

**PRIMARY DEDICATION, DECLARATION, PROTECTIVE
RESTRICTIONS, COVENANTS, LIMITATIONS, EASEMENTS AND
APPROVALS APPENDED TO AND AS PART OF THE DEDICATION
AND PLAT OF LIVINGSTON LAKES, SECTION IV, A SUBDIVISION IN
ADAMS TOWNSHIP, ALLEN COUNTY, INDIANA**

THIS DECLARATION, made this 14th day of December, 2023, by PALMIRA DEVELOPMENT II, LLC, an Indiana limited liability company ("Declarant"),

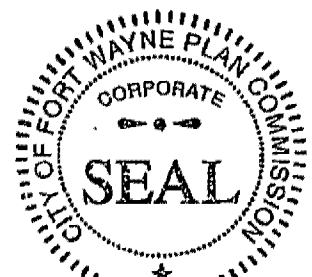
WITNESSETH:

A. Declarant is the owner of the real property described on Exhibit "A" attached hereto and referred to in Article IX of this Declaration, and desires to create thereon a residential duplex community with lots numbered 137-166, inclusive, open spaces, and other common facilities for the benefit of the community. All streets and easements specifically shown or described are expressly dedicated to public use for their usual and intended purposes.

B. Declarant further desires to provide for the preservation of the values and amenities in said community and for the maintenance of said open spaces and other common facilities; and, for such purposes, Declarant desires to subject the real property described on the Plat, attached hereto and referred to in Article IX, together with such additions as may hereafter be made thereto (as provided in Article IX), to the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth, each and all of which is and are for the benefit of the said property and each Owner thereof.

C. Declarant shall cause Livingston Lakes Community Association, Inc., a nonprofit corporation, or a corporation with a name similar thereto, to be formed under the laws of the State of Indiana. Declarant shall delegate and assign to the Association all the powers of maintaining and administering the community properties and facilities, administering and enforcing the covenants, conditions and restrictions, and collecting and disbursing the assessments and charges in connection with the Properties, as hereinafter provided.

D. Declarant intends for lots numbered 137-166 to be duplex-style villas and the owners thereof shall be members of a separate association to be known as Duplexes of Livingston Lakes Owners Association, Inc. as well as members of the Livingston Lakes Community Association, Inc.



NOW THEREFORE, Declarant declares that the real property referred to in Article IX, and such additions thereto as may hereafter be made pursuant to Article IX hereof, are and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "Covenants, Conditions and Restrictions") hereinafter set forth.

ARTICLE I

DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meaning:

- (a) "Association" shall mean and refer to the entity organized under the name Livingston Lakes Community Association, Inc., or a name similar thereto.
- (b) "Board" shall mean and refer to the Board of Directors of the Association.
- (c) "Common Areas" shall mean and refer to (i) those areas of land designated as Common Areas on any recorded subdivision Plat of the Properties and intended to be devoted to the common use and enjoyment of the Members of the Association, together with any and all improvements that are now or may hereafter be constructed thereon; (ii) all areas designated as water impoundment areas on any such recorded subdivision Plat; and (iii) all other real property owned by the Association for the common use and enjoyment of the Owners.
- (d) "Declarant" shall mean and refer to Palmira Development II, LLC, an Indiana limited liability company, its successors and any assignee other than an Owner, who shall receive by assignment from the said Palmira Development II, LLC all or a portion of its rights hereunder as such Declarant, by an instrument expressly assigning such rights as Declarant to such assignee.
- (e) "Duplexes of Livingston Lakes" shall mean and refer to the duplex-style villas contained on Lots 137-166.
- (f) "Duplex Association" shall mean the Duplexes of Livingston Lakes Owners Association, Inc., or a name similar thereto.
- (g) "Existing Property" shall mean and refer to the real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration pursuant to Article IX.
- (h) "Livingston Lakes" shall mean the community concept of Livingston Lakes developed by Declarant, including all sections governed and to be governed by the Association and Duplex Association.
- (i) "Lot" shall mean and refer to any plot or tract of land shown upon any recorded subdivision map of the Properties which is designated as a lot therein and which is or is to be improved with a residential, duplex-style dwelling.



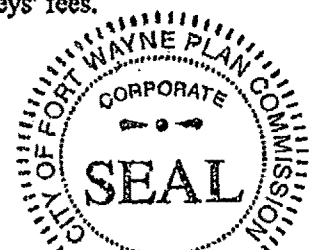
- (j) "Member" shall mean and refer to each Owner as provided herein in Article VII.
- (k) "Owner" shall mean and refer to the record owner, whether one or more person or entities, of the fee simple title to any Lot but, notwithstanding any applicable theory of mortgage or other security device, shall not mean or refer to any mortgagee or trustee under a mortgage or trust deed unless and until such mortgagee or trustee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- (l) "Properties" shall mean and refer to all such existing properties and additions thereto as are subject to this Declaration or any Supplemental Declaration prepared and filed of record pursuant to the provisions of Article IX hereof.

ARTICLE II

USE OF PROPERTIES AND COMMON AREAS

The Properties (and the improvements situated thereon) and the Common Areas shall be occupied and used as follows:

- (a) Each Lot shall be used exclusively for residential purposes, and streets and parking spaces shall be used exclusively for the parking of passenger automobiles.
- (b) There shall be no obstruction of the Common Areas, nor shall anything be kept or stored in the Common Areas, nor shall anything be altered, or constructed or planted in, or removed from or destroyed or damaged in the Common Areas, without the written consent of the Board.
- (c) No Owner shall permit anything to be done or kept on his Lot or in the Common Areas which will result in the cancellation of any insurance carried by the Association, or which would be in violation of any law. No waste shall be committed in the Common Areas.
- (d) No animals, livestock or poultry shall be raised, bred or kept in any portion of the Properties, except that dogs, cats or other household pets may be kept, but not for any commercial purposes, provided that they do not create a nuisance.
- (e) Nothing shall (i) be done in any part of the Properties, nor shall (ii) any noxious or offensive activity, be carried on, nor shall (iii) any outside lighting or loudspeakers or other sound producing devices be used, which in the judgment of the Board, may be or become an unreasonable annoyance or nuisance to the other Owners.
- (f) Each Owner shall be liable to the Association for any damage to the Common Areas caused by the negligence or willful misconduct of the Owner or his family, guests, or invitees.
- (g) All Owners and occupants shall abide by any rules and regulations adopted by the Board. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association for all damages and costs, including attorneys' fees.



ARTICLE III

AFFIRMATIVE AND PROTECTIVE COVENANTS

Section 1. Duplex Residential Structures and Garages. Subject to the provisions of Section 21 of this Article III, each duplex structure erected or placed on any Lot shall be designed, intended and used for two separate single family residences only, and not more than one duplex residential structure shall be placed on any Lot. There shall be constructed and maintained with each portion of the duplex an attached garage for not less than two (2) automobiles. Subject to approval under Section 21 of this Article III, any duplex to be constructed on a Lot shall be situated on and within the building pad ("Building Pad") provided on said Lot by the Declarant as part of the Declarant's obligations in connection with the sale of said Lot. The size and location of said Building Pad shall be determined by the Declarant, at its sole discretion. The Declarant shall have no responsibility to an Owner to extend a Building Pad for the purpose of the construction by an Owner of any portion of the proposed residence extending beyond the initial Building Pad, nor shall the Declarant have an obligation to provide a similar pad for the construction by an Owner of any other building, structure, or improvements made to the subject Lot.

Section 2. Side Line and Front Line Set Back Restrictions. No building shall be located on any Lot nearer the front line or the side street line than the minimum building setback lines as shown on the Plat. No projection of any building shall be permitted to extend into or encroach upon the space between said building line and the street. No building shall be located nearer than a distance of five (5) feet to an interior Lot line; provided, however, there shall be a zero (0) side yard setback for the adjoining wall of any duplex constructed on a Lot. No building shall be located on any Lot nearer than twenty-five (25) feet to the front or rear Lot line; provided, however, should any rear Lot line run adjacent to Common Area, no building on such a Lot shall be located nearer than fifteen (15) feet to the rear Lot line.

