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Subdivision Covenants and Restrictions

The information is provided as a public service only. The information on this site is general in nature, unofficial and is not a valid reference for any legal purposes. The user agrees to hold harmless, protect, indemnify, and forever release First American Title Insurance Company and its officers, directors, agents, and employees, from and against any and all liabilities, losses, damage, expenses and charges, including but not limited to attorneys' fees and expenses of litigation, which may be sustained or incurred by the user under, or arising directly or indirectly out of the use of the information contained in this site.

COVENANTS

FOR

OAK BEND ESTATES SEC. 5

HENDRICKS COUNTY



OAK BEND ESTATES

subdivision contains 2,449 linear feet of storm sewers, 5,035 linear feet of subsurface drains, 4,070 linear feet of swales, and 656 linear feet of culverts.

The restrictive covenants and requirements given herein, together with those entered for record in Miscellaneous Record _____, page _____, in the office of the Recorder of the aforesaid county, shall operate, be in force for, and apply to this plat. Henceforth this subdivision shall be known and designated as **Oak Bend Estates, Section 5, A Subdivision of the South Half of the Northeast Quarter of the Southeast Quarter of Section 34, Township 16 North, Range 1 East, Hendricks County, Indiana.**

RESTRICTIVE COVENANTS

PHW Development Corporation 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 Oak Bend Estates, Section 5, 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.** "Committee" shall mean the Architectural and Environmental Control Committee composed of the officers and directors of PHW Development Corporation or their duly authorized representatives, all of whom shall serve without compensation for services performed as committee members. In the event PHW Development Corporation 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.

"Owner" shall mean the person or collection of persons 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.

2. **LAND USE.** 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 Hendricks County's zoning and subdivision control ordinances and with these covenants. Where a lot is subdivided, or where an owner acquires adjoining lots for the purpose of building one dwelling across the common lot line, the side lot line set back restrictions specified 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. **DWELLING SIZE.** No dwelling shall be erected, altered, placed, or permitted to remain on any lot other than one single-family residence three stories or less in height. Dwellings on all lots shall have, at a minimum, attached two-car garages. The ground floor area of the main structure of any one-story dwelling, excluding garages and one-story porches, shall be not less than 2,000 square feet. The ground floor area of the main structure of any two-story dwelling, excluding garages and one-story porches, shall be not less than 1,100 square feet, with no less than a total of 2,200 square feet of finished floor space in such two-story structure.

4. **UTILITY BUILDING AND/OR BARN.** A utility building, barn, or other accessory building will not be allowed on any lot, except one gazebo type structure and/or one 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 allowed 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, nor shall any building be erected nearer than 15 feet to any side line of a lot on one side, and the total of both side setbacks shall be not less than 20 percent of the lot width, as measured at the building line. Architectural appurtenances projecting not more than 24 inches, stairways projecting not more than 4 feet, unenclosed and unroofed porch slabs on the front sides of buildings, steps, and walks are exceptions to these setback requirements.

6. **OCCUPANCY OF STRUCTURES.** No dwelling 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 the Hendricks County Building Commissioner. The use of any other structure or mobile home as a residence, either temporarily or permanently, is prohibited.

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PURSUANT to IC 36-7-4-700 et seq., and all amendments thereof, the undersigned do hereby certify that the public notice of the hearing by the Hendricks County Plan Commission on the herein-named owner's application for approval of this plat duly complied with IC 36-7-4-706 and all amendments thereof, and that said plat was approved at said hearing with a majority of the members of said Commission concurring in said approval.

Given under our hands and seal this 9th day of July, 1990:

C. Richard Whicker
C. Richard Whicker, President

Robert E. Jarzen
Robert E. Jarzen, Secretary



STATES, SECTION 5

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, first floor elevations, locations of water wells, 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 specifications 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, the Hendricks County Building Commissioner 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 Plan Commission has approved a soil and water conservation plan (erosion control plan) and a development plan showing house locations and first floor elevations, with slopes for positive surface drainage therefrom. Each owner is obligated to 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 dwelling to a sanitary sewer. The Table of Elevations appearing on said development plan and at the end of these covenants, shows, for each lot, first floor elevations for houses if constructed at the locations shown on said development plan. *The entrance of ground water into basements shall be prevented by special designs and construction.*

