

## Declaration of Covenants, Conditions and Restrictions for Pedigo Bay

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, is made on the date herein set forth by Pedigo Bay Development, LLC, an Indiana company, hereinafter referred to as "Declarant".

Declarant is the owner in fee simple of certain real property located in Monroe County and Lawrence County, State of Indiana, which is being and shall be developed as a residential subdivision under the name of Pedigo Bay. When the Pedigo Bay plat ("Plat") is recorded, these covenants, conditions, and restrictions shall be incorporated by reference assuring that all real property contained within the Plat shall be developed according to the common scheme of this Declaration.

For the purpose of enhancing and protecting the value, attractiveness, and desirability of the lots or tracts constituting such subdivision, Declarant hereby declares that all of the real property described above and each part thereof and any properties subsequently annexed hereto in accordance with the provisions of this Declaration, shall be held, sold, and conveyed subject to the following easements, covenants, conditions, and restrictions which shall constitute covenants running with the land and shall be binding on all parties having any right, title, or interest in the above described property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

### ARTICLE I

#### Name

This development shall be known and designated as Pedigo Bay, a subdivision located in Monroe County, Indiana.

### ARTICLE II

#### Definitions

The following words, when used in this Declaration (unless the context shall prohibit), shall have the following meanings:

Section 1. "Association" shall mean and refer to Pedigo Bay Homeowners Association, Inc., an Indiana not-for-profit corporation its successors and assigns.

Section 2. "Board of Directors" shall mean and refer to the Board of Directors of Pedigo Bay Owners Association, Inc.

Section 3. "Common Area" shall mean all real and/or personal property which the Association and or the Declarant owns for the nonexclusive common use and enjoyment of the owners of all Lots, as defined in Section 6 below, together with nonexclusive, easements of ingress and egress over the private road indicated on the Plat servicing Lots 1 through 4.

Section 4. "Declarant" shall mean and refer to Pedigo Bay Development, LLC ("Pedigo Bay Development") or its successors and assigns if such successor or assign acquires the rights, title, and interest of Pedigo Bay Development to this Declaration.

Section 5. "Developer" shall mean and refer to Pedigo Bay Development, its successors and assigns.

Section 6. "Lot" shall mean and refer to any tract of land, with the exception of land designated as Common Area, shown on the recorded Plat of Pedigo Bay referred to above, the parcels identified above as Lots 1a - 10a, or any other parcel of land currently owned or later acquired by Declarant or Developer which is conveyed subject to the scheme of this Declaration pursuant to Article III of this Declaration.

Section 7. "Owner" shall mean and refer to the record owner, whether one or more person or entities, of the fee simple title to any Lot which is a part of the subdivision, including the Declarant and including contract sellers, but not including contract purchasers and not including those having such interest merely as security for the performance of an obligation.

Section 8. "Plat" shall mean and refer to the subdivision plat of the properties recorded in the office of the Recorder of Monroe County, Indiana, as the same may be hereafter amended or supplemented.

Section 9. "Properties" shall mean and refer to that certain real property herein before described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

## ARTICLE III

### Property Subject to This Declaration; Additions Thereto, Deletions Therefrom

Section 1. Land Subject to this Declaration. The real property which is and shall be held, transferred, sold, conveyed, and occupied, subject to this Declaration is located in Monroe County, Indiana, and comprises all the lots, tracts, and easements shown and/or platted within or upon the property described above as recorded in the Office of the Recorder of Monroe County, Indiana.

Section 2. Platting and Subdivision Restrictions. The Declarant shall be entitled at any time and from time to time, to plat and/or re-plat all or any part of the property, and to file subdivision restrictions and or amendments thereto with respect to any undeveloped portion, or portions of, or additions to, Pedigo Bay.

Section 3. Additional Land. Developer may, but shall have no obligation to, add at any time or from time to time to the scheme of this Declaration Additional Lands, provided only that (a) any portions of the Additional Land from time to time added to the scheme of this Declaration shall be contiguous to property then subject to the scheme of this Declaration, (b) any portions of such Additional Land shall at the time of addition to this scheme, be platted as single family residential lots, (c) said plat of the Additional Land shall dedicate, or commit to dedicate, to the Association the Common Areas of said plat of the Additional Land, and (d) upon addition of the Additional Land to the scheme of this Declaration, the owners of the property therein shall be and become subject to this Declaration, and shall have all privileges and obligations set forth in this Declaration, including assessment by the Association for their pro rata share of Association expenses. The addition at any time or from time to time of all or any portion(s) of the Additional Land to the scheme of this Declaration shall be made and evidenced by filing in the Public Records of Monroe County, Indiana, a supplementary Declaration with respect to that portion of the Additional Land to be added. Declarant reserves the right to so amend and supplement this Declaration without the consent or joinder of the Association or of any owner and/or mortgagee of land in Pedigo Bay.