Section 3. Minimum Lot Size. No duplex shall be erected or placed on a Lot having a width of less than forty (40) feet at the minimum building setback line, nor shall any residence be erected or placed on any Lot having an area of less than 4,685 square feet.

Section 4. Further Subdivision of Lots. The further dividing of any Lot or combination of Lots after approval by the Allen County Plan Commission is prohibited unless and until the Allen County Plan Commission has reviewed and approved the change. This restriction will not prohibit utilizing a portion or all of an adjoining Lot to change the size of a Lot, so long as no Lot shall have a width of less than forty-six (46) feet at the building line.

Section 5. Pre-Inhabitation. Before any duplex on any Lot in the Plat shall be used and occupied as a dwelling or as otherwise provided in the Declaration, the Declarant or any subsequent developing Owner of said Lot shall install all improvements serving the Lot as provided in the development plans and specifications for the Properties filed with the Board of Commissioners of Allen County. Before any Lot may be used or occupied, the Owner of such Lot shall first obtain from the Zoning Administration the improvement location permit and certificate of occupancy, required by the Allen County Zoning Ordinance.

Section 6. Signs. No sign of any kind shall be displayed to the public view on a Lot except one professional sign of not more than six (6) square feet, advertising the Lot for sale, or signs



used by a builder to advertise the Lot during the construction and sale period. The provision of this Section 6 shall not be applicable to signs used by Declarant.

Section 7. Waste. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers which are not visible from the front of any residence. All Equipment for the storage and disposal for such material shall be kept in a clean and sanitary condition.

Section 8. Antennae. Unless otherwise approved in writing by Declarant, no radio or television or other type of antennae, satellite disk or dish, or supporting structure may rise more than six (6) feet above the highest point of the roof of any building. Such antennae, satellite disk or dish, or supporting structure must be attached to the main dwelling. No towers will be permitted unless otherwise approved in writing by Declarant.

Section 9. Boats, Trailers, Etc. No boats, trailers, campers, recreational vehicles, or other vehicles of whatever kind or character other than operational automobiles shall be parked or permitted to remain on the street or on any Lot unless housed completely in a garage.

Section 10. Yard Light. Each Owner will, within thirty (30) days of the issuance of a Certificate of Occupancy, cause a yard light or other illuminating device to be installed in the front yard of the Lot fifteen (15) feet (plus or minus one (1) foot) from the street curb. Such yard light or illuminating device will be of such design and construction as shall be approved by the Architectural Control Committee; said Committee shall also have the authority to approve a change in the location of said yard light or illuminating device. Said yard light or other illuminating device shall be illuminated at all times other than daylight hours. Owner, other than Declarant, will supply at his expense said lights and equip same with photoelectric cells.

Section 11. No Prefabricated Construction. All residences and other structures constructed or erected upon any Lot shall be new construction, and in no event shall any prefabricated or existing residences or garages be moved onto any Lot.

Section 12. Communication Equipment. No communication receiving or transmitting device or equipment shall be used on any Lot which interferes with the television reception on any other Lot without the prior written consent of the Architectural Control Committee, which consent may be withheld or, once given, revoked for any reason.

Section 13. Vegetable Gardens. No vegetable gardens shall be placed on any Lot except behind the residence situated on such Lot.

Section 14. Maximum Building Coverage. Each duplex-style residence contained within the Duplexes of Livingston Lakes shall have a habitable floor area of not less than 1,450 square feet, exclusive of porches and garages.

All structures, exterior colors and design must be approved by the Architectural Control Committee pursuant to Section 21 of this Article III.

Section 15. Temporary Structures. No temporary structures of any kind shall be erected or placed on any Lot and in no instance shall more than one duplex be erected or placed on any one Lot as the same is shown on the Plat. In no event shall any residential dwelling upon any Lot be occupied until it has been fully completed in accordance with plans approved the Architectural



Control Committee. No trailer, basement, tent, shack, or garage erected or placed on any Lot shall at any time be used as a residence temporarily or permanently, nor shall any structure or a temporary character be used as a residence. However, the provisions of this Section 15 shall not apply to structures commenced, erected or maintained by the Declarant.

Section 16. Drives and Storage Tanks. All driveways from the street to the garage shall be concrete surface and not less than sixteen (16) feet in width. All oil or fuel storage tanks shall be installed underground or concealed within the main structure of the dwelling house, basement or attached garage.

Section 17. Fences. No fencing shall be permitted in the yard of any Lot except or patio screening as set forth herein. The plans, specifications and locations for any fencing to be constructed around a patio for screening purposes on any Lot shall be submitted to the Declarant, or to the Committee at any time after the appointment of the members of the Committee by the Declarant, for approval prior to construction in accordance with Section 21 of this Article III. In addition to approval from the Declarant or the Committee, any fencing shall also meet the requirements of the pertinent provisions of the Allen County Zoning Ordinance. All fences shall be of wood, vinyl or, in the case of a wrought iron fence, steel construction. No aluminum fencing or steel chain-link type fencing will be allowed. In addition, all fences shall be a spaced picket-type or stockade fence, or, in the case of a steel fence, a wrought iron fence. No fence shall exceed six (6) feet in height.

Section 18. Storage Sheds. No storage sheds, outbuildings, or other similar structures shall be allowed on any Lot. Any such building allowed hereunder shall meet all applicable requirements of the Allen County Zoning Ordinance.

Section 19. Sidewalks. Each Owner shall provide, at Owner's expense, and maintain a concrete public sidewalk across the front of his, her or their Lot prior to occupancy. Concrete sidewalks shall be five (5) feet in width.

Section 20. Pools. No above-ground pool, except for spas, whirlpools and similar structures, shall be installed, erected or maintained on any Lot. The installation, erection or maintenance of any in-ground pool on any Lot shall be subject to the provisions of Section 21 below governing the Architectural Control Committee and shall be prohibited on, in, or about any Lot within the community lacking the soil conditions suitable for such installation, erection or maintenance of an in-ground pool thereon. No in-ground pool shall be located on any Lot nearer than a distance of six (6) feet from the rear or side property line of said Lot. In addition to the foregoing, all in-ground pools shall meet all applicable requirements of the Allen County Zoning Ordinance. Pools of any type shall be prohibited on any Lot contained within the Duplexes of Livingston Lakes.

Section 21. Architectural Control.

Section 21.1. New Construction. Notwithstanding any provisions to the contrary set forth in Section 21, the following shall apply:

- (a) No Owner shall construct, or cause the construction of, a single-family residence on any Lot prior to obtaining Declarant's written approval of the licensed residential contractor the Owner intends to engage to construct said residence; and



- (b) All plans and specifications for the construction of a new single-family residence shall be submitted to and approved or disapproved by Declarant pursuant to Section 21.2 below.

Section 21.2. Other Construction. No building, outbuilding, fence, wall, swimming pool or spa, or other structure shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition, change, or alteration in or to such structure or any residence, including, without limitation, the repainting of the exterior of any residence and/or garage, or any portion thereof, be commenced until two (2) sets of plans and specifications showing the nature, kind, shape, height, color, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design, aesthetics and location in relation to surrounding structures and topography by Declarant. Declarant's approval or disapproval as required in these Covenants shall be in writing. No structure of any kind which does not comply fully with such approved plans shall be erected, constructed, placed or maintained upon any Lot, and no changes or deviations in or from such plans as approved shall be made without Declarant's prior written consent. In the event Declarant fails to approve or disapprove such improvements or other matters within ninety (90) days after said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the erection, addition, alteration, or change has been commenced prior to the completion thereof, written approval will not be required, and this Section 21.2 will be deemed to have been duly complied with by the Lot Owner. Neither Declarant nor any heirs, personal representatives, successors or assigns thereof, shall be liable to anyone by reason of any mistake in judgment, negligence, or nonfeasance arising out of or relating to the approval or disapproval or failure to approve any plans so submitted, nor shall they, or any of them, be responsible or liable for any structural defects in such plans or in any building or structure erected according to such plans or any drainage problems resulting therefrom. Every person and entity who submits plans to Declarant agrees, by submission of such plans, that he or it will not bring any action or suit against Declarant to recover any damages or to require Declarant to take, or refrain from taking, any action whatever in regard to such plans or in regard to any building or structure erected in accordance therewith. Neither the submission of any complete sets of plans to Declarant's office for review thereby, nor the approval thereof by Declarant, shall be deemed to guarantee or require the actual construction of the building or structure therein described, and no adjacent Lot Owner may claim any reliance upon the submission and/or approval of any such plans or the buildings or structures described therein.

