

Declaration of Wabash Gardens Horizontal Property Regime

GENERAL HOMES OF LAFAYETTE, INC., an Indiana Corporation, having an office in the City of West Lafayette, Indiana, as Declarant, being the sole owner of the real estate hereinafter described, hereby declares that a "Horizontal Property Regime" shall exist and be imposed thereon and that said real estate shall be and the same hereby is submitted to the provisions of the Horizontal Property Law, being Chapter 349 of the 1963 Acts of the Indiana General Assembly, as amended, hereinafter referred to as the "Law".

1. **DEFINITIONS.** Unless the context shall clearly indicate otherwise, as used herein the following terms shall have the following meanings:
 - a. "Building" shall mean any of the seven (7) residential buildings, each containing four (4) individual single-family dwelling units.
 - b. "Unit" means an enclosed space consisting of several rooms having lawful access to a public way, designated and numbered on the floor plans as hereinafter provided and including the garage facility appurtenant thereto.
 - c. "Unit Owner" or "Owner" means a person, firm, corporation partnership, association or legal entity, or any combination thereof, whose estates or interest, individually or collectively, aggregate fee simple ownership of one or more units.
 - d. "Property" means the land, as described in Section 2; the buildings; all improvements and structures thereon now or hereinafter; and all easements, rights and appurtenances pertaining thereto.
 - e. "Floor Plans" means the documents entitled "Wabash Gardens Horizontal Property Regime - Floor Plans" dated Nov. 17th, 1978, and recorded in Condominium Plat Book 2, pages 1-15, in the Office of the Recorder of Tippecanoe County, Indiana, bearing file number 15762, which documents are by this reference, made a part of this Declaration.
 - f. "Common Areas and Facilities" means and includes the land on which the buildings are located and the following areas, parks and facilities or pertaining to the buildings and surrounding areas: (1) The foundations, columns, beams, supports, exterior walls, walls dividing units, load-bearing structural components, attics and roofs; (2) The yards, exterior gardens and sidewalks (excluding courtyards), parking areas, courtyard walls, driveways

and streets; (3) Installations for services for more than one unit such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, plumbing, sewer lines, water lines, telephone, cable television and other means of communications; (4) Pipes, wires, ducts, conduits and utility lines running through the units which serve more than one unit; (5) Any tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use; (6) All other parts of the property necessary or convenient to its existence, maintenance, and safety, or normally used in common. Patios are limited common areas and, subject to this declaration and to the regulations of the Association, are reserved for the unit to which they are assigned on the Floor Plans.

g. "Association" means Wabash Gardens Condominium Association, Inc., a Corporation to be organized by the Declarant under the Indiana General Not-for-Profit Corporation Act, its successors and assigns, the voting members of which shall be all of the owners of the units. The following additional terms are defined elsewhere in the Declaration:

"Ownership Percentages" – Section 4 (b). "Common Expenses" – Section 8 (a).

2. DESCRIPTION OF REAL ESTATE.

The real estate which is subject to this Declaration and the provisions of Horizontal Property Law is described as follows, and is located in the City of West Lafayette, Tippecanoe County, Indiana:

Part of the Southeast Quarter of Section Seven, Township 23 North, Range 4 West, City of West Lafayette, Wabash Township, Tippecanoe County, Indiana, described as follows: Commencing at the intersection of the centerline of Miami Trail and West Navajo Street; thence North 89° 42'00" West along the centerline of West Navajo Street, 18.04 feet; thence North 00°14'45" East 17.50 feet to the northern right of way line of West Navajo Street as recorded in Deed Record 73, page 508, said point being the point of beginning of this description; thence North 0°14'45" East, 433.00 feet to the southern right of way line of Sagamore Parkway; thence traversing the southern right of way line of Sagamore Parkway the following four courses: South 82°59'00" East, 24.76 feet; thence South 80°36'04" East, 131.36 feet; thence South 85°43'34"

East, 347.75 feet; thence South $72^{\circ}04'37''$ East, 4.69 feet to the western right of way line of Indian Trail Drive extended; thence South $15^{\circ}00'00''$ West along the western right of way line of Indian Trail Drive, 455.24 feet to the present northern right of way line of West Navajo Street as recorded in Deed Record 73, page 508; thence along the northern right of way line of West Navajo Street the following three courses: North $75^{\circ}00'00''$ West, 91.55 feet; thence westerly on a curve to the left having a central angle of $14^{\circ}42'00''$, a radius of 1,017.26 feet, an arc distance of 260.99 feet; thence North $89^{\circ}42'00''$ West, 43.06 feet to the point of beginning, containing 4.42 acres, more or less.