## ARTICLE IV

### Property Rights

Section 1. Title to Common Areas. Declarant may retain the legal title to the Common Area so long as it owns at least one lot in Pedigo Bay. Before conveyance of the last lot owned by Declarant, Declarant shall convey the Common Areas to the Association subject to taxes for the year of conveyance and to restrictions, conditions, limitations, reservations, and easements of record; and also subject to the reservation hereby perpetually reserved to the Declarant, its successors and assigns, of the right to use and enjoy the same nonexclusive common utility easements, easements of drainage, and ingress and egress easements for the benefit of additional lands owned and to be owned by the Declarant.

Section 2. Owners' Easements of Enjoyment. Every owner of a Lot shall have a nonexclusive right and easement of enjoyment and ingress and egress in and to the Common Areas which shall be appurtenant to and shall pass with the title to such Lot, subject to the following:

(1) All provisions of this Declaration, any Plat of all or any part or parts of the property, and the Articles and Bylaws Of the Association;

(2) Rules and Regulations governing the use and enjoyment of Common Areas adopted by the Association.

(3) Easements for installation and maintenance of utilities and Drainage facilities as shown on recorded Plat of Pedigo Bay. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may damage, interfere with, or change the direction of flow of drainage facilities in the easements. All utilities located within such easements shall be placed underground with minimal above ground appurtenances. The easement areas shown on each lot and all improvements thereon shall be continuously maintained by the owner of such lot, except for improvements the maintenance of which some public authority or utility company is responsible. No dwelling unit or other structure of any kind shall be built or erected or maintained on any easement, reservation or right-of-way, and such easements, reservations, and rights-of-way shall at all times be open and accessible to public and quasi-public utility corporations, their employees and contractors, and shall also be opened and accessible to Declarant, its successors and assigns, all of whom shall have the right and privilege of doing whatever may be necessary in, on, under, and above such locations to carry out any of the purposes for which such easements, reservations, and rights of way are reserved. Any damage or disturbance caused by such activity to the lawns, landscaping, or other permitted improvements located within such easements shall be repaired or restored by, or at the cost of, the entity responsible.

(4) Subject also to reservation hereby perpetually reserved to Declarant, its successors, and assigns of the right to use and enjoy the same nonexclusive easements, for the benefit of additional lands owned and to be owned by Declarant.

Section 3. Right of Entry. The Declarant and the Association through their duly authorized

employees and contractors, shall have the right after reasonable notice to the owner thereof to enter any lot or tract at any reasonable hour on any day to perform such maintenance as may be authorized herein.

## ARTICLE V

### Declarant/Developer Control, Membership, and Voting Rights In the Association

It is the intent of the Declarant that Pedigo Bay should be developed as a semi-independent, gated community. Lying outside the corporate boundaries of any municipality, Pedigo Bay will have a street lighting system as well as the typical right-of-way and common area maintenance responsibilities. It is, therefore, essential that the Pedigo Bay Home Owners Association be promptly organized and carefully managed. As member management is impractical until a substantial percentage of Owners have built homes and taken up residence, the Association will for a time operate under the control of the Declarant/Developer, Pedigo Bay Development, LLC ("PBD").

Section 1. All authority granted by this Declaration to the Board of Directors and members of the Association shall temporarily reside in PBD.

Section 2. Control by Declarant/Developer. PBD may, at its sole discretion, surrender its control of the Home Owners Association at any time after January 1, 2002. PBD must surrender such control at the earlier of December 31, 2007 or the date upon which PBD sells the last Lot to a third party.

Section 3. Membership. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 4. Classes of Membership. The Association shall have one class of voting membership.

Section 5. Board of Directors. Upon the surrender of authority by the Declarant, the Owners shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association.

Section 6. Professional Management. No contract or agreement for professional management

of the Association nor any other contract with Declarant shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause without any termination fee by written notice of ninety (90) days or less.

## ARTICLE VI

### Covenants for Maintenance and Insurance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned within the subdivision, hereby covenants, and the Owner of any Lot by acceptance of a deed therefor, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay to the Association (1) monthly assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The monthly and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Maintenance Assessment. The monthly and special maintenance assessments levied by the Association shall be used exclusively for the improvement and maintenance of the Common Area and any fixtures or equipment maintained by the Association including but not limited to security gates, street lighting, and the water supply system.

Section 3. Purpose of Insurance Assessment. The monthly insurance assessment levied by the Association shall be used exclusively for the provision of casualty and liability insurance. A complete description of the coverage required is provided in Article XI.

Section 4. Maximum Monthly Assessment. Until January 1st, 2002, the maximum combined monthly assessment for maintenance and insurance shall be Seventy-five Dollars (\$75.00) per Lot.

(1) After January 1st, 2002, the maximum monthly assessment may be increased each year not more than ten percent (10%) above the maximum assessment of the previous year without the approval of the membership.

(2) From and after January 1st, 2002, the maximum monthly assessment may be increased above ten percent (10%) by a vote of two-thirds (2/3) of the members who are voting in person or by proxy, at a meeting duly called for this purpose.