Once Declarant, or the Board, as appropriate, has appointed the Committee, as defined below, any plans and specifications for construction not considered new construction of a Dwelling Lot shall be submitted to and approved or disapproved by the Committee pursuant to the requirements set forth in this Section 21.2.

Section 21.3. Appointment of Committee. Declarant (or the Board following the formation by Declarant of the Association) may designate representatives to serve on the Architectural Control Committee (the "Committee"). The Committee shall consist of at least three (3) and no more than five (5) members appointed by Declarant or the Board, if applicable. Once the Committee is established by Declarant or the Board, the Committee shall assume the rights and obligations of Declarant under Section 21.2 above.

Section 22. Flood Protection Grades. In order to minimize potential damages from surface water, flood protection grades are hereby established as set forth below. All dwellings shall be constructed at or above the minimum flood protection grades; such grades shall be the minimum



elevation of a first floor or the minimum sill elevation of any opening below the first floor of any dwelling. The flood protection grades shall be per North American Vertical Datum 1988 and shall be specifically set forth in the Plat of Livingston Lakes, Section IV, as approved by the Allen County Plan Commission.

The flood protection grades for Livingston Lakes, Section IV, are as follows, inclusive:

<u>Lot</u>	<u>Rear</u>	<u>Front</u>
137	830.0	832.8
138-142	830.0	
150	830.5	
151	824.2	830.5
152-153	824.2	

Section 23. Front Exteriors. All front elevations must be of natural material, i.e., wood, brick or stone, except for soffits and the use of hard plank or vinyl siding, on a limited basis, to highlight or complement the natural material required to cover the majority of all front elevations hereunder.

Section 24. Landscaping and Lawn/Lake Lots Maintenance Requirement.

- (a) All Owners shall landscape, or cause to be landscaped, their Lot, at a minimum, in a manner so as to maintain and remain consistent with the aesthetic integrity of the landscaping contained on the Properties, as defined by Declarant. Said landscaping shall be completed, or caused to be completed, by each Owner within one (1) year after the date of said Owner's certificate of occupancy, as issued by the Allen County Building Department, authorizing the Owner's occupancy of the house. The foregoing landscaping requirements shall not apply to Declarant nor to any Common Area or Lot owned by Declarant.
- (b) All Owners, as soon as reasonably possible upon completion of construction of their house, shall properly grass seed or sod their Lot and maintain their yard in a condition consistent with the aesthetic integrity of the yards contained on other Lots and the Properties, as defined by Declarant.

Section 25. Utility Easements. Except for easements and Declarant's rights relating thereto as set forth in Article IV, Section 1 hereof, no Owner shall erect on a Lot, or grant to any entity the right, license or privilege to erect or use, or permit the use of, overhead wires, poles, or overhead facilities of any kind for electrical, telephone, or television service (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave the subdivision). Nothing in these Covenants shall be construed to prohibit street lighting or ornamental yard lighting serviced by underground wires or cables. Electrical service entrance facilities installed for any residence or other structure on a Lot connecting it to the electrical distribution system of any electric public utility shall be provided by the Owner of the Lot who constructs the residence or structure, and shall carry not less than three (3) wires and have a capacity of not less than two hundred twenty (220) amperes. Any public utility charged with the maintenance of underground installations shall have access to all easements in which said installations are located for operation, maintenance and replacement of service connections.



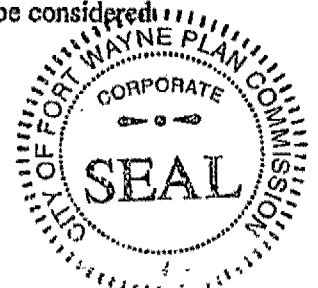
Section 26. Surface, Storm and Underground Water Discharge. Each Owner shall take all steps necessary to maintain and continue at all times the separation of surface, storm and underground waters from the sanitary sewer system servicing each dwelling unit, including, without limitation, not allowing discharge from gutter downspouts, interior or exterior foundation drains, foundation drain sump pumps, yard and other surface, storm or underground waters to be connected to or flow through or into, directly or indirectly, said sanitary sewer system. Any surface, storm or underground water discharge service system erected, constructed or maintained by the Owner shall be done so in compliance with all local, state and federal rules, regulations and standards governing such discharge systems, including, without limitation, the rules, regulations and standards set forth by the Allen County Drainage Board, or its successor. Declarant shall provide a swale or similar storm water drainage system at the rear of each Lot (each, a "Storm Water Drainage System"), and each Owner shall connect his or her foundation drain sump pump or other surface, storm or underground water discharge system maintained by said Owner to the Storm Water Drainage System (or, in the case of a swale, arrange for said sump pump or system discharge to flow to and through said swale) for purposes of adequately draining said Lot.

Each Owner shall contact Declarant prior to the connection of his or her dwelling unit to the sanitary sewer system and the Storm Water Drainage System constructed and maintained by Declarant so that Declarant can verify and inspect, or arrange for verification and inspection of, the separate connections of the Owner's dwelling unit to the respective discharge systems. Should any Owner fail to comply with the provisions of this Section 26 and Declarant incur any costs associated with curing said failure, including, without limitation, disconnecting improper connections to Declarant's sanitary sewer system, Declarant shall have the right to collect all of said costs from the Owner, including, without limitation, the costs of collection and reasonable attorney fees.

In addition to the foregoing, each Owner shall take all steps necessary to keep the Storm Water Drainage System provided by Declarant clear of debris so as to maintain the flow of surface water to and through said Storm Water Drainage System for purposes of properly draining said Owner's Lot. Should any Owner fail to comply with the requirements hereunder, Declarant, or the Board, as appropriate, shall have the right to enter onto said Owner's Lot and repair any Storm Water Drainage System and/or remove any debris or other items blocking the flow of water to or through said System, and charge said Owner for all costs and expenses incurred in doing so. All costs and expenses incurred by Declarant, or the Board, as appropriate, and charged to the Owner hereunder shall be considered part of and added to the amounts assessed and collected under Article VI hereof.

Section 27. Single Owner Contiguous or Multiple Lots. Intentionally Omitted.

Section 28. Construction Damage. Each Owner shall be responsible for any damage caused to any Lot, Common Area, or other Properties during or after construction by any contractor and/or subcontractor engaged by said Owner to construct a dwelling or any other improvements on said Owner's Lot. Should any Owner fail to properly repair such damage and/or restore any Lot, Common Area and/or Properties to a condition deemed acceptable by Declarant, or the Board, as appropriate, Declarant, or the Board, as appropriate, shall have the right to repair any such damage and/or restore any Lot, Common Area or Properties to an acceptable condition, and charge said Owner for all costs and expenses incurred in doing so. All costs and expenses incurred by Declarant, or the Board, as appropriate, and charged to the Owner hereunder shall be considered part of and added to the amounts assessed and collected under Article VI hereof.



ARTICLE IV

EASEMENTS

Section 1. Easements Reserved by Declarant. Easements for the installation, maintenance, repair and removal of public and/or quasi-public utilities and sewer and drainage facilities, and floodway easements are reserved by Declarant over, under and across the Properties, as shown on the recorded Plat thereof. Full ingress and egress shall be had by Declarant at all times over the Properties for the installation, operations, maintenance, repair or removal of any utility together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easements, or with the use, maintenance, operation or installation of such utility. The grade of the land in any such easement shall not be changed or altered by any Owner of any Lot, after the said grade has been established. All utility easements as dedicated on the Plat shall be left free from all permanent structures and the removal of any obstructions, whether temporary or permanent, shall be subject to the paramount right of the utility and/or sewer installation. Declarant shall have the right to assign and transfer the easements and rights herein reserved to or for the benefit of any public or quasi-public utility.