The above bearings are based on Wabash Shores Second Addition, Part One.

3. DIVISION OF PROPERTY INTO UNITS. The property is hereby divided into twenty-eight (28) separate units which are located in seven (7) separate buildings. The buildings are units that are respectively identified and designated by building numbers and units numbers; are located with respect to each other and to lot lines of the real estate on the Floor Plans; and have dimensions, elevations, boundaries, layouts and floor plans as shown on the Floor Plans. Each unit shall contain one (1) individual single-family dwelling unit. Each building shall contain four (4) units, and shall be one story in height, except for building No. 3 which shall be two stories in height and containing four (4) units.

Declarant reserves the right to change the interior design and arrangement of any unit and to alter the interior boundaries between units so long as Declarant owns the units so altered. Any such alteration shall be reflected by an amendment to this Declaration which may be executed by the Declarant alone, notwithstanding the procedure for amendment in Section 18.

However, no such change shall increase the numbers of units nor alter the boundaries of the common areas and facilities (except that between the units being altered) without amendment of the Declaration as provided in Section 18.

Each unit shall consist of the space enclosed or bounded by the horizontal and vertical plans set forth in the delineation thereof on the Floor Plans, including the patio area.

The legal description of each unit shall consist of the Building Number and Unit Number shown on the Floor Plans, and every deed, lease, mortgage or other instrument may legally describe the unit by using its appropriate identifying Building Number and Unit Number as shown on the Floor Plans, followed by the words "in WABASH GARDENS HORIZONTAL PROPERTY REGIME, as recorded in Condominium Plat Book _____, pages _____, under the date of _____, of the Records of Tippecanoc County, Indiana," and that shall be deemed to contain a good and sufficient description for all purposes.

In accordance with the Law, each instrument or deed of conveyance also shall include the following particulars: (1) A statement of the use for which the condominium units intended and restrictions on its use; (2) The percentage of undivided interest appertaining to the condominium unit in the common areas and facilities; (3) The amount of any current or delinquent assessments of common expense. (4) Any other details and restrictions which the grantor and grantee deem desirable that are consistent with the declaration.

Except as provided by the Law, no owner shall, by deed, plat or otherwise, sub-divide or cause his unit to be separated into tracts or parcels different from the whole unit as shown on the Floor Plans.

4. OWNERSHIP OF UNITS AND COMMON AREAS and FACILITIES – OWNERSHIP PERCENTAGES.

- a. Each unit, together with its undivided interest in the common areas and facilities, shall constitute real property and may be individually conveyed and encumbered as if it were entirely independent of the other units in the building.
- b. The owner of each unit shall be seized of the fee simple title to and exclusive ownership and possession of his unit and of the fee simple title in an undivided interest in the common

areas and facilities, which undivided interest shall be equal to 3.571428% per unit, (herein sometimes referred to as "ownership percentage"), it being the intention of this Declaration that each of the twenty-eight (28) units shall share equally in the ownership of the common areas and facilities and shall bear the common expenses equally. The ownership percentages of undivided interest in the common areas and facilities as set forth above shall be permanent, shall not be altered without the consent of all of the owners expressed in an amendment to this Declaration, duly executed and recorded, and shall, except as otherwise provided in the Articles and By-Laws with respect to the Declarant, determine and govern the respective voting rights of the owners for all purposes.

- c. Any unit may be held and owned by more than one person as joint tenants as tenants in common, as tenants by the entirety or in any other real property tenancy relationship now or hereafter recognized under the laws of the State of Indiana.
- d. Each unit together with its undivided interest in the common areas and facilities shall constitute one inseparable unit which may not be divided or sub-divided and which may be conveyed, leased, or encumbered only as a single unit and any such conveyance, lease or encumbrance shall be deemed to include such undivided interest even though not expressly mentioned or described therein.
- e. Except as otherwise provided in Section 13, the common areas and facilities shall remain undivided and no unit owner or other person shall bring any action for partition or division of any part thereof, unless the property has been removed from the provisions of the Law as therein provided.