(3) The Board of Directors may fix the monthly assessment at an amount not in excess of the maximum.

Section 5. Special Assessments for Capital Improvements. In addition to the monthly assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, or a capital improvement to any Lot for items or areas maintained by the Association in accordance with this maintenance obligation, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 2, 3, and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 2, 3, or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Both monthly and special assessments for Common Area expenses, Common Area capital improvements and operating deficits must be fixed at a uniform rate for all Lots, and may be collected on a monthly basis.

Section 8. Date of Commencement of Monthly Assessments: Due Dates. The monthly assessments provided for herein and the insurance assessment provided for in Article XI shall commence as to each Lot on the later of September 1, 2001 or the first day of the first full month following the final closing at which the Lot was conveyed by Developer to a third-party Owner. The Board of Directors shall fix any increase in the amount of the monthly assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all assessments

shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

Section 9. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment that is not paid on the date when due shall become delinquent and shall become, together with such interest thereon and cost of collection as hereinafter provided, a continuing lien on such Lot, binding upon the then Owner, his heirs, devisee, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, or both, and there shall be added to the amount of such assessment all costs including attorney's fees associated with collecting or enforcing payment of the assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot or by non-use of the Common Area.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Declarant's Reserved Rights. Declarant, for such time as it continues to be a Lot Owner, shall only be required to contribute to the Common Expense and Insurance Assessments such sums as may be needed in addition to the contributions of the other Lot Owners for the Association to maintain the Common Area as provided in this Declaration. In no event, however, shall Declarant be required to contribute an amount exceeding the amount which would have been duly assessed for the Lots held by Declarant had those Lots been sold to third parties.

## ARTICLE VII

### Use Restrictions

The intent and purpose of this Declaration is to ensure the development of the Lots of Pedigo Bay according to a common scheme. However, due to the differences in size and in the zoning regulations under which the various Lots were created, certain use restrictions cannot be applied equally to all Lots. Specifically, Lots 1a through 10a are exempt from all restrictions contained in Section 2 other than the building set-backs, and Lot 10 is partially exempt from the restrictions contained in Section 1 with regard to subdivision: Lot 10 may be subdivided provided that the resulting Lots conform to all standards established by local government and this Declaration and provided that all resulting Lots are made subject to this Declaration.

Section 1. Residential Use. The property subject to these covenants and restrictions may be used for single-family residential living units and for no other purpose. No business or commercial building may be erected on any lot and no business may be conducted on any part thereof, except that, so long as the Declarant owns a Lot in Pedigo Bay, it may authorize a sales and marketing office on either land designated as Common Area or one of the Lots within Declarant's control. No building or other improvement shall be erected upon any Lot without prior Architectural Review Board ("ARB") approval thereof as elsewhere herein provided. No Lot shall be divided, subdivided, or reduced in size unless each divided or subdivided portion thereof is consolidated with one or more contiguous lots under one ownership. In the event of such division or subdivision of any lot(s), the obligation for Association expenses attributable to the divided or subdivided lot(s) shall be and become proportionately attributable and chargeable to the Owner(s) of the contiguous lot(s) with which the subdivided portions become consolidated. In the event that one or more Lots are developed as a unit, the provisions of these covenants in restrictions, with the exception of assessments, shall apply thereto as a single Lot. No dwelling or other structure or improvement shall be erected, altered, placed, or permitted to remain on any site not including at least one (1) full Lot according to either the recorded Plat of Pedigo Bay or the current deeds for Lots 1a -10a.

Section 2. Building Sites. Given the environmentally sensitive location of Pedigo Bay, all construction sites must be carefully determined.

#### Set backs:

a) No building on Lots 1-10 shall be located less than 65 feet from the R/W for Pedigo Bay Drive nor less than 15 feet from the Lot's side lines. Buildings on Lots 1-4 must also be located not less than 20 feet from the service easement serving Lots 1-4.

b) No building on Lots 1a -10a shall be located less than 30 feet from the R/W line for Pedigo Bay Drive nor less than 15 feet from the Lot's side lines.

In addition, pursuant to the Monroe County Zoning Ordinance, the following restrictions pertain to any portion of any Lot within the Lake Monroe watershed:

Land disturbance: "There shall be no land disturbance of any kind ... including construction, removal of vegetation, agricultural activity, logging operation or construction of infrastructure" closer than 125 feet "measured horizontally from the normal pool elevation" of Lake Monroe. And there can be no "land disturbance involved in construction of buildings, driveways, roads, parking lots and utilities" on any portion of any lot that exceeds a "maximum land slope . . . [of] twelve (12) percent."

Erosion Control and Drainage: Construction projects "shall minimize disturbance of tree concentrations to the maximum extent reasonable"; building pads shall be designed so as "to conform closely to existing contours and minimize grading"; all development proposals and permit applications "shall require an erosion and drainage control plan"; all construction projects which require a grading permit "shall be inspected at a minimum of every two weeks from ground breaking to stabilization"; and there shall be a pre-construction conference on the site "for all projects where more than one acre will be disturbed."