Section 2. Surface Drainage Easements. Surface drainage easements as shown in the Plat are intended for either periodic or occasional use as conductors for the flow or surface shall be constructed and maintained so as to achieve this intention. Such easements shall be maintained in an unobstructed condition and the Association or a proper public authority having jurisdiction over storm drainage shall have the right to repair and maintain such easements, or to require such repair and maintenance as shall be reasonably necessary to keep the conductors unobstructed.

Section 3. Surface Water. No rain or storm water runoff shall at any time be discharged or permitted to flow into the sanitary sewage system, which shall be a separate sewerage system from the storm water and surface water runoff outlets. No individual water supply system or individual sewage disposal system shall be installed, maintained or used on any Lot except that any individual water system may be used for the purpose of a swimming pool or lawn irrigation.

ARTICLE V

PROPERTY RIGHTS IN THE COMMON AREAS

Section 1. Easements of Enjoyment. Subject to the provision of Section 3 of this Article, the following persons shall have a right and easement of enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title to every Lot:

- (i) Each member and each individual in his family residing with him on his Lot.
- (ii) Each tenant and contract purchaser or each Member (and each individual in the respective families of each such tenant and contract purchaser residing with each of them) who resides on the Lot owned by such member; provided, that such tenant or contract purchaser, as the case may be, shall have a right and easements of enjoyment in and to the Common Areas in lieu of such Member of his family.



Section 2. Title to the Common Areas. The Declarant may retain the legal title to the Common Areas until such time as it has completed such improvements thereon as it may elect to make and until such time as, in the opinion of the Declarant, the Association is able to maintain the same but, notwithstanding any provision herein, the Declarant hereby covenants, for itself, its successors and assigns, that it shall convey the Common Areas to the Association. At any time thereafter so long as Class B Members of the Association exist, the Declarant may convey and transfer to the Association such additional real and/or personal property as the Declarant, in its sole discretion, deems appropriate, and the Association shall accept such transfer and hold such property as part of the Common Areas.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) The right of the Association to prescribe regulations governing the use, operation and maintenance of the Common Areas (including limiting the number of guests of members);
- (b) The right of the Declarant, and of the Association in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Areas and facilities and in aid thereof to mortgage the Common Areas, and the rights of such mortgagee in the Common Areas shall be subordinate to the rights of the homeowners hereunder;
- (c) The right of the Association to take such steps as are reasonably necessary to protect the Common Areas against foreclosure;
- (d) The right of the Association, as provided in its Articles and Bylaws, to suspend the voting rights of any member and to suspend the right of any individual to use any of the Common Areas and/or common facilities for any period during which any assessment against a Lot resided upon by such individual remains unpaid, and for any period not to exceed thirty (30) days for an infraction or its rules and regulations;
- (e) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities of the Common Areas; and
- (f) Subject to approval by the affirmative vote of the Association's Members, as provided in Section 3 of Article VII, the right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and upon such conditions as may be agreed to by the Members.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Lot (by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance), for each Lot owned by any such Owner, hereby covenants and agrees and shall be deemed to covenant and agree to pay to the Association (or to a mortgage company of



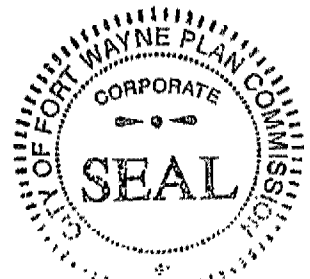
other collection agency designated by the Association) Annual Assessments or charges (the "Annual Assessments"), to be paid on June 1 of each year (hereinafter called "Annual Payment Dates") or in such other installments as the Board may elect. The Assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such Assessment is made. The Assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the continuing personal obligation of the person who was the Owner of such Lot at the time when the Assessments became due.

Section 2. Purpose of Annual Assessments. The Annual Assessments levied by the Association shall be used exclusively for (i) the care, preservation, supervision, improvement and maintenance of the Common Areas and of the improvements situated thereon; (ii) the payment of taxes on and insurance in connection with the Common Areas and the repair, replacement and making of additions thereto; (iii) paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management, supervision, maintenance and repair of, the Common Areas, including without limitation, the storm water detention basin and control structures, water quality amenities utilized as post construction best management practices to satisfy the state/federal water quality regulatory requirements, and of any existing and future recreational lakes together with any outlet and water level control structures and of the park area and improvements situated thereon, (iv) carrying out the duties of the Board as set forth in Article VIII hereafter; and (v) carrying out the purposes of the Association as stated in its Articles of Incorporation.

Section 3. Improvement and Maintenance of the Common Areas Prior to Conveyance to the Association. Upon conveyance of any portion of the Common Areas to the Association, the Association shall have the responsibility and duty of improving and maintaining that portion of the Common Areas conveyed by the Declarant. Prior to such conveyance, the Declarant shall have the right but not the responsibility to access and to improve the Common Areas and the Association shall have the duty to mow and to maintain the Common Areas. and during such period, all Assessments, both Annual and Special, collected by the Association shall be forthwith paid by the Association to Declarant, to the extent that such Assessments are required by Declarant to improve and maintain the Common Areas as set forth in this paragraph. The Association shall rely upon a certificate executed and delivered by the Declarant with respect to the amount required by Declarant to improve and maintain the Common Areas hereunder. Any sums required by Declarant to improve and maintain the Common Areas, in excess of the Assessments collected by the Association, shall be borne and paid exclusively by Declarant.

Section 4. Basis and Amount of Annual Assessments.

- (a) Until the year beginning January 1, 2023, there shall be no Annual Assessment under this Article VI.
- (b) Commencing with the year beginning January 1, 2023 and each year thereafter, the Board, at its annual meeting and effective for the year commencing with the next January 1, and each January 1 thereafter, shall set the amount of the Annual Assessment for the following year for each Lot, taking into consideration the current maintenance costs and the future needs of the Association, provided that the Annual Assessment shall never be less than \$200.00.



Section 5. Capital Improvements. In the event any Annual Assessment includes, or the Board levies a special assessment ("Special Assessment") in any given year to include, an amount for the purpose of defraying, in whole or in part, the cost of construction, repair or replacement of a capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto, that portion of any such Assessment, Annual or Special, relating to the capital improvement(s) must have the assent of the Members entitled to cast a majority of the votes of the Members of the Association who are voting in person or by proxy at a meeting duly called for this purpose, as provided in Section 3 of Article VII. ("Annual Assessment" and "Special Assessment" are sometimes collectively referred to herein as the "Assessments.")

Section 6. Uniform Rate of Assessment. Subject to the provisions of Section 1 of this Article VI, both Annual and Special Assessments must be fixed at a uniform rate for all Lots.

Section 7. Date of Commencement of Assessments: Due Dates.

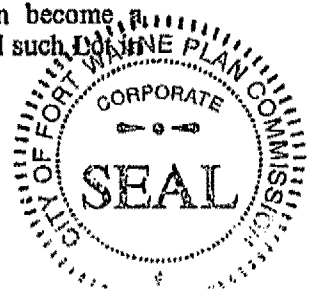
- (a) The initial Annual Assessment provided for in Section 4 of this Article VI shall commence on the date fixed by the Board to be the date of commencement, and shall be payable annually, in advance, on each Annual Payment Date thereafter; provided, however, that if the date of commencement falls on other than the first day of a month, the Assessment for such month shall be prorated by the number of days remaining in the month.
- (b) The due date or dates of any Special Assessment under Section 5 hereof shall be fixed in the Board resolution authorizing such Assessment.

Section 8. Duties of the Board with Respect to Assessments.

- (a) The Board shall fix the date of commencement and the amount of the Assessment against each Lot for each Assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and Assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.
- (b) Written notice of the Assessment shall thereupon be delivered or mailed to every Owner subject thereto.
- (c) The Board shall upon demand at any time furnish to any Owner liable for said Assessment a certificate in writing signed by an officer of the Association, setting forth whether said Assessment had been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. A reasonable charge may be made by the Board of the issuance of such certificates.