5. USE AND OCCUPANCY OF UNITS – RESTRICTIONS.

- a. All units shall be used and occupied solely as single-family residences. No more than six (6) of the units can be rental units at any given time. Existing units, as of 4/8/2014, used as rentals will be "grandfathered into this clause. The exception to this rule is rental to immediate relatives, e.g., owner (parent) renting to adult child, or owner (child) renting to parent. A temporary rental of a unit, for up to a 12 month time period, may be allowed with Board approval. The owners of units may use the common areas and facilities in accordance with

the purposes for which they were intended but without hindering or encroaching upon lawful rights of other owners. In the event two or more adjoining units are used as one residence for a single family, that part of the common areas and facilities separating the two or more adjoining units may be altered to afford ingress and egress to and from such adjoining units in such manner and upon such conditions as shall be determined by the Declarant in writing with respect to the initial sale of such units and by the Association in writing with respect to subsequent sales.

- b. Each owner shall comply with all valid laws, ordinances and regulations of governmental authorities and with reasonable rules and regulations concerning the use of the property as made and amended from time to time by the Association. No owner shall permit any use of the property which is unlawful or which interferes with the peaceful possession and enjoyment of the property by other owners. As used in this Section 5, the term "owner" means and includes the owner, members of his/her family, guests, invitees and tenants and their family, guests and invitees.
- c. Each owner shall maintain and keep his unit in good order and repair.
- d. Nothing shall be done or kept in any unit or in the common areas and facilities which will increase the insurance rates on any building or the contents thereof, without the written consent of the Association. No owner shall permit anything to be done or kept in his unit or in the common areas and facilities which will result in the cancellation of insurance on any building, or the contents thereof, which would be in violation of any law. No waste shall be committed in the units or in the common areas or facilities.
- e. No owner shall cause or permit anything to be placed on the outside walls of any building and no awning, canopy, shutter, radio or television antenna, shall be affixed to or placed upon the exterior walls or roof or any part thereof without the prior written consent of the Association.
- f. No animals of any kind shall be raised, bred, or kept in any unit or in the common areas and facilities except that dogs, cats or other household pets may be kept in units, subject to rules and regulations adopted by the Association, provided they are not kept, bred or maintained for any commercial purpose; and provided further that any such pet causing or creating a nuisance

or unreasonable disturbance shall be permanently removed from the property upon three(3) days written notice from the Association.

- g. No noxious or offensive activity shall be carried on in any unit or in the common areas and facilities nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other owners or occupants.
- h. Except as otherwise provided herein, nothing shall be done in any unit or in, on, or to the common areas and facilities which will impair the structural soundness or safety of the property or which would structurally change any building or would impair the value thereof, or impair any easement or hereditament.
- i. Except for management of the affairs of the Association, no industry, business, trade, occupation or profession of any kind shall be conducted, maintained or permitted in any unit; PROVIDED, however, this restriction shall not be construed to prohibit an owner from (a) maintaining his professional library therein; (b) keeping his personal, business or professional records or accounts therein; or (c) handling his personal, business or professional telephone calls or correspondence therein. Such uses are expressly declared customarily incident to the principal residential use and not in violation of any restriction under this Section 5.
- j. No signs, advertising or other displays shall be maintained or permitted on any part of the property except in such location and in such form as may be determined by the Association; provided, however, where the mortgagee of a first mortgage acquires title as a direct result of foreclosure of the first mortgage, including conveyance in lieu of foreclosure, such first mortgagee may post signs in the common area and facilities or in the unit advertising the unit for sale.
- k. After completion of construction of the buildings, nothing shall be altered or constructed or removed from the common areas and facilities except with the written consent of the Association.

