

BOARD OF COMMISSIONERS OF THE COUNTY OF ALLEN

ORDINANCE DATED: February 24, 2023

ORDINANCE NUMBER: 02-24-23-09

WHEREAS, the Allen County Health Department is responsible for protecting the health of the public by enforcing all state laws regarding such matters, but understanding that the state laws do not have provisions to protect citizens from additional public health conditions deemed hazardous; and

WHEREAS, there exists a very real and distinct possibility of the transmission of serious infectious diseases, illness, injury as well as existence of public health nuisances when properties are not maintained, kept in a minimum sanitary manner, or remediated when found to be a public health hazard or public health nuisance to others;

NOW, THEREFORE, BE IT ordained that the Board of Commissioners of the County of Allen hereby amends Allen County Code, as outlined below.

**ALLEN COUNTY CODE TITLE 10
DEPARTMENT OF HEALTH**

**ARTICLE 12
PUBLIC HEALTH HAZARDS**

10-12-1 CHAPTER 1: Definitions

Unless the context specifically indicates otherwise, the following definitions shall apply in the interpretation and enforcement of this Ordinance.

10-12-1-1 BOARD shall mean the Allen County Executive Board of Health of Fort Wayne, Allen County, Indiana.

10-12-1-2 DEPARTMENT shall mean the Allen County Department of Health of Fort Wayne, Allen County, Indiana, and/or its employees.

10-12-1-3 DWELLING shall mean a structure, partially or wholly, intended for or being used for residential purposes, with the minimal use being for sleeping. This definition does include hotel and motel rooms as well as boarding facilities, assisted living centers, and apartments. This definition does not include long-term medical or mental health residential facilities, otherwise inspected by the Indiana State Department of Health, such as nursing homes, and hospitals.

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- 10-12-1-4 DWELLINGS UNFIT FOR HUMAN HABITATION shall mean the Dwelling or Dwelling Unit is dangerous or detrimental to life or health because of the existence on the Premises of an unsanitary or unlawful condition that is likely to cause disease, injury or sickness among Occupants of the Dwelling.
- 10-12-1-5 DWELLING UNIT shall mean a single unit providing complete, independent living facilities for one or more Persons, with the minimal use being for sleeping.
- 10-12-1-6 EXTERMINATION shall mean the control and elimination of Public Health Pests by eliminating their Harborage places; by removing or making inaccessible materials that may serve as their food; by poisoning, spraying, fumigating, fogging, larviciding or trapping; or by any other recognized and legal pest control elimination methods approved by the local or state authority having such administrative authority.
- 10-12-1-7 GARBAGE shall mean the animal or vegetable waste resulting from the handling, preparation, cooking and consumption of food.
- 10-12-1-8 HARBORAGE shall mean any place where Public Health Pests can live, nest or seek shelter.
- 10-12-1-9 HEALTH COMMISSIONER shall mean the Health Officer of the Allen County Department of Health of Allen County, Indiana, and/or his/her authorized representatives.
- 10-12-1-10 IMMINENT HEALTH HAZARD shall mean a significant threat or danger to health that exists when there is evidence sufficient to show that a product, practice, circumstance, condition, or event creates a situation that requires immediate correction or cessation to prevent injury or illness based on:
- A. the number of potential injuries or illnesses; or
- B. the nature, severity, and duration of the anticipated injury or illness.
- 10-12-1-11 INFESTATION shall mean the presence of any Public Health Pest on a Premise or Premises which are deemed likely to pose a hazard to the public health.
- 10-12-1-12 JUNK shall mean all scrap copper, glass, lead, or any other nonferrous metal; iron, steel, or other scrap ferrous material; tin ware, plastic, or discarded household goods, rope, rags, crockery, batteries, paper, trash, rubber, debris, building materials; dismantled or inoperable vehicles,

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unused tires, machinery and appliances or parts thereof; including but not limited to discarded, abandoned, unattended, or used refrigerators, iceboxes and similar containers equipped with airtight door or lid, snap lock or other locking device which may not be released from the inside; or any other kind of scrap or waste or abandoned material or items, with the exception of normal storage of machinery on a farm for agricultural purposes.