Section 9. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; the Lien; Remedies of the Association.

- (a) If any Assessment or any part thereof is not paid on the date(s) when due (being the dates specified in Section 7 of this Article VI), then the unpaid amount of such Assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot of the non-paying Owner which shall bind such Lot.



the hands of the then Owner, his heirs, executors, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such Assessment, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them. The lien for unpaid Assessments shall be unaffected by any sale or assignment of a Lot and shall continue in full force and effect. No Owner may waive or otherwise escape liability for the Assessments provided herein by non-use of the Common Areas or abandonment of his Lot.

- (b) If any Assessment or any part thereof is not paid within thirty (30) days after the delinquency date, the unpaid amount of such Assessment shall bear interest from the date of delinquency at the annual rate of eighteen percent (18%) interest, and the Association may, at its election, bring an action at law against the Owner personally obligated to pay the same in order to enforce payment and/or to foreclose the lien against the property subject thereto, and there shall be added to the amount of such Assessment the costs of preparing and filing the complaint (including reasonable attorneys' fees) in such action and, in the event a judgment is obtained, such judgment shall include interest on the Assessment as above provided and a reasonable attorneys' fee to be fixed by the court, together with the costs of the action.

Section 10. Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate and inferior to the lien of any mortgage or deed of trust now or hereafter placed upon the Lots subject to assessment; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to the sale, whether public or private, or such property pursuant to the terms and conditions of any such deed of trust. Such sale shall not relieve such Lots from liability for the amount of any Assessments thereafter becoming due nor from the lien of any such subsequent Assessment.

Section 11. Exempt Property. The following property subject to this Declaration shall be exempted from the Annual and Special Assessments, charges and liens created herein:

- (a) All properties dedicated and accepted by the local public authority and devoted to public use.
- (b) All Common Areas as defined in Article I hereof.
- (c) All areas reserved by the Declarant on the recorded Plat of the Properties.
- (d) All Lots owned by Declarant.
- (e) All Lots owned by a residential contractor licensed in Allen County, Indiana as such and who holds title to a Lot for the purpose of constructing a Dwelling Unit on said Lot but not residing thereon.

Section 12. Administrative Fees. The Association may assess against a Lot a reasonable charge for providing letters notifying Owners of any violations or breaches of the Restrictions. The Association may incur administrative time and expense in receiving and reviewing complaints of any violations of these Restrictions, onsite inspections, consultations, mailing and other time, costs and expenses. The fee shall be charged for the first notice of violation, however, the Association may charge an Owner for any subsequent letter for the same of substantially the same violation.



these Restrictions. The Board of Directors of the Association may adjust the administrative fees from time to time, but such administrative fee shall not be less than \$75.00 per letter. The second and any subsequent letter shall not be sent more often than every twenty (20) days. The administrative fees contained within this Section 10 shall be collected in accordance with Section 9 above.

ARTICLE VII
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every Owner of a Lot shall automatically be a Member of the Association.

Section 2. Classes of Membership. The Association shall have two classes of voting membership:

CLASS A. Class A Members shall be all Members with the exception of Declarant. Class A Members shall be entitled to one vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest or interest in any Lot, all such person shall be Members, and the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any such Lot.

CLASS B. The Class B Member(s) shall be the Declarant, and such Member(s) shall be entitled to fifty-four (54) votes for each Lot owned. The Class B membership of Declarant shall cease and be converted to Class A membership on the occurrence of either of the following events, whichever occurs first:

- (a) When title to all Lots in Livingston Lakes, Section IV, have been conveyed; or
- (b) On December 31, 2040.

Section 3. Quorum and Notice Requirements.

- (a) Subject to the provision of paragraph (c) of this Section, any action authorized by Section 3(f) of Article V shall require the assent of the Members entitled to cast two-thirds (2/3) of the votes of the Members of the Association who are voting in person or by proxy at a meeting duly called for that purpose, written notice of which shall be given to all Members at least ten (10) days in advance (unless otherwise provided in the Bylaws of the Association) and shall set forth the purpose of such meeting.
- (b) The quorum required for any action referred to in Section 3(f) of Article V or Section 5 of Article VI shall be as follows: At the first meeting called, as hereinafter provided, the presence at the meeting of Members, or of proxies, entitled to cast sixty percent (60%) of all of the votes of each class of membership shall constitute a quorum. If the required quorum is not present at the meeting, an additional meeting may be called, subject to the notice requirement hereinafter set forth, and the required quorum at such second meeting shall be one-half (1/2) of the required quorum at the preceding meeting; provided, however, that no such second meeting shall be held more than sixty (60) days following the first meeting.



- (c) Any provision of this Declaration to the contrary notwithstanding any action described in Section 3(f) of Article V may be taken with the assent given in writing and signed by the Members entitled to cast two-thirds (2/3) of the votes of the Association.
- (d) Except as hereinabove specifically set forth in Article VII, Section 3, paragraphs (a), (b) and (c), notice, voting and quorum requirements for all action to be taken by the Association shall be as set forth in its Articles of Incorporation and Bylaws, as same may be amended from time to time.

ARTICLE VIII

GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS OF THE ASSOCIATIONS

Section 1. Powers and Duties. The Boards, for the benefit of the Properties and the Owner, shall provide, and shall pay for out of the maintenance fund provided for in Article V, Section 1, above, the following:

- (a) Taxes and assessments and other liens and encumbrances, which shall properly be assessed or charged against the Common Areas, rather than against the individual Owners.
- (b) Care and preservation of the Common Areas and full maintenance of a utility service for the Common Areas including the furnishing and upkeep of any desired personal property for use in the Common Areas.
- (c) The services of a person or firm to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager.
- (d) Legal and accounting services.
- (e) A policy or policies of insurance insuring the Association against any liability to the public or to the Owners (and/or invitees or tenants), incident to the operation of the Association, in an amount not less than \$100,000 to indemnify against the claim of one person \$300,000 against the claim of two or more persons in any one occurrence, and property damage insurance in an amount not less than \$100,000 per occurrence; which policy or policies shall contain an endorsement providing that the rights of the named insureds shall not be prejudiced with respect to actions against other named insureds.
- (f) Workers' compensation insurance to the extent necessary to comply with any applicable laws.
- (g) Such fidelity bonds as the Board may determine to be advisable.



- (h) Any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, structural alterations, taxes or assessments (including taxes or assessments assessed against an individual Owner) which the Board is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.

The Board shall have the following additional rights, powers and duties:

- (i) To execute all declarations of ownership for tax assessment purposes with regard to the Common Areas on behalf of all Owners.
- (j) To borrow funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit.
- (k) To enter into contracts, maintain one or more bank accounts (granting authority as the Board shall desire to one or more persons to sign checks) and, generally, to have all the powers necessary or incidental to the operation and management of the Association.
- (l) To protect or defend the Common Areas from loss or damage by suit or otherwise, and to provide adequate reserves for replacements.
- (m) To make reasonable rules and regulations for the operation of the Common Areas and to amend them from time to time, provided that any rule or regulation may be amended or repealed by an instrument in writing signed by a majority of the Members (without limiting the generality of the foregoing language, the rules and regulations may provide for limitations on use of the common recreational areas during certain periods by youthful persons, visitors or otherwise).
- (n) To make available to each Owner within sixty (60) days after the end of each year an annual report and, upon the written request of one-tenth (1/10) of the Members, to have such report audited by an independent, certified public accountant, which audited report shall be made available to each Member within thirty (30) days after completion.
- (o) To adjust the amount, collect, and use any insurance proceeds to repair damage or replace lost property; and if proceeds are insufficient to repair damage or replace lost property, to assess the Members in proportionate amounts to cover the deficiency.
- (p) To enforce the provision of this Declaration and any rules made hereunder and to enjoin and seek damages from any Owner for violation of such provisions or rules.

Section 2. Board Powers, Exclusive. The Board shall have the exclusive right to contract for all goods, services, and insurance, payment for which is to be made by the Association, and the exclusive right and obligation to perform the functions of the Board, except as otherwise provided herein.