Section 3. Occupancy. No residence shall be occupied prior to completion, and there shall be no temporary living quarters constructed on any lot. No trailer, basement, tent, shack, garage, barn or other outbuilding erected on any lot in this addition shall at any time be used as a residence, temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

Section 4. Building Size Restrictions.

(1) Single family residences of one story in height shall have a ground floor area of not less than 2,000 square feet.

(2) Single family residences of one and one-half stories shall have a ground floor area of not less than 1,700 square feet.

(3) Single family residences with two stories in height shall have a ground floor area of not less than 1,500 square feet.

(4) The ground floor area for the purpose of these restrictions shall be determined from the

area of the house measured from the outside of the building foundation exclusive of open porches, breeze-ways, garages, chimney and eaves. Ground floor area shall be measured from the outside of the building foundation.

(5) Restrictions set out under Section 4 entitled Building Size Restrictions may be waived by the Developer on application in writing by any lot owners. Said waiver shall be valid only when properly recorded in the Office of the Recorder of Monroe County, Indiana.

(6) The powers and duties of architectural review possessed by the Developer may be assigned to an architectural control committee or an association of owners in Pedigo Bay. Said assignment shall be valid only when properly recorded in the office of the Recorder of Monroe County, Indiana.

(7) All utilities shall be underground.

Section 5. Lawn Care Products. Given the environmentally sensitive location of Pedigo Bay, all fertilizers and other lawn care products used within the Lake Monroe watershed must be biodegradable, such as products marketed by such corporations as "Safer", "Harmony", and "Ringer" all of which are available locally.

Section 6. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose. Household pets kept by an Owner shall not be permitted to run free or to roam at large at any time. All animals or pets, when permitted outside the residence or fenced area, must be under the direct control of the Owner or responsible person through use of a leash or similar restraint.

Section 7. Prohibited Activities. No noxious or offensive activities shall be carried on upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 8. Certain Vehicles and Personal Property Prohibited. Any motor vehicle which is inoperative and not being used for normal transportation shall not be permitted to remain on any Lot. Recreational vehicles, boats, trailers, buses and trucks, other than quarter-ton and half-ton pickup trucks, shall not be permitted to remain on any Lot unless completely screened from the street and neighboring houses by landscaping or architectural buffer.

Section 9. Construction and Sale. Notwithstanding any provisions contained herein to the contrary, it shall be expressly permissible for Developer to maintain, during the period of construction and sale of Lots, upon any portion of the properties which Declarant owns, such

facilities as in the sole opinion of Declarant, may be reasonably deemed to be required, convenient, or incidental to the construction and sale of Lots, including, but without limitation, storage areas, signs, model residences, construction offices, sales offices and business offices.

#### Section 10. Additional Subdivision Restrictions.

(1) Waste Disposal - All rubbish, trash, garbage or other waste material shall be kept in sanitary containers out of sight and under cover except on days of trash collection. All equipment for the storage or disposal of such materials shall be kept in a clean sanitary condition. No lot or portion thereof shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste materials. Failure of an owner to comply with this requirement, after five (5) days notice, shall entitle Declarant or the Association to maintain the lot and include the reasonable cost of such maintenance as an additional assessment to the Owner, plus attorney fees. Such costs and fees may be collected as provided in Article VIII.

(2) Yard incinerators for the disposal or burning of trash or yard waste are not permitted.

(3) All sewage disposal and grey water systems, including garage and patio floor drains, shall be connected to fully approved individual septic systems. Lot owner shall be responsible for obtaining the approval of the Monroe County Health Department and/or other appropriate county agencies regarding the design and construction of the septic system.

(4) All rain gutters and surface storm water control systems shall be designed and constructed to drain away from Lake Monroe. This requirement may be waived by the ARB only upon demonstration by Owner that such a design is infeasible in a given situation.

(5) All Fences shall be built of wood, stone, or masonry and shall be architecturally compatible to the Owner's house. No fence in excess of 4 feet in height shall be permitted within 10 feet of any lot line, and no fence in excess of 8 feet in height shall be permitted on any lot. These guidelines may be waived by the ARB with regard to fences enclosing tennis courts or other similar facilities upon submission of accurate plans and renderings by the Owner.

(6) No fence, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any Lot within the triangular area formed by the intersection of two streets, or of one street and a driveway, and a line connecting them at points 20 feet from the intersection. No tree shall be permitted to remain within twenty (20) feet of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(7) Each residence shall have an enclosed garage for the off street parking of a minimum of two automobiles and each dwelling or structure shall have a driveway with a minimum width of ten (10) feet extending from the edge of road in the front of the Lot back to a point at least as far as the closest point of the structure to the street. Said driveway shall be paved with either concrete or hot mixed bituminous asphalt material. No overnight on-street parking shall be permitted.