- 10-12-1-13 OCCUPANT shall mean the person or persons residing in or having use of a Dwelling (by lease, contract or otherwise is afforded use of the Dwelling as a residence). The same person or persons can be the Owner and Occupant.
- 10-12-1-14 OWNER shall mean any person who, alone or jointly or severally with others:
- A. Has legal title to any Premises, Dwelling or Dwelling Unit, with or without accompanying actual possession thereof; or
 - B. Has charge, care or control of any Premises, Dwelling or Dwelling Unit as Owner or agent of the Owner. This includes those who are an executor, administrator, trustee or guardian of the estate of the Owner. Any such person must comply with the provisions of this article and this ordinance just as if they were the Owner.
- 10-12-1-15 PEST-PROOFING shall mean a form of construction or measure to prevent the ingress or egress of Public Health Pests to or from a given space or building or from gaining access to food, water or Harborage. This term shall include but not be limited to rodent-proofing, fly-proofing, mosquito-proofing, etc.
- 10-12-1-16 PREMISE shall mean a lot, plot or parcel of land including the building(s) thereon.
- 10-12-1-17 PUBLIC HEALTH HAZARD shall mean any condition considered harmful to person(s) or property, which may be hazardous to the public health, or a condition which has the ability to affect the health, safety and welfare of the public in general.
- 10-12-1-18 PUBLIC HEALTH PEST shall mean a rodent, arthropod or insect capable of transmitting a disease or infection and/or causing great discomfort or injury. Public Health Pests shall include but not be limited to rats, mice, mosquitoes, bed bugs, fleas, cockroaches, flies, and ticks.
- 10-12-1-19 REFUSE shall mean all solid wastes, except bodily wastes, and shall include Garbage, Junk, and Rubbish.

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10-12-1-20 RUBBISH shall mean and include such matter as ashes, cans, metal ware, broken glass, crockery, dirt, sweepings, boxes, wood, grass, weeds or litter of any kind, exclusive of building materials.

10-12-1-21 UNLAWFUL OR UNSANITARY CONDITIONS shall mean any conditions that may transmit, generate or promote disease, injury or sickness to any person(s).

10-12-2 CHAPTER 2: HAZARDS DEFINED AND PROHIBITED

10-12-2-1 It shall be a hazard and unlawful for any person to erect, construct, cause, permit, keep or maintain any structure, including slaughter houses, animal or animal hide processing facilities, rendering establishments, factories, fertilizer plants, or a business of any kind, or condition that is injurious to health or offensive to the olfactory senses, and any Person maintaining any hazard as set forth in this chapter is declared to be the person responsible for the hazard.

10-12-2-2 Vacant or unoccupied residential structures shall not be required to meet the same interior standards as operational, occupied residential structures. It is not the purpose of this section to impede or inhibit development of residential properties. Therefore, the interior standards of the structure shall be limited to maintaining it in a safe and sanitary condition, free of hazards, trash and debris, Infestation, or any issues which potentially create a health and safety concern to the community.

REFUSE, SANITATION AND PUBLIC HEALTH PESTS

10-12-2-3 It shall be unlawful to collect or accumulate Refuse, animal carcasses, un-rimmed tires and other materials which could potentially be a Harborage or food source for mosquitoes, rodents, or other vermin, with the exception of normal storage of manure or machinery on a farm for agricultural purposes.

10-12-2-4 All Garbage, organic matter, Refuse, vegetable materials, and small dead animals which provide food and Harborage for rodents, flies and other Public Health Pests must be stored in covered rodent proof containers until proper disposal has been completed.

10-12-2-5 For every Dwelling containing three or more Dwelling Units, the Owner shall provide, in a location accessible to all Dwelling Units, an adequate number of receptacles into which Garbage, Rubbish and ashes from the Dwelling Unit receptacles may be emptied for storage between the days of collection.