Section 3. Owner's Obligations to Repair. Each Owner shall, at his sole cost and expense, maintain and repair his Lot and the improvements situated thereon, keeping the same in good



condition and repair. In the event that any Owner shall fail to maintain and repair his Lot and the improvements thereon as required hereunder, the Association, in addition to all other remedies available to it hereunder or by law, and without waiving any of said alternative remedies, shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain and restore the Lot and exterior of the buildings and any other improvements erected thereon; and each Owner (by acceptance of a deed for his Lot) hereby covenants and agrees to repay to the Association the cost thereof immediately upon demand, and the failure of any such Owner to pay the same shall carry with it the same consequences as the failure to pay any assessment hereunder when due.

ARTICLE IX

PROPERTY SUBJECT TO THIS DECLARATION: ADDITIONS THERETO

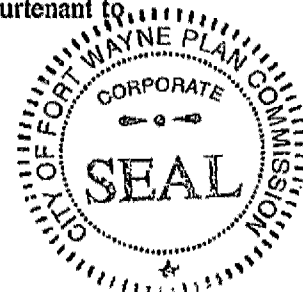
Section 1. Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration (hereinafter defined as the "Existing Property"), located in Allen County, State of Indiana, is described on Exhibit "A" attached hereto, and is designated Livingston Lakes, Section IV and more particularly described on a subdivision Plat (the "Plat" hereafter) thereof recorded as Plat Record _____, Cabinet _____, page _____, in the Office of the Recorder of Allen County, Indiana.

Section 2. Additions to Existing Property. If Declarant is the owner of any property which it desires to add to the community of Livingston Lakes, including future Properties to be added as additional sections of Livingston Lakes, it may do so by filing of record a Supplementary Dedication, Declaration, Protective Restrictions, Covenants, Limitations, Easements and Approvals which shall extend the concept of the covenants, conditions and restrictions of this Declaration to such property, PROVIDED, HOWEVER, that (i) such additional property shall be contiguous (as hereafter defined) to the Properties subject to this Declaration at the time, and (ii) such Supplementary Declaration may contain such complimentary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the concept of this Declaration. In no event, however, shall such Supplemental Declaration modify or add to the covenants established by this Declaration for the Existing Property. Any additions made and sections added to Livingston Lakes pursuant to this Section 2, when made, shall automatically become part of the Association, thereby extending the jurisdiction, functions, duties and membership of the Association to the sections and properties added. For the purposes hereof, the term "contiguous" shall mean adjoining; provided, that any tracts or parcels of land which are separated by a street, road, sidewalk, right-of-way, easement or other thoroughfare shall be deemed to be contiguous.

ARTICLE X

DUPLEXES OF LIVINGSTON LAKES ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of Lots 170-223 in Livingston Lakes shall be a member of the Duplexes of Livingston Lakes Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot.



1.2 Classes. The Association shall have the following two classes of voting memberships:

1.2.1 Class A. Class A membership consists of all Owners, except Developer. Class A members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in a Lot, all such persons shall be members. The vote for such Lot shall be exercised as its Owners among themselves determine; but in no event shall more than one vote be cast with respect to a Lot.

1.2.2 Class B. Class B membership consists of Developer and its successor. The Class B member shall be entitled to 54 votes for each Lot owned by Developer. Class B membership shall cease upon the happening of either of the following events, whichever occurs first:

1.2.2.1 When fee simple title to all Lots has been conveyed by Developer or its successor; or

1.2.2.2 On December 31, 2040.

Section 2. Covenant For Maintenance Assessments.

2.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner, except Developer, by and immediately upon acceptance of a deed for a Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges; and (b) special assessments for capital improvements, such assessments to be established and collected as provided in these Covenants and the Bylaws. The annual and special assessments, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. The lien is effective from and after recording a Claim of Lien in the Public Records, stating the description of the Lot, name of the Owner, amount due and the due dates. Each such assessment, together with interest, costs and reasonable attorney fees, shall also be the personal obligation of the person who was Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by them.

2.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the provision of the Grounds Keeping Services as defined in and required under Subsection 6.2 hereof and for the care, preservation, supervision, improvement, repair and maintenance of the Common Areas and of the improvements situated thereon, including, but not limited to: (a) the payment of taxes on and insurance in connection with the Common Areas and the repair, replacement and making of additions thereto; (b) paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management, supervision, maintenance and repair of the Common Areas, including, without limitation, the park area and improvements situated thereon, (c) carrying out the duties of the Board of Directors of the Association, as set forth herein and as, from time to time, shall be determined by said Board of Directors; and (d) carrying out the purposes of the Association as stated in its Articles of Incorporation.



2.3 Amounts of Annual Assessments. Until January 1 of the year in which the first conveyance by Developer of a Lot, the minimum annual assessment shall be \$____.00 per improved Lot. Until January 1 of the year in which the first conveyance by Developer of a Lot, the minimum annual assessment shall be \$____.00 per unimproved Lot. Should any Owner fail to commence construction or cause the commencement of construction of the dwelling unit on said Owner's Lot(s) within 12 months of said Owner receiving title to said Lot(s), said Owner shall be responsible for and cause the grading and planting of grass seed on said Lot, subject to the approval of Developer or its representative. Once the Owner has graded and seeded the Lot(s) hereunder and until such time as construction has begun on said Lot(s), the Association shall maintain the grass on the subject Lot(s) and assess the Owner with an amount equal to the annual assessment for unimproved Lots in effect at that time, as established by Developer or the Association under this Subsection 2.3. The amounts contained herein are provided solely for the purpose of determining the initial annual assessment to Lot Owners under Subsection 2.6, and are subject to change from time to time both as to the amounts and as to their relation to the total annual assessment.

2.3.1 From and after January 1 of the year in which such first conveyance of a Lot occurs pursuant to Subsection 2.3 above, the annual assessment for improved and unimproved Lots may be increased each year by the Board of Directors, or by the Developer in the event no association and/or Board of Directors has been formed, by a percentage of not more than 8% above the annual assessment for the previous year, without a vote of the membership.

2.3.2 From and after January 1 of the year in which such first conveyance of a Lot occurs pursuant to Subsection 2.3 above, the annual assessment may be increased by a percentage in excess of 8%, only by the vote or written assent of a majority of each class of members of the Association, or by the Developer at its sole discretion if no association has been formed at that time.

2.4 Special Assessments.

2.4.1 Capital Improvements. In addition to the annual assessments authorized in Subsection 2.2, the Association may levy, in any assessment year, a special assessment against all Lots applicable to that year for the purpose of defraying, in whole or in part, the cost of any new construction, repair or replacement of any existing capital improvement in the Common Area, including fixtures and related personal property; provided that any such assessment shall require the vote or written assent of 75% of each class of members of the Association; and provided, further, that no special assessment for any such purpose shall be made if the assessment in any way jeopardizes or affects the Association's ability to improve and maintain the Common Area, or pay its pro rata share of the cost of maintaining the Lakes.

2.4.2 Excessive Grounds Keeping Services Expenses. In addition to the annual assessments authorized in Subsection 2.2, the Association may levy, in any assessment year, a special assessment applicable to and charged against any Lot and its Owner for the purpose of defraying, in whole or in part, the costs and expenses incurred by the Association in providing the Grounds Keeping Services that exceed those expenses covered by a portion of the annual assessments levied under this Section 2 for standard landscaping as described in Subsection 6.2 hereof.



2.5 Notice and Quorum for Any Action Authorized Under Subsections 2.3.2 and 2.4. Any action authorized under Subsections 2.3.2 and 2.4 shall be taken at a meeting of the Association called for that purpose, written notice of which shall be sent to all members not less than 30 days, nor more than 60 days, in advance of the meeting. If the proposed action is less than the requisite percentage of each class of members, members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by an officer of the Association within 30 days of the date of such meeting.