9. **WATER SUPPLY SYSTEMS AND GEOTHERMAL HEAT PUMP SYSTEMS** shall comply with minimum standards set forth in an ordinance passed and adopted by the Board of Commissioners of Hendricks County, Indiana, October 7, 1985, entitled Chapter 3.1, Minimum Standards for Well Supply Systems and Geothermal Heat Pump Systems. The public water supply system in lieu of water wells shall be used in this subdivision. The Hendricks County 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 dwellings shall be open wood fences of a decorative type not exceeding four (4) feet in height. Swimming pools shall be properly fenced to protect the safety of others as required by Section numbered 25 below. Fences in easements are erected at owners' risk as such fences may be partially or completely torn down by others if they interfere with the installation, operation, and/or maintenance of the facilities for which the easements have been reserved.

11. **CONSTRUCTION TIME.** Any dwelling, fence, water line, sewer, ditch, or any structure excepting sidewalks, once approved and under construction, must be completed one (1) year from the date construction starts. For sidewalk construction time, see Section numbered 31 below.

12. **STORAGE TANKS.** Oil or gas storage tanks shall be buried or located in a dwelling or garage.

13. **SIGNS.** The only signs that may be erected by lot owners in this subdivision are: Those required by law, a single sign placed by a builder or financial institution to advertise a property during the construction and sales period, a single yard sale or garage sale sign placed by the owner no more often than one day 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 nine (9) 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 one shall keep or maintain animals or poultry in this subdivision except household pets such as cats and dogs, but no pet shall be kept, bred, or maintained for commercial

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17. **VEHICLE PARKING.** No trucks larger than pickup trucks, disabled vehicles, unused vehicles, campers, trailers, recreational vehicles, boats, motorcycles, or similar vehicles shall be parked 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 park on any 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 landscape the lot within sixty (60) days following completion of a house thereon, weather permitting. Landscaping required for sidewalk construction shall be in accordance with Section numbered 31 below.

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, or retailing business operate in this subdivision.

22. **DEDICATED EASEMENTS.** Each owner of a lot in this subdivision will take his title subject to the rights of utility companies, the Hendricks County Drainage Board, the Commissioners of Hendricks County, the committee, and the other lot owners in those certain strips or areas of ground designated "utility easements," "drainage easements," and "retention pond easements" that are reserved hereinabove. No permanent or other structures may occupy said easements excepting fences and the facilities for which the easements are reserved. Fences erected on easements may be removed by easement holders if necessary to the proper operation and maintenance of the facilities for which the easements are reserved. 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 Section numbered 8 above.

24. **DRIVEWAYS.** Residential driveways shall be constructed of portland cement concrete, asphalt, or other hard-surface material which may be approved by the committee. Pavement shall be a minimum of four (4) inches thick excluding subbase material.

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

26. **CRAWL SPACE, BASEMENT, AND FOUNDATION DRAINS.** No crawl spaces, basements, caves, 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 laterals already in place for that purpose. Said laterals connect with 6-inch diameter subsurface drains that parallel street curbs. However, no foundation perimeter drain shall discharge at an elevation below 849.50 feet (National Geodetic Vertical Datum of 1929). Where any lateral is below said 849.50-foot elevation, the connection to the lateral shall not occur but, instead, an alternate discharge location must be selected. Should any said laterals and/or subsurface drains 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.

27. **BASEMENTS** are allowed in this subdivision but pump ejector systems for withdrawing wastewater from basement facilities, as well as other pumps for foundation drains, may be required.

PURSUANT to IC 36-7-4-700 *et seq.*, and all amendments thereof, the undersigned do hereby certify that the public notice of the hearing by the Hendricks County Plan Commission on the herein-named owner's application for approval of this plat duly complied with IC 36-7-4-706 and all amendments thereof, and that said plat was approved at said hearing with a majority of the members of said Commission concurring in said approval.

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STATES, SECTION 5

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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. The minimum allowable distance between a street boundary and a signal receiver in the form of a satellite dish, or other similar device, is seventy (70) feet. No antenna on any lot shall exceed ten (10) feet above the roof peak of the house on said lot.