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- 10-12-2-6 Every Owner of a Dwelling containing two or more Dwelling Units shall be responsible for maintaining in a clean and sanitary condition the shared or public area of the Dwelling and the Premises thereof.
- 10-12-2-7 Every Occupant of a Dwelling or Dwelling Unit shall keep it in a clean and sanitary condition (that part of the Dwelling or Dwelling Unit) and the Premises thereof which he/she occupies or controls.
- 10-12-2-8 No person shall occupy, or allow another to occupy, any Dwelling or Dwelling Unit for the purpose of living therein, which does not comply with the following requirements. A clean and sanitary condition shall include, but is not limited to, the following standards:
- A. Floors, floor coverings and other walking surfaces shall be kept free of filth, Garbage, human and animal wastes, litter, Refuse and any other unsanitary matter.
 - B. Walls, ceilings, windows and doorways shall be kept free of excessive dirt, greasy film, soot and any other unsanitary matter.
 - C. Water closets, lavatories, sinks, showers and bathtubs shall be kept in a clean and sanitary condition; no material shall be deposited in any such fixture which may result in the obstruction of such fixture or of any connected plumbing lines.
 - D. Excessive amounts of belongings, collections of papers/boxes, or materials such as clothing and similar items shall not be stored in a Dwelling such that walkways and/or means of egress for safety of the Occupants are blocked or inaccessible.
- 10-12-2-9 Compost piles shall be properly maintained so as not to present or allow an offensive odor or the breeding or Harborage of flies or other insects, rodents or any other Public Health Hazard.
- 10-12-2-10 It shall be unlawful for any person to leave or permit to remain outside of any Dwelling, building or other structure, any abandoned, unattended or discarded icebox, refrigerator, or other container, which has an airtight door or lid, without first removing the door or lid from the icebox, refrigerator or container.
- 10-12-2-11 The Owner and/or Occupant shall maintain the Premises, including any Dwelling or Dwelling Unit, accessory structure or fences, in such a manner so as to prevent Public Health Pest Infestations or conditions that create Harborage for Public Health Pests or supply them with food and water.
- 10-12-2-12 Containers stored outside, including, but not limited to buckets, planter drip trays, rain barrels, bird baths, gutters, and kiddie pools, must be removed, screened or dumped/flushed out regularly to prevent a

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breeding environment for mosquitoes. The meaning of this subsection shall not apply to ponds where fish are adequately maintained so as to preclude the breeding of mosquitoes. This section shall not apply to fountains or swimming pools which maintain adequate circulation to preclude the breeding of mosquitoes.

- 10-12-2-13 Tires shall be covered to prevent the existence or presence of any water in which mosquito larvae may mature and grow or exist. If stored outside, tires must be stored off the ground and covered in a manner to prevent standing water. Any tires that cannot be used for the original intended purpose shall be disposed of in a proper and lawful manner to prevent the collection of stagnant rainwater in them.
- 10-12-2-14 Swimming pools which have not been maintained so as to prevent the growth of plant organisms or the development of insect eggs or larvae for fourteen (14) consecutive days or more shall be completely drained and kept free of standing water and debris or tightly covered, so as to prevent the collection of rainwater. Swimming pools which are not kept free of standing water or debris for fourteen (14) days or more shall be considered abandoned. Abandoned swimming pools shall be removed or tightly covered so as to prevent the collection of rainwater or filled to the grade of adjacent land. Failure to do so shall constitute a Public Health Hazard.
- 10-12-2-15 Whenever the Health Commissioner, through a written order as specified in 10-12-3-4, notifies the Owner or person(s) responsible for any Premise that there is evidence of rat, mosquito or other Public Health Pest Infestation on the Premises, said person(s), shall institute exterminating and Pest-Proofing measures as soon as possible and must maintain the Premises in such a manner that will prohibit future Infestations. Written certification of Extermination services received for or rendered on the Premise must be supplied to the Health Commissioner within seven (7) business days of the receipt of the order to abate the hazard.
- 10-12-2-16 The Owner of a Dwelling shall be responsible for the Extermination of any Public Health Pests in Dwellings containing one or more Dwelling Units and in the shared or public parts thereof.
- 10-12-2-17 All openings requiring screening for ventilation of habitable rooms of Dwelling Unit shall be supplied with tightly fitting screens maintained in good repair, properly fitted to the opening in conformance with state and local codes and ordinances. The Owner of a Dwelling Unit shall be responsible for providing, installing and maintaining all screens whenever required under the provisions of this ordinance.