2.6 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots, except as provided in Subsection 6.2 and may be collected on a monthly, quarterly or yearly basis. The annual assessment as set forth in Subsection 2.3 shall include an assessment for Common Area Maintenance and for Grounds Keeping Services, the costs of which shall be assessed as set forth herein. The portion of the annual budget allocated for landscaping shall be assessed in accordance with the actual cost as determined by the annual contract with the landscape contractor, which contract when bid out by the Board shall be awarded in two parts as follows: [1] Grounds Keeping Services for the Duplexes of Livingston Lakes and; [2] landscape maintenance, repair and replacement for the Common Areas. The charges for each shall be shared equally by all Duplexes of Livingston Lakes except as provided in Subsection 6.2.

2.7 Date of Commencement of Annual Assessments. The annual assessment allowed under Subsection 2.3 shall be in force and effect on the first day of the month following the first conveyance of a Lot by Developer or its successor, and each Owner shall be subject to said annual assessment immediately upon acceptance of the deed to said Owner's Lot. The first annual assessment shall be based upon a partial year unless such conveyance is made in the first month of such year. The portion of the annual assessment for Common Area Maintenance shall commence as to individual Lots on the first day of the month following the conveyance of such Lot to Owner, prorated according to the number of months remaining in the calendar year at the time of conveyance (except for the initial year, when the proration shall be based upon the partial year). That portion of the annual assessment for Grounds Keeping Services shall commence as to individual Lots on the first day of the month following the issuance of an Occupancy Permit for such Lot, prorated according to the number of months remaining in the calendar year at the time of issuance (except for the initial year, when proration shall be based upon the partial year). The Board of Directors, or the Developer in the event no association and/or Board of Directors has been formed, shall fix the amount of the annual assessment against each Lot at least 30 days in advance of the date when the annual assessment is due. Written notice of the annual assessment shall be given to every Owner. The Association, or the Developer, if appropriate, shall, upon demand and for a reasonable charge, furnish a certificate by an officer of the Association stating whether an assessment on a Lot has been paid.

2.8 Exempt Property. The following property subject to this Declaration shall be exempted from the assessments; charges and liens created herein:

- (a) All properties dedicated and accepted by the local public authority and devoted to public use;
- (b) All Common Areas, as defined herein;
- (c) All areas reserved by Developer on the recorded Plat of the Properties;



- (d) All Lots owned by Developer or its successor; and
- (e) All Lots owned by a residential contractor licensed in Allen County, Indiana, as such and who holds title to a Lot for the purpose of constructing a dwelling unit on said Lot but not residing thereon. However, the exemption afforded contractors under this Subsection 2.8(e) shall be limited to 12 months following said contractor taking title to a Lot. In addition, should construction not commence on the subject Lot within said 12-month period, the contractor shall be subject to the grading and seeding requirements set forth herein, and the assessment requirements imposed on Owners of unimproved Lots set forth in this Section 2 until such time as construction shall commence.

Section 3. Establishment of Assessments.

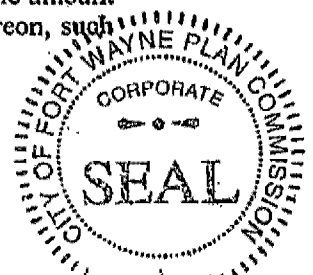
3.1 The Board of Directors of the Association, or the Developer in the event no association and/or Board of Directors has been formed, shall approve and establish all sums which shall be payable by the Owners in accordance with the following procedures:

3.1.1 The annual assessments against the Owners of all of the Duplexes of Livingston Lakes shall be established after the adoption of an operating budget, and written notice of the amount and date of commencement thereof shall be given to each Owner not less than 30 days in advance of the date thereof. Annual assessments shall be payable at such time or times as the Board of Directors shall direct, which shall be monthly until otherwise directed. Annual assessments shall include an amount for "Reserves for Replacement" so as to enable the Association to establish and maintain an adequate reserve fund for periodic maintenance, repair and replacements of improvements to the Common Areas.

3.1.2 Special assessments against the Owners and all other fees, dues and charges, including assessments for the creation of reasonable reserves, may be established by the Board of Directors at any regular or special meeting thereof, or by the Developer, if appropriate, at any time without a meeting, and shall be payable at such time or times as the Board of Directors, or the Developer, if appropriate, shall direct.

3.1.3 The Board of Directors, or the Developer, if appropriate, may, from time to time, establish a resolution, rule or regulation, or may delegate to an officer or agent the power and authority to establish specific fees, dues or charges to be paid by Owners of the Duplexes of Livingston Lakes for any special or personal use of facilities, or to reimburse the Association, or the Developer, if appropriate, for the expenses incurred in connection with the enforcement of any of the terms of this Declaration. Such sums shall be payable by the affected member at such time or times as shall be established by the resolution, rule or regulation of the officer or agent.

3.1.4 The Association, or the Developer, if appropriate, shall prepare a roster of the Duplexes of Livingston Lakes and assessments applicable thereto which shall be kept in the office of the Association, or the Developer, if appropriate, and shall be open to inspection by any Owner. The Association, or the Developer, if appropriate, shall, upon demand, furnish an Owner liable for said assessment a certificate, in writing signed by an officer of the Association, or the Developer, if appropriate, setting forth whether the assessment has been paid and/or the amount which is due as of any date. As to parties without knowledge of error who rely thereon, such



certificates shall be conclusive evidence of payment or partial payment of any assessment therein stated having been paid or partially paid.

Section 4. Effect of Nonpayment of Assessments. If any assessment is not paid within 30 days after the due date, a late fee of \$25.00, beginning from the due date, shall be levied by the Board of Directors, or the Developer, if appropriate, for each month the assessment is unpaid.

For example: Owner A is delinquent in payment of his assessment for two (2) months. The computation of late fees is as follows:

1st month's late fees:	\$25.00 for Assessment #1
2nd month's late fees:	\$25.00 for Assessment #2 <u>and</u> another \$25.00 for Assessment #1

Total amount of late charges due after two months: \$75.00
(\$25.00 for month #1 and \$50.00 for month #2)

The Association, on approval by the Board of Directors, or the Developer if no association and/or Board of Directors has been formed at that time, may, at any time after a delinquency has continued for two (2) months, bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against the property. Any officer of the Association, or the Developer, if appropriate, is authorized to execute any documents required to effect such action. Any such action shall include subsequent unpaid assessments and/or late charges. There shall be added to the assessment all costs and expenses, including attorney fees required to collect same. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of the Lot.

Section 5. Subordination of the Lien to Mortgages. As hereinabove provided in Subsection 4.1, the lien of the Association or the Developer for assessments and other charges of the Association or the Developer becomes effective from and after recording of a Claim of Lien in the Public Records and shall automatically secure all unpaid assessments, late fees and other charges, including attorney fees which may become due from and after the recording of the Claim of Lien. The Claim of Lien shall be executed by an officer of the Association and shall comply with the requirements necessary for the recording thereof in Allen County, Indiana. This lien of the Association or the Developer shall be subordinate to a first mortgage on any Lot, which mortgage is recorded in the Public Records prior to any said Claim of Lien against the same Lot being recorded in the Public Records. A lien for assessments shall not be affected by any sale or transfer of a Lot; provided, however, that in the event of a sale or transfer pursuant to a foreclosure of a first mortgage, a foreclosure of a mortgage held by an Institutional Mortgagee, or deed in lieu of foreclosure by a first mortgage or a mortgage held by an Institutional Mortgagee, the acquire of title, his successors and assigns, shall not be liable for assessments pertaining to the Lot or chargeable to the former Owner of the Lot which became due prior to such sale or transfer. However, any such unpaid assessments for which such acquire of title is not liable may be reallocated and assessed to all Duplexes of Livingston Lakes (including such acquire of title) as an Association or Developer expense. Any such sale or transfer pursuant to a foreclosure or deed in lieu of foreclosure shall not relieve the purchaser or transferee of a Lot from liability for, or the Lot from, the lien of any assessments made thereafter. Nothing herein contained shall be construed as releasing the party liable for any delinquent assessments from the payment thereof, or the enforcement of collection by means other than foreclosure.



Section 6. Maintenance Obligation of Association.

6.1 Common Area. The Association shall at all times maintain, repair and replace at its expense all Common Areas, including all improvements placed thereon, in good condition and repair.