(8) Each Owner covenants to preserve and maintain the exterior of all improvements to the real estate together with lawn and shrubbery care in a good and reasonable manner. No Owner shall permit his or her lot or the improvements thereon to become unsightly. Undeveloped lots are not exempt from this provision. Except in naturally wooded areas, Owners of such Lots shall cut vegetation and grass in a timely manner by bushhog or other usual method for maintaining the appearance of such lots. Failure of an owner of any lot to comply with this requirement, after five (5) days notice, shall entitle Declarant or the Association to maintain the lot and include the reasonable cost as an additional assessment to the Owner, plus attorney fees. Such costs and fees may be collected as provided in Article VIII.

(9) No outbuildings or satellite dishes over 24" in diameter shall be installed except with the prior approval of Declarant or the ARB. Outbuildings shall conform to or complement the architectural style of the main house and shall enclose a minimum of 200 square feet of floor space. Guest Cottages shall enclose a minimum of 500 square feet of floor space.

## ARTICLE VIII

### Architectural Control

#### To Preserve the Beauty, Quality, and Value of the Neighborhood

Section 1. Necessity of Design Guidelines and Architectural Approval. The Design Guidelines for Pedigo Bay ("Design Guidelines") provide an overall framework and comprehensive set of standards and procedures for the development of the Community in an orderly increase of manner. In addition, the Design Guidelines established a process for review of proposed construction and modifications to Living Units to ensure that all sides within Pedigo Bay are developed with consistency in quality that attracted you to this development.

Section 2. Unless otherwise specifically stated in these Design Guidelines, all plans and materials for new construction or exterior modifications of improvements on a Living Unit must be approved before any construction activities begin. Unless otherwise specifically stated in these Design Guidelines, no structure may be erected on any Lot, and no improvements

(including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) shall take place without receiving the prior written approval of the appropriate reviewer as described below. Where these Design Guidelines specifically allow an Owner to proceed without advance approval, such allowance shall only be effective so long as the Owner complies with the requirements of the stated guidelines. Owners and builders are responsible for ensuring compliance with all standards and procedures within these Design Guidelines.

### Section 3. Review Authority.

(1) Developer. As long as the Declarant owns any portion of Pedigo Bay, or until Developer relinquishes its authority hereunder, the Developer shall have jurisdiction over all construction and landscaping decisions. The Developer shall review plans and specifications for all proposed construction and landscaping projects, shall be the conclusive interpreter of these Design Guidelines, and may, but shall not be obligated to, promulgate additional design standards and review procedures as it deems appropriate.

(2) Architectural Review Board. Initially, the Architectural Review Board (ARB) shall have jurisdiction over those responsibilities, if any, delegated to it by the Developer. After the Developer relinquishes its authority hereunder, the ARB shall assume jurisdiction over all construction and landscaping decisions. As the Developer's successor, the ARB shall review plans and specifications for all construction, modifications, landscaping and shall become the conclusive interpreter of these Design Guidelines, and may promulgate additional design standards and review procedures consistent with these Design Guidelines. Until the Developer relinquishes its authority, the Developer will appoint the members of the ARB.

Section 4. Review of New Construction. Applicants for design approval of new construction shall submit to the Plan Reviewer a conceptual or preliminary site layout and the plans listed in Section 6 below. Presentation should include samples of the exterior finishes and color scheme, information concerning irrigation systems, drainage, exterior lighting, and landscaping. Applicants may request an initial meeting with the Plan Reviewer to address any questions about Pedigo Bay and the Design Guidelines.

Section 5. Review of Proposed Modifications. Depending on the nature and scope of the proposed modification, the Plan Reviewer may require applicants to submit all of the plans required for new construction or a substantially reduced list of exhibits. Applicants should request an initial meeting to determine the amount of detail that Reviewer will require to review the proposed modification.

Section 6. Construction Plans. Unless otherwise determined through a preliminary meeting, a request for plan review should be accompanied by two sets of the following plans:

(1) Floor Plan. Plan view of project including decks, patios, stoops, retaining walls related to the residential dwelling, trash enclosures, HVAC equipment and utilities, and screening for same, layout of rooms, and connections to driveways and operates. Minimum scale of ¼"= 1.0'.

(2) Elevations. Front, rear, & exterior elevations showing building materials and finishes, and indicating the maximum height residential dwelling.

(3) Roof Plan. Showing slopes, pitches, and Gables, unless reflected in other plans.

(4) Exterior Finishes. Showing the exterior color scheme (including samples and color chips, if requested), lighting scheme, and other details affecting the exterior appearance of the proposed improvements.

(5) Landscaping Plan. Showing location of trees, protection of existing vegetation, use of plants, and other landscaping details.

(6) Other. Such other information, data, and drawings as may be reasonably requested including, without limitation irrigation systems, drainage, lighting, satellite dish placement, landscaping, and other features.