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10-12-2-18 No condition shall be allowed on the Premises of a commercial or industrial building or property which provides food, water and/or Harborage for Public Health Pests and any such condition shall be abated by the Owner upon issuance of an order as specified in 10-12-3-4.

DWELLING FREE FROM MOISTURE AND WATER DAMAGE

10-12-2-19 The Owner and/or Occupant of a Dwelling shall maintain the Dwelling so as to prevent water damage or conditions that can cause water damage or dampness in the Dwelling. The Owner of the Dwelling shall promptly repair, remove or remediate water-damaged, permeable or mold-like substance-containing materials.

PROTECTION FROM FALL AND INJURY HAZARDS

10-12-2-20 The Owner shall maintain all Dwellings and Dwelling Units free from defects, holes, cracks, loose plaster, loose floor joints, or defects where such defects constitute an accidental fall or injury hazard.

FIRE HAZARDS

10-12-2-21 The Owner shall provide at least one battery-operated or hard-wired smoke detector, in proper operating condition, on each level of a Dwelling Unit, including basements but excepting crawl spaces and unfinished attics. Smoke detectors shall be installed in accordance with *IC 22-11-18.

CHEMICAL CONTAMINATION FROM THE ILLEGAL MANUFACTURE OF A CONTROLLED SUBSTANCE

10-12-2-23 Premises/Dwellings identified by law enforcement as an operational laboratory for the manufacture of a controlled substance (such as methamphetamine) or those contaminated with chemicals used in the manufacture of these drugs are regulated with regard to inspection, testing, remediation and occupancy under *410 IAC. Local Health Departments are charged with enforcement of certain provisions of that statute with regard to laboratory records retention and dwelling occupancy.

10-12-2-24 A Dwelling, Dwelling Unit or commercial unit (which has the potential to be occupied) that is identified by law enforcement as containing an illegal operational drug laboratory will be placarded by the Department as a Dwelling Unfit for Human Habitation and declared a Public Health Hazard. The Dwelling, Dwelling Unit or commercial unit cannot be occupied or utilized until it has been certified as being properly

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decontaminated by a Qualified Inspector, as defined in 410 IAC 38.

10-12-2-25 No person, other than the Health Commissioner or their authorized employee/agent, shall alter, move or authorize the removal of the Dwelling Unfit for Human Habitation placard.

10-12-2-26 As stated in 410 IAC 38, a qualified inspector or demolition contractor may choose to recycle at a permitted recycling facility the following from an affected property:

- (1) Iron and low carbon steel, including galvanized steel and other ferrous materials;
- (2) Aluminum, copper, brass, bronze, and other non-ferrous metals; and
- (3) Concrete.

(b) The receipts from the permitted facility must be provided to the local health department with the qualified inspector or demolition contractor clearance documentation.

(c) The recycling, refurbishing or reusing of any material not listed is prohibited.

All removed materials shall be disposed of in accordance with 329 IAC 10 no more than seventy-two (72) hours after removal.

10-12-2-27 The Owner of the Dwelling, Dwelling Unit or commercial unit is responsible for the cleanup of the Dwelling, Dwelling Unit or commercial unit where the illegal drug lab was identified, as stated in 410 IAC 38. The Owner shall properly decontaminate or demolish the Dwelling, Dwelling Unit or commercial unit within one hundred and eighty days (180) days from the issuance of the abatement order as specified in 10-12-3-4 and in accordance with the provisions for decontamination set forth in 410 IAC.

10-12-3 CHAPTER 3: ENFORCEMENT

10-12-3-1 Pursuant to IC 16-20-1-23, the Health Commissioner, or an authorized representative, bearing proper identification, providing due notice, and receiving consent of the Owner or Occupant of the Premises, may enter upon private property for the purposes of inspecting, observing, measuring, sampling, testing, specimen collection and examining records necessary to ensure compliance with this ordinance.

10-12-3-2 In the event that a property owner or the Occupant does not provide consent for an inspection for the purposes described in 10-12-3-1, the Health Commissioner, or an authorized representative, may obtain an inspection warrant/order from the Allen County Circuit or Superior

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Court to authorize the inspection, investigation, evaluation, testing, or sample/specimen collection.