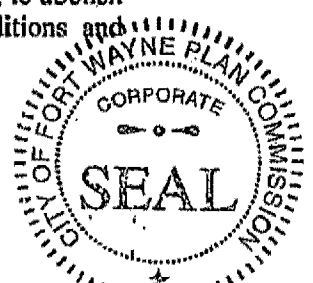
6.2 Grounds Keeping Services. Grounds Keeping Services, as hereinafter defined, shall be provided by the Association for all Duplexes of Livingston Lakes. For purposes hereof, "Grounds Keeping Services" shall consist of the maintenance of snow removal, mowing, all standard landscaping, vegetation, grass, plants, trees and the like located upon each Lot; provided, however, that if any of the foregoing standard landscaping requires replacement, it shall be the responsibility of, and at the expense of, the Owner of the applicable Lot to make such replacement. In the event there is a fenced-in area upon a Lot, adequate access to this area shall be provided to enable the Association to perform this maintenance, but if none is so provided or if the access is locked or otherwise made inaccessible, the Association shall not be responsible for providing any maintenance within this area, and the Owner thereof shall have such responsibility and shall not be entitled to claim any abatement of any portion of the annual assessment by the Association due to such situation. If the installation of fencing or additional landscaping by an Owner increases the cost to the Association of performing the landscaping maintenance as part of the Grounds Keeping Services required hereunder, such Owner shall be subject to the payment of such increases as a special assessment, pursuant to Subsection 2.4.2 hereof. Maintenance, repair or replacement of any portion or part of a Lot's sprinkler system shall be the responsibility of that Lot's Owner. If a Lot Owner fails or refuses to make required repairs or replacements of his sprinkler system after reasonable notice from the Association to do so, the Association may enter upon said Lot and perform such required work to the sprinkler system; and the cost thereof, plus reasonable overhead costs of the Association, shall be a special assessment upon such Lot.

6.3 Right of Entry by Association. Whenever it is necessary to enter a Lot for the purpose of inspection, including inspection to ascertain an Owner's compliance with the provisions of this Declaration, or for performance of any maintenance, alteration or repair to any portion of the dwelling or improvements upon the Lot, the Owner thereof shall permit an authorized agent of the Association to enter such dwelling, or go upon the Lot, provided that such entry shall be made only at reasonable times. In the case of emergency such as, but not limited to, fire or tornado, entry may be made at any time. Each Owner does hereby appoint the Association as its agent for the purposes herein provided and agrees that the Association shall not be liable for any alleged property damage or theft caused or occurring on account of any entry.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Duration. The Covenants, Conditions and Restrictions of this Declaration shall run with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by the Association and/or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date that this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the Members entitled to cast a majority of the votes of the Association has been recorded, agreeing to abolish said Covenants, Conditions and Restrictions or to change said Covenants, Conditions and



Restrictions in whole or in part; provided, however, that no such agreements to change shall be effective unless made and recorded one (1) year in advance of the effective date of such change; provided further, that no such agreements to change shall be applicable to existing buildings on the Properties.

Section 2. Termination or Amendment by Declarant. For a period of five (5) years following the date of the recording of this Declaration with the Office of the Recorder of Allen County, Indiana, Declarant, at its discretion, may abolish, amend or otherwise modify the Covenants, Conditions and Restrictions of this Declaration, in whole or in part, subject, however, to approval of the Allen County Plan Commission. Declarant's rights under this Section 2, for the duration of the aforementioned five (5) year period, shall supersede the rights to modify the Covenants, Conditions and Restrictions of this Declaration provided in Section 1 and/or Section 3 of this Article X.

Section 3. Consent of Members. Except as provided in Section 1 and Section 2 of this Article, the Covenants, Conditions and Restrictions of this Declaration may be abolished, amended and/or changed in whole or in part, only with the consent of the Members of each class of membership entitled to cast fifty-one percent (51%) of the votes of each such class of Association, evidenced by a document in writing bearing each of their signatures; provided, that (i) no amendment whatsoever shall be made without the written consent of the Declarant prior to January 1, 2035, notwithstanding that Declarant has no interest in the Properties at the time, (ii) Declarant shall have the right to amend this Declaration at any time from time to time, without the consent of any Member, to the extent that such amendments are required by the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association, or other governmental authority involved in financing the improvement, purchase or sale of any of the Lots or the improvements to be constructed thereon, and (iii) no amendment shall be made eliminating any of the covenants of Articles III and IV or adversely affecting or reducing the assessments provided in Article VI without the prior written approval of the Allen County Plan Commission or its successor, and further, however, that the restrictions and covenants herein contained as they relate to the storm water detention system and the maintenance and repair thereof shall be for an indefinite period except as amended with the prior approval of the Allen County Drainage Board.

Section 4. Enforcement. Enforcement of these covenants and restrictions shall be by and proceedings at law or in equity against any person or person violating or attempting to violate them, or to recover damages, or to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed waiver of the right to do so thereafter.

Section 5. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 6. Headings. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

Section 7. Notices. Any notice required to be given to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in



the United States mail, postage prepaid; addressed 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 8. Storm Water Detention System and Pond Maintenance Assessment. The Association shall be obligated to maintain, repair and/or replace, as necessary, the storm water drainage system, water quality features, and the storm water detention system consisting of all ponds shown on the Plat of the subdivision, together with outlets and water control structures, the cost of which shall be borne by all of the Owners in Livingston Lakes and subsequent Owners of Lots in any and all of the sections of Livingston Lakes.

The Owner of any Lot in this section, or any future sections, of Livingston Lakes and/or the Allen County Drainage Board shall have the right to order the Association to carry out its obligation to maintain, repair and/or replace the storm water drainage system and storm water detention system improvements, as above provided, and to assess the Owners of all Lots in this section and future sections of Livingston Lakes with the cost thereof.

Until the year beginning January 1, 2024, the annual assessment for pond maintenance shall be \$25.00 per Lot. Commencing with the year beginning January 1, 2024 and each year thereafter, the Board of Directors of the Association, at its annual meeting next preceding, and each January 1 thereafter, shall set the amount of the annual assessment for the maintenance of the ponds in addition to the regular annual maintenance fee for the common areas as set forth in Article VI, provided that the annual assessment for the storm water detention system (ponds) under this Article XI, Section 8 shall never be less than \$25.00.

Notwithstanding anything contrary to the aforesaid, any alteration or amendment of the Restrictions and Covenants must be made accordingly with the prior approval of the Allen County Plan Commission and further that the Restrictions and Covenants herein contained, and only as they relate to the storm water detention system and the maintenance and repair thereof, shall be in continuous effect for an indefinite period, except as amended with the prior approval of the Allen County Drainage Board.

[SIGNATURE PAGE TO FOLLOW]



IN WITNESS WHEREOF, Jeffrey M. Thomas, a Member of Palmira Development II, LLC, being the Declarant herein, has executed this instrument on this, the 14th day of December, 2023.

PALMIRA DEVELOPMENT II, LLC

By: 
Jeffrey M. Thomas, Member

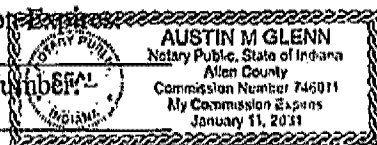
STATE OF INDIANA, COUNTY OF ALLEN) SS:

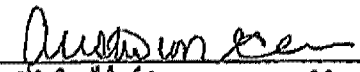
Before me, the undersigned authority, a Notary Public in and for said County and State, this day personally appeared Jeffrey M. Thomas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said Palmira Development II, LLC, an Indiana limited liability company, and that he executed the same as the act of such Palmira Development II, LLC for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 14th day of December, 2023.

My Commission Expires

Commission Number




Austin M. Glenn, Notary Public
Resident of Allen County, IN

Pursuant to IC 36-2-11-15(d): I/We affirm, under the penalties for perjury, that I/we have taken reasonable care to redact each Social Security number in this document, unless required by law.
Timothy L. Claxton

This Instrument Prepared by: Timothy L. Claxton, Attorney at Law, 200 E. Main St., Ste. 1000, Fort Wayne, IN 46802. Attorney Identification No. 14523-02

Return to: Burt Blec Box