Section 7. Review Criteria; Recommendations; Variances. While Design Guidelines are intended to provide a framework for construction and modifications, they are not all-inclusive. In his review process, the reviewer may consider the quality of workmanship and design, compatibility of design to existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other things. Reviewer decisions may be based on purely aesthetic considerations.

The Plan Reviewer, whether the Developer or the ARB, shall have the authority from time to time to adopt and revise lists of recommended landscape materials, that is, materials that may be incorporated into landscaping plans without individual reviewer approval.

Variances may be granted where circumstances, including but not limited to, topography, natural obstructions, environmental considerations, or hardship, require deviation from the Design Guidelines. Such variances shall be limited in scope and number, allowing no more

deviation from the Design Guidelines than is necessary to circumvent the obstacle to the proposed design. No waiver shall be effective unless in writing.

Section 8. Review Period. Each Application for Review and the plans submitted shall be approved or disapproved within thirty days of submission of all materials required by the Plan Reviewer. One set of plans shall be returned to the Applicant, accompanied by the plan reviewer's decision. The other set of plans shall be retained for the Plan Reviewer's records. The reviewer's decision shall be rendered in one of the following forms:

(1) "Approved" -- The entire application is approved as submitted.

(2) "Approved as Noted" -- The application is not approved as submitted, but the reviewer's suggestions for curing objectionable features or segments are noted. The Applicant must correct the plan's objectionable features or segments prior to commencing the construction or alteration. Depending on the extent of the problems cited, the Applicant may be required to re-submit the application.

(3) "Disapproved" -- The entire application as submitted is rejected in total. The reviewer may provide comments but is not required to do so.

If the reviewer fails to respond within thirty (30) days, the Applicant shall give the reviewer written notice of its failure to respond by certified mail return receipt requested. Unless the reviewer responds within an additional ten (10) days of receipt of such notice, approval shall be deemed granted. In such event, despite the irregularity of the approval process, the applicant will be required to complete the project as proposed.

Section 9. Appeal. Applicants shall have the right to appeal a negative decision of the Plan Reviewer by re-submitting the information, documents, and fees set forth above. However, such appeal shall be considered only if the Applicant presents new information which might reasonably be expected to overcome the Reviewer's initial objections. If Applicant fails to appeal the decision of the Reviewer within 30 days, the reviewer's decision is final. If Applicant appeals the decision, the Reviewer shall have 10 days to approve or disapprove the re-submission. The filing of an appeal does not extend any maximum time for the completion of any new construction or modification. All required notices shall be sent by certified mail return receipt requested.

Section 10. Monroe County Approval. The review and approval plans and specifications shall not be a substitute for compliance with all permitting and approval requirements of Monroe County or other governmental authorities. It is the responsibility of Applicant to obtain all

necessary permits and approvals.

Section 11. Implementation of Approved Plans. All work must conform to approved plans. If it is determined by the Reviewer that work completed or in progress in any residential unit or modification thereof is not in compliance with these Design Guidelines or an approval issued by the Reviewer, the Reviewer shall, directly or through the Board of Directors of the association, notify the Owner and Builder, if any, in writing of such noncompliance specifying in reasonable detail the particulars of noncompliance and shall require the Owner and/or Builder to remedy the same. If the Owner and/or Builder fails to remedy such noncompliance or fails to commence and continue diligently toward achieving compliance within the time. Stated in the notice, then such noncompliance shall be deemed to be in violation of the Declaration and these Design Guidelines.

(1) Time to Commence. If construction does not commence on project within six months of plan approval, such approval shall be deemed withdrawn, and it shall be necessary for the Applicant to resubmit the plans to the appropriate committee for reconsideration. Applicant shall notify the ARB in writing of its official "start date" which notification shall be maintained as a part of the Applicant's file on record with the ARB.

(2) Time to Complete. The Reviewer shall include in any approval maximum time. For the completion of any new construction or modification. If no maximum time period specified in the approval, construction shall be completed within nine months of its commencement. The Applicant may request an extension, not less than 30 days prior to the expiration of the maximum time period, which the reviewer may approve or disapprove, in its sole discretion.

If construction is not completed on the project within the period set forth in the approval, within the nine months default or within any extension approved by the reviewer, the approval shall be deemed withdrawn, and the incomplete construction shall be deemed to be in violation of the Declaration and these Design Guidelines.

Section 12. Changes After Approval. All proposed changes to plans, including changes which affect the exterior of any building, colors, windows, grading, paving, utilities, landscaping or signage, made after the approval of plans must be submitted in writing and approved by the reviewer prior to implementation. Cooperation and coordination between the Applicant and the reviewer will ensure that changes are approved in a timely manner.

If Monroe County or any other authority having jurisdiction requires the changes be made to final construction plans previously approved by the reviewer, the Applicant must notify the reviewer of such changes and receive approval from the Reviewer prior to implementing such

changes.

## ARTICLE IX

### Architectural and Improvement Design Standards

The following specific site criteria shall apply to all proposed or existing construction within Pedigo Bay unless a variance is granted by a reviewer.