- 10-12-3-3 Consent for an inspection as described in 10-12-3-1 is not necessary under the following circumstances:
- A. A court order is obtained and presented to Owner/Occupant;
 - B. An emergency condition exists that poses an Imminent Health Hazard to an individual or the public and, therefore, a delay of inspection could result in a greater health risk; or
 - C. The area being inspected occurs by entry to a public place or an area in plain and open view to determine compliance.

- 10-12-3-4 Whenever the Health Commissioner determines that there are reasonable grounds to believe that there has been a violation of any provision of this Ordinance, he/she shall issue an order of such alleged violations to the Owner, Occupant and/or their designated agent as hereinafter provided. Such order shall:
- A. Be in writing;
 - B. Include a statement of the reasons why it is being issued and list the applicable ordinance violations;
 - C. Contain an outline of remedial actions required to comply with this Ordinance;
 - D. Allow a reasonable time for the correction of the violation(s); and
 - E. Be served upon the Owner, Occupant and/or their designated agent, provided that such notice shall be deemed to be properly served upon such Owner, Occupant and/or designated agent, if a copy thereof is sent by certified mail to the address listed on the official tax record of the property affected by such notice, or if the Owner, Occupant and/or designated agent is served with such notice by any other method authorized by the laws of this state (such as hand delivery).

If the violations are not corrected within the stated reasonable period of time in the order, the owner/occupant/designated agent responsible shall be subject to an administrative hearing and/or the penalties and remedies outlined in 10-12-3-5 or 10-12-4-3 unless otherwise stated in this ordinance.

- 10-12-3-5 ADMINISTRATIVE HEARING:
- (A) All administrative hearings required or requested under this section shall be held only after at least ten (10) calendar days written notice to the Owner/Occupant/Designated agent of time, place and nature thereof. The notice of hearing shall be served upon the Owner/Occupant and/or Designated agent by mailing by certified mail or hand delivery of the notice to the address

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listed on the official tax record of the property affected by such notice or such other address as the Owner, Occupant and/or designated agent shall designate in writing to the Health Commissioner.

- (B) The Health Commissioner or their duly appointed representative will act as the hearing officer for and preside over administrative hearings under this chapter.
- (C) At any administrative hearing required or requested under this Ordinance, every person who is a party to such proceedings shall have the right to submit evidence, to cross-examine witnesses and to be represented by legal counsel. All such administrative hearings shall be conducted in an informal manner, but irrelevant, immaterial or unduly repetitive evidence may be excluded.
- (D) Upon the conclusion of such administrative hearing, the Health Commissioner or duly appointed representative shall enter a final order on the matter, subject to the right of appeal in accordance with 10-12-3-6.

10-12-3-6

APPEAL:

- (A) Any Owner, Occupant and/or designated agent aggrieved by any final order of the Health Commissioner or their duly appointed representative shall be entitled to appeal the order for review before the Board by filing a written request therefore to the Health Commissioner or their duly appointed representative within fifteen (15) calendar days after such final order is issued.
- (B) Upon the Health Commissioner's receipt of such request, the Board shall hear the matter de novo in an open hearing after at least ten (10) days written notice of the time, place and nature thereof. (The Health Commissioner and Owner, Occupant and/or designated agent may agree to a shorter period of time, if requested by either party.) The notice of the appeal hearing shall be issued by the Department to the Owner, or Occupant and/or designated agent filing the request.
- (C) The notice of appeal hearing shall be served upon the Owner/Occupant/Designated agent by mailing by certified mail or hand delivery of the notice to the address listed on the official tax record of the property affected by such notice or such other address as the Owner, Occupant and/or designated agent shall designate in writing to the Health Commissioner.
- (D) At such appeal hearing, the same rules of procedure shall apply as in the case of the administrative hearing before the Health Commissioner; provided, that upon written request

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by the Owner, Occupant and/or designated agent or the Health Commissioner, the Board shall cause the proceedings before it to be recorded by a reporter retained/employed for such purpose, and the recording, together with all papers and documents filed therein, shall, at the request of either party be reproduced by the Board/Department in the form of a transcript, and a copy of which shall be available to any part upon request.

