements are being constructed, or by the party responsible for such damages arising out of the exercise of rights reserved for the lot owners.

(o) After completing the work described in (i), (m), or (n) above, the owner who did the work, or who had it done, may serve notice by certified or registered mail to the other owners that satisfactory repairs have been made, and that the total cost thereof has been paid as verified by a copy of a paid receipt attached to said notice, together with any reasonable itemized bill for the total amount of any work performed by the notifying owner, including labor, material, and equipment.

(p) The notified owners shall, within thirty (30) days after receipt of said notice, reimburse the owner who did the work or had it done, in an amount equal to one sixth (1/6) of the sum of said receipt and said itemized bill, if any, or in an amount equal to 100 percent (100%) where work was performed to remedy damages described in (n) above.

(q) If a notified owner fails to pay his share within thirty (30) days after receipt of such notice, then said costs, and the expenses of collection thereof, shall thereupon become a continuing lien on that owner's lot which shall bind such lot in the hands of the then owner, his heirs, devisees, personal representatives and assigns.

(r) If the expense is not paid within the said thirty (30) day period, then interest at the rate of twelve percent (12%) per annum may be added to the delinquent balance and the owner who had the maintenance done may bring an action at law against the owner personally obligated to pay the same or to foreclose the lien against the lot; and in that event, judgement shall include interest on the total amount as above provided, reasonable attorney's fees, and costs of the action.

(s) The lien of the expense provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the lot subject to such expense;

provided, however, that such subordination shall apply only to the expenses that become due and payable prior to a sale or transfer of such lot pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure.

(t) Such sale or transfer shall not relieve such lot from liability for any expense thereafter becoming due, nor from the lien or any such subsequent expense.

(u) Each owner shall save the other owners, PHW Development Corp., its employees, agents, contractors, engineers, successors, and assigns, harmless from any and all liability and claims for damages due to death or injury to persons or damage to property resulting from acts of the owner, his contractors and agents.

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

**IN WITNESS WHEREOF**, the said PHW Development Corp., by Paul T. Hardin, and Russell M. Webb, Jr., as President and Secretary, respectively of PHW Development Corp., as owner and proprietor of those lots above described, has set its hand and seal this 22<sup>nd</sup> day of October, 1998.