29. SANITARY SEWER CONNECTION. Every pipe connecting between a dwelling and a public sanitary sewer shall contain a check valve to prevent backflow.

30. UTILITIES CONNECTION INSPECTION. All materials and workmanship in the installation of connections between dwellings 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 said lot, even if not expressed in said deed, is deemed to covenant and agree to build and maintain in good condition a concrete walk at the sides of all streets upon which his lot abuts. Said walks shall conform with the lines and grades as established by the committee. Each said owner shall be responsible for slope modifications, erosion control, and decorative landscaping as required by the committee for sidewalk construction. Said walks shall conform with the development plans for this subdivision on file in the office of the Hendricks County Plan Commission and shall be placed on a 4-inch aggregate subbase. Sidewalks shall be constructed within sixty (60) days after completion of the dwelling on the lot, weather permitting, or within two (2) years of the date of said deed if no dwelling is constructed or before the conveyance of title to another party, whichever first occurs.

32. STAKING. PHW Development Corporation will set lot corner stakes one time. Wherever possible to be driven, corner stakes will consist of 3/4-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 monument appears on the recorded plat. Said 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. 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; 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. Laths, with or without flagging, driven beside metal pipe stakes do not constitute corner stakes but serve only to signalize and identify corner stakes.

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 the PHW Development Corporation nor its engineers or surveyors make any express or implied 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 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 those shown 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 Oak Bend Estates, 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 Oak Bend Estates 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 34 below. The owner further holds PHW Development Corporation, 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. ENFORCEMENT. If the parties hereto, or any of them, 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. A violation of any restriction herein will not result in reversion or forfeiture of title. If any owner of a lot in this subdivision shall fail to maintain his lot

hereof, the undersigned
Hendricks County Plan
approval of this plat duly
said plat was approved
action concurring in said



Given under my hand and seal this 27th
day of September 1990:



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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 reasonably necessary to make said lot, and/or any improvements situated thereon, conform to the requirements 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, employees, or contractors, shall be liable for any damage that may result from any maintenance or other work performed hereunder. Any fine 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 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, 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 fines that shall be made pursuant to this paragraph.

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35. **RETENTION PONDS.** Since the retention ponds constructed on Lots 146, 147, 148, 149, and 150 and on Lots 166, 167, 168, 169, and 170, which are shown on the annexed plat, may not be maintained by Hendricks County or any other public agency to the satisfaction of all owners of the lots affected thereby, despite the location of said ponds on dedicated drainage easements, use and maintenance thereof shall be governed by the following provisions: (a) The owner of any of such lot, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from the PHW Development Corporation 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) Retention ponds shown on the plat and referred to herein are defined as the areas within the tops of the side slopes bordering the ponds and are facilities set aside for retaining storm water and for recreational use and enjoyment of the owners of the fee title or other interest underlying said ponds. (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 any 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 ponds 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 fifth (1/5) interest in the easement in the pond area, even if title to a lot is shared by two or more grantees as tenants by the entirety, joint tenants, tenants in common, or otherwise. (h) Every grantee under one 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 his 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 or more owners may bring an action at law or equity for adjudication, and judgment shall include reasonable attorneys' fees and costs of such action. (m) Should a 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 any 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

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Robert E. Jarzen, Secretary



COVENANTS, SECTION 5

the owner who did the work or had it done, in an amount equal to one fifth (1/5) of the sum of said receipt and said itemized bill, if any, or in an amount equal to 100 percent 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) The personal obligation of the then owner to pay such expense, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them. (s) If the expense is not paid within said thirty (30) day period, then interest at the rate of eighteen (18%) percent 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, judgment shall include interest on the total amount as above provided, reasonable attorneys' fees, and cost of the action. (t) 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. (u) 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. (v) Each owner shall save the other owner, and the PHW Development Corporation, 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. (w) PHW Development Corporation, its successors and assigns, reserve the right to go upon the drainage easements and pond easements, as herein dedicated, for the purpose of removing water from said ponds so long as the same does not substantially lower the level of the water in those ponds or cause substantial damage to those lot owners herein designated.

36. **TERM.** These covenants will run with the land and shall be binding on all parties, and all persons claiming under them, for a period of twenty-five (25) years from the date these covenants are recorded, after which twenty-five (25) years they shall be automatically extended for successive ten (10) year periods, unless an instrument signed by a majority of the then owners of the lots has been recorded agreeing to change said covenants in whole or in part.