Section 1. Accessory Buildings. Owners shall secure reviewer approval prior to construction of any accessory building, including sheds, detached garages, swimming pool houses, guest houses or permanently installed play houses. Accessory buildings shall meet the following criteria:

(1) An accessory building must be the same color, material, and architectural style as the main residence or of color, material, and style that is generally recognized as complementary to that of the main residence. An accessory building's roofing material shall match those of the main residence.

(2) Any utilities servicing an accessory building shall be installed underground.

(3) Accessory buildings may not be located within an easement area and shall not unreasonably obstruct any adjacent neighbor's view and must be screened by a fence or vegetation.

(4) No contractor or builder shall erect on any Lot any temporary building for use in connection with construction on such Lot. Provided, however, the ARB may in its sole discretion waive this requirement for temporary construction trailers.

Section 2. Additions and Expansions. Reviewer approval is required for any addition to or expansion of a residence. Materials shall match the existing residence.

Section 3. Air Conditioning Equipment. Unless otherwise permitted by the ARB, no air conditioning units may be installed which are visible from the street.

Section 4. Antennae and Satellite Dishes. No exterior television, radio antenna or satellite dish or receiver, or sewer equipment of any sort shall be placed, allowed or maintained upon any portion of the structure or Lot without prior approval of the ARB. Satellite dishes shall be restricted in size to 40 inches or less and shall be screened from view of the street and

neighboring residences.

Section 5. Architectural Standards. The exteriors of all buildings must be designed to be compatible with the natural site features of the Lot and to be in harmony with their surroundings. The land forms, the natural contours, local climate, vegetation, and use should dictate the building location, the building form, and the architectural style. The reviewer may disapprove plans if in its judgment the massing, architectural style, roof line, exterior materials, colors or other features of the building do not meet those standards.

Section 6. Awnings and Overhangs. The installation of awnings or overhangs requires reviewer approval. The awning overhang color must be the same as or generally recognized as complementary to the exterior of the residence.

Section 7. Signage. No "For Sale" signs shall be erected except during original construction of residence.

Section 8. Street Lighting. The cost of operating and maintaining street lighting shall be shared equally by each homeowner through the Association.

## ARTICLE X

### Maintenance

Section 1. Maintenance by Owners. Each Owner shall be responsible for maintenance of landscaped areas within the public right-of-way in front of his or her lot and house. Residents' responsibilities may be assigned to Pedigo Bay Owners Association, Inc., if such assignment is accepted by vote of two-thirds of the Owners.

Section 2. Maintenance of the Common Area. The Association shall be responsible for the maintenance, repair and replacement of common area and improvements thereon.

## ARTICLE XI

### Insurance

Section 1. Casualty Insurance. The Association shall purchase a master casualty insurance policy or policies affording fire and extended coverage insurance insuring the Common Area and the improvements thereon in an amount commensurate with the full replacement value of

the improvements. If the Association can obtain such coverage for reasonable amounts it shall also obtain "all risk" coverage. The Association shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Association, it may cause such full replacement value to be determined by a qualified appraiser and the cost of any such appraisal shall be included in the monthly maintenance assessment for each Lot on a pro-rata basis.

Such master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Association, its Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms, that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners as hereinafter permitted.

Section 2. Liability Insurance. The Association shall also purchase a master, comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Association, its Board of Directors, any committee or organ of the Association or Board of Directors, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Association.

The Association shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross-liability claims of one insured party against another insured party. Such insurance shall inure to the benefit the Association, its Board of Directors and any managing agent acting on behalf of the Association.

Section 3. Monthly Assessment for Insurance. The premiums for all such insurance herein above described shall be paid by the Association and the pro-rata cost thereof shall be assessed to each Lot conveyed by Declarant subject to the terms and provisions of Article V.

Section 4. Additional Insurance. Each Owner shall be solely responsible for and may obtain such additional insurance as he deems necessary or desirable at his own expense affording coverage upon his personal property, the contents of his residence and his personal property stored elsewhere on the Properties, and for his personal liability, but all such insurance shall

contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Association. Each Owner shall maintain casualty insurance for his or her residence insuring the residence for the full replacement value thereof.

Section 5. Casualty and Restoration. Damage to or destruction of any fixture, improvement, or piece of equipment located in the Common Area or belonging to the Association due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose. Each Owner covenants to repair, restore, or replace a residence damaged or destroyed due to fire or other casualty or disaster. The proceeds of the insurance required under Section 4, shall be applied for that purpose.

## ARTICLE XII

### Easements

Section 1. Drainage, Utility and Sewer Easements. It is the intention of Declarant to provide the needed flexibility to itself and the Association to properly install and allow to be maintained all electrical, telephone, water, gas, sewer and other utility services (including all lines, pipes, wires, cables, ducts, etc., including television cable and the like) to the living units constructed on the various Lots.