- (E) The expense of recording such proceedings shall be charged to the Owner, Occupant and/or designated agent who applied for the appeal hearing, except that copies of transcripts shall be at the expense of the party requesting the same. At the time the transcript is requested, the Board may require the Owner or Occupant and/or agent to pay a deposit in an amount determined by the Board to be necessary to secure such expense(s).
- (F) The Board shall make written findings of facts and shall enter its final order or determination of the matter in writing.

10-12-4 **CHAPTER 4: VIOLATIONS AND PENALTIES**

10-12-4-1 **ENFORCEMENT:** It shall be the duty of the Health Commissioner to enforce the provisions of this Ordinance. A violation of an order issued by the Health Commissioner or Board shall be considered to be a violation of this Ordinance.

10-12-4-2 **VIOLATIONS:** Whenever the Health Commissioner determines that any Owner, Occupant and/or designated agent is in willful and/or continuous violation of any of the provisions of this Ordinance, the Health Commissioner shall furnish evidence of said willful and/or continuous violation(s) to the attorney for the Board or Department who shall seek all appropriate legal remedies against the person(s) violating said provisions of this Ordinance.

10-12-4-3 **PENALTIES AND FINES:** Any person who willfully violates any of the provisions in this Ordinance shall be subject to a fine of not more than five hundred dollars (\$500) for each violation. Each day of the existence of any violation of this Ordinance shall be considered a separate offense. All penalties under this chapter may only be assessed as part of a final order of a hearing or appeal hearing as specified in 10-12-3-5 and/or 10-12-3-6 respectively, EXCEPT FOR the following penalties/fines which may be assessed immediately to the Owner/Occupant/Designated agent as specified below:

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1. For any violation of 10-12-2-3 through 10-12-2-5, 10-12-2-9 through 10-12-2-14, 10-12-2-17 through 10-12-2-19, and 10-12-2-21, a fine may be assessed in the amount of \$25 per day for each day the violation exists. These fines will only be assessed in situations where the Owner/Occupant/Designated agent has been properly notified and ordered to correct a public health violation within a reasonable and specified timeframe as required under 10-12-3-4 but is willfully non-compliant with those orders.
2. Altering, moving, or removing a Dwelling Unfit for Human Habitation placard as stated in 10-12-2-25 will carry a fine of \$100.
3. For a violation of 10-12-2-26 regarding failure to properly decontaminate a property identified as an operational laboratory for the manufacture of illegal drugs, a fine may be assessed in the amount of \$25 per day for each day the property is not decontaminated beyond the required 180-day completion timeline as ordered.

10-12-4-4 **INJUNCTION:** The Health Commissioner may bring an action for an injunction or other appropriate legal remedy in the Circuit or Superior Court of Allen County, Indiana, to restrain any person from violating the provisions of this Ordinance, to cause such violation(s) to be prevented, abated or removed or to seek enforcement of orders issued by the Health Commissioner.

10-12-4-5 **EXPENSE:** Any person violating any of the provisions of this Ordinance shall be liable to the Allen County Department of Health for the expense, loss or damage occasioned by reason of such violation, including reasonable attorney's fees and costs.

10-12-4-6 **CUMULATIVE:** The remedies provided in this section shall be cumulative, and not exclusive, and shall be in addition to any other remedy provided by law.

10-12-5 CHAPTER 5: MISCELLANEOUS

10-12-5-1 **REPEAL:** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

10-12-5-2 **SEVERABILITY:** Invalidity of any section, clause, sentence or provision of this Ordinance shall not affect the validity of any other part of this Ordinance.

10-12-6 CHAPTER 6: EFFECTIVE DATE

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10-12-6-1

Effective Date

This Ordinance shall become effective as of April, 2023.

Passed this 24 day of February, 2023.

THE BOARD OF COMMISSIONERS OF
THE COUNTY OF ALLEN

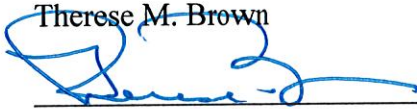
F. Nelson Peters




Richard Beck



Therese M. Brown



ATTEST:



Nicholas Jordan, Auditor

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