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

The undersigned person, executing this instrument on behalf of PHW Development Corporation, represents and certifies that he is a duly elected officer of said corporation and has 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 Corporation, by Paul T. Hardin, President, as owner and proprietor of the above-described real estate, has set its hand and seal this

30th day of October, 1990.

DULY ENTERED FOR TAXATION

14th day November, 1990
 Mary James Russell
 Notary Public
 HENDRICKS COUNTY

Paul T. Hardin
 Paul T. Hardin, President

STATE OF INDIANA }
 COUNTY OF HENDRICKS } SS:

Before me, the undersigned Notary Public within and for said County and State, personally appeared Paul T. Hardin, President of PHW Development Corporation, as owner and proprietor of the above-described subdivision, and acknowledged the execution of the foregoing instrument to be his voluntary act and deed for the uses and purposes therein stated.

Pamela D. Hughes
 Pamela D. Hughes, Notary Public
 Residing in Hendricks County, Ind.

My Commission Expires August 1, 1993.

THIS PLAT HAS BEEN REVIEWED AND IS HEREBY RELEASED FOR RECORDING
 DATE: 11-9-90
Walter J. Reeder
 HENDRICKS COUNTY ENGINEER

RESTRICTIVE COVENANT MODIFICATION
OAK BEND ESTATES, SECTION 5

PHW Development Corporation does hereby respectfully change the restrictive covenants for Section 5 of Oak Bend Estates as follows:

1. That on November 14, 1990 a plat of Oak Bend Estates, Section 5 was recorded.

2. That on that plat was expressly stated certain restrictive covenants affecting all lots in Section 5 of Oak Bend Estates.

3. That Item 36 of those restrictive covenants allows for procedure to change those covenants as follows:

36. TERM. These covenants will run with the land and shall be binding on all parties, and all persons claiming under them, for a period of twenty-five (25) years from the date these covenants are recorded, after which twenty five (25) years they shall be automatically extended for successive ten (10) year periods, unless an instrument signed by a majority of the then owners of the lots has been recorded agreeing to change said covenants in whole or in part.

4. As owner of the majority of the lots in Oak Bend Estates, Section 5 and in accordance with Item 36 as described above, PHW Development Corporation does hereby change Item 36 to read as follows:

36. TERM. These covenants will run with the land and shall be binding on all parties, and all persons claiming under them, for a period of twenty-five (25) years from the date these covenants are recorded, after which twenty five (25) years they shall be automatically extended for successive ten (10) year periods, unless an instrument signed by a majority of the then owners of the lots has been recorded agreeing to change said covenants in whole or in part. Additionally, said covenants cannot be changed without the express written consent of PHW Development Corporation so long as PHW Development Corporation has any ownership interest in any one or more lots in Section 5, Oak Bend Estates.

IN WITNESS WHEREOF, the undersigned as owner of a majority of the lots in Section 5, Oak Bend Estates have executed this Restrictive Covenant Modification on this 23rd day of October, 1991.

PHW DEVELOPMENT CORPORATION

By: *Paul T. Hardin*
Paul T. Hardin, President

By: *Embell M. Webb, Jr.*
Embell M. Webb, Jr., Secretary

ENTERED FOR RECORD
BOOK 128 OCT 28 1991 *m 8:00*
107-08
HENRICKS COUNTY RECORDER

*#14361 July 12, 1994
For letter of resignation
see mine and into page 389
Jeff Brudby RHC id*

STATE OF INDIANA)
COUNTY OF HENDRICKS) SS

Before me, the undersigned Notary Public within and for said County and State, personally appeared Paul T. Hardin, President and Russell M. Webb, Jr., Secretary of PHW Development Corporation, as owner and proprietor of the above described subdivision, and acknowledged the execution of the foregoing instrument to be their voluntary act and deed for the uses and purposes therein stated.

My Commission Expires August 1, 1993

Signature *Pamela D. Hughes*

Printed Name Pamela D. Hughes, Notary Public

Residence of Hendricks, Indiana



This instrument prepared by Hardin & Webb, Attorneys.