Declarant further reserves unto itself an easement and right-of-way in and to the Lots and Common Areas shown on the Plat and an easement of ingress and egress through so much of the remainder of the Properties as is reasonably necessary or appropriate, to perform such actions as are required or are reasonably necessary or appropriate for the purpose of establishing and maintaining proper surface water drainage throughout the Properties including the construction, repair and maintenance or retention and detention ponds or lakes in accordance with the requirements of all governmental agencies having jurisdiction. Provided, however, the reservation of this easement and terms and provisions contained herein shall not be construed so as to impose upon Declarant any higher or different duty or obligation than is imposed by applicable law.

Section 2. Additional Easement Rights. Declarant further reserves unto itself an easement and the full right, title and authority to relocate, alter or otherwise change the location of any drainage, utility, and sewer easement or any Access Easement and to grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress, egress,

utility and similar purposes on or within any Lot or Lots or any portion of the Properties. Declarant further reserves the right to more specifically describe or to change the description of any such drainage, utility and sewer easement, driveway easement, or other easement, license or right-of-way by written instrument, amended Plat or amendment to the Plat recorded in the office of the Recorder of Monroe County, Indiana, and any Owner of any Lot shall take title subject to the rights and easements reserved herein; provided, however, the rights reserved in this Section shall not be exercised in a manner which unreasonably and adversely affects any improvement or portion thereof located upon any Lot or any Owner's use or enjoyment thereof or which unreasonably restricts the rights of ingress and egress to any Lot. The rights and easements reserved by Declarant in this Section 2 shall run with the land and Declarant's right to further alter or grant easements shall automatically terminate one (1) year after Declarant shall have conveyed the last Lot within the Properties or on December 31, 2007, whichever first occurs.

Section 3. Easement for Emergency Purposes. An easement is hereby dedicated and granted for use in the case of an emergency by emergency vehicles such as fire trucks, police cars, ambulances, etc., and emergency personnel, public and private, over and upon any pedestrian walkways, sidewalks, or roadway.

## ARTICLE XIII

### Encroachments and Easements for Buildings

Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities located in or on any other Lot and serving his Lot.

## ARTICLE XIV

### General Provisions

Section 1. Duration of and Remedies for Violation. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Declarant, the Developer, the Association with the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of ten (10) years from the date this Declaration is recorded, after which time said covenants and restrictions shall automatically be extended for successive periods of ten (10) years unless an instrument signed by the then Owners of two-thirds (2/3) of the lots has been

recorded, agreeing to change or to terminate said covenants and restrictions in whole or in part. Violation or breach of any condition, covenant, or restriction herein contained shall give the Declarant, Developer, Association and/or Owner(s) in addition to all other remedies, the right to proceed at law or in equity to compel compliance with the terms of said conditions, covenants or restrictions, and to prevent the violation or breach of any of them, and expense of such litigation shall be borne by the then Owner or Owners of the subject property, provided such proceeding results in a finding that such Owner was in violation of said covenants or restrictions. Expenses of litigation shall include reasonable attorneys' fees incurred by the party seeking such enforcement.

Section 2. Owner's Obligation to Maintaining Repair. Each Owner shall, at his sole cost and expense, maintain and repair his residence, keeping the same in a condition comparable to the condition of such residence of the time of its initial construction.

Section 3. Notices. Any notices required to be sent to any member or Owner under the provisions of this Declaration shall be deemed to be properly sent when mailed, postpaid, to the last known address of the person who appears as member or Owner on the records of the Association at the time of such mailing.

Section 4. Severability. Invalidation of any one or more of these covenants and restrictions by judgment or Court Order shall in no way affect any other provision which shall remain in full force and effect.

Section 5. Amendment. This declaration may be amended at any time and from time to time upon the execution and recording of an instrument executed by Owners holding not less than two-thirds (2/3) of the voting interest of the membership, provided that so long as Declarant is the Owner of any lot or any property affected by this Declaration, or amendment thereto, or appoints Director of the Association, no amendment will be effective without Declarant's express written joinder and consent.

Section 6. Usage. Whenever used the singular shall include the plural and singular, and use of any gender shall include all genders.

Section 7. Effective date. This declaration shall become effective upon its recording in the Public Records of Monroe County, Indiana.

IN WITNESS WHEREOF, the Declarant has cause these presents to be executed as of this \_\_\_\_ day of \_\_\_\_\_, 2001.

Pedigo Bay Development, LLC

By: \_\_\_\_\_  
Ronald J. Killion

and

By: \_\_\_\_\_  
Stephen L. Smith

**ACKNOWLEDGMENT**

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF MONROE        )

Before me, a Notary Public in and for said County and State, personally appeared RONALD J. KILLION and STEPHEN L. SMITH, each of whom acknowledged the execution of the above and foregoing Instrument to be his own free and voluntary act, done with the complete authorization of the Pedigo Bay Development, LLC, for the uses and purposes set forth therein.

Witness my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
Gerard W. Pauwels, NOTARY PUBLIC

My commission expires:  
August 16, 2007

Residing in Bloomington, Monroe County, Indiana