Any provision of these restrictions or of this Declaration or any rule or regulation of the Association to the contrary, the Declarant reserves the right to itself, its agents, successors and assigns to maintain on the property until the sale of the last unit by the Declarant, such models,

sales offices and advertising signs or banners and lighting in connection therewith as the Declarant may desire from time to time, together with the right of ingress and egress thereto and transient parking therefor, throughout the common areas and facilities; and, upon the sale of the last unit, the Declarant shall have the right to convert such models and sales offices into living units and may remove accessories to such models and sales offices including but not limited to fences, lights, wiring, signs and fixtures.

6. EASEMENTS.

- a. If any portion of the common areas and facilities encroaches upon a unit, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. If any portion of a unit encroaches upon the common areas and facilities, or upon another unit, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the common areas and facilities or on the units; provided, in no event shall a valid easement for any encroachment or use of the common areas and facilities be created in favor of any owner if such encroachment or use substantially interferes with the reasonable use and enjoyment of the property by other owners or if it occurred as the result of a willful encroachment by any owner other than the Declarant.
- b. Easements are hereby reserved to the Declarant and granted to all public utilities and governmental agencies to lay, construct, repair, renew, replace, operate and maintain conduits, cables, pipes, wires, transformers, switching apparatus and other equipment into and through the common areas and facilities for the purpose of providing water, gas, sewage, electrical, telephone, television, storm sewer, surface drainage and other utility services. The location of some of such easements is shown on the Floor Plans. Additional locations may be designated by the Declarant and shall be such as to constitute minimum interference with the other uses of the common areas and facilities. All parts of the property may be entered under reasonable circumstances for the purposes expressed herein. Such easements shall run with the land, shall be perpetual, non-exclusive and at all times shall inure to the benefit of the Declarant, its successors and assigns (including the use thereof for the benefit of the real estate not within

the real estate described in Section 2 of this Declaration); any owner, purchaser, mortgagee or other person having an interest in the property or any part thereof; and any adjoining land owner.

- c. Easements as shown on the Floor Plans and which lie outside the real estate described in Section 2 of this Declaration are hereby granted to all public utilities and governmental agencies to lay, construct, repair, renew, replace, operate and maintain, conduits, cables, pipes, wires, transformers, switching apparatus and other equipment for the purpose of providing water, gas, sewage, electrical, telephone, television, storm sewer, surface drainage and other utility services to and through the property. Such easements shall be perpetual, non-exclusive and shall inure to the benefit of the Declarant, its successors and assigns and any owner, purchaser, mortgagee or other person having an interest in the property.
- d. The unit owners are hereby granted a perpetual and non-exclusive easement over and across that portion of Indian Trail Dr., extended, which lies outside the real estate described in Section 2 of this Declaration, for purposes of ingress and egress and for all other purposes customarily associated with the use of public streets and ways. Such easement shall be perpetual, non-exclusive and shall insure to the benefit of the Declarant, its successors and assigns, and any owner, purchaser, mortgagee or other persons having an interest in the Property. Expenses of maintaining shall be a common expense unless otherwise provided by the Association.

7. MAINTENANCE AND REPAIR.

- a. Owner's Responsibility. For the purposes of maintenance, repair, alteration and remodeling, an owner shall be deemed to own the interior non-supporting walls which are not boundary walls between units, the floors and ceilings between the first and second floors of the two-story building units, the materials (such as but not limited to, plaster, gypsum, drywall, paneling, wallpaper, paint, wall and floor tile, carpeting and flooring, including the sub-flooring) making up the finished surfaces of the boundary walls between units and perimeter walls, and making up the finished surfaces of all ceilings and floors within the unit and the unit doors, (except the exterior surface), windows, furnaces and heating

system, water heaters, stoves, refrigerators, washing machines and household appliances. The owner shall also be deemed to own the air conditioner compressor, lines and other air conditioning equipment located both outside and inside the unit and heating and cooling ducts within the unit, in the concrete slab and elsewhere. The owner shall not be deemed to own lines, pipes, wires, ducts, conduits or other equipment or material constituting a part of any utility service system or installation running through his unit which serves other units (whether in common with his unit or not) except as a tenant in common with the other owners. Such utilities and utility systems or installations shall not be disturbed or relocated by an owner without written consent or approval of the Association. Except as otherwise expressly provided, all maintenance, repair, alteration and remodeling of the interior of the unit shall be at the expense of the owner. All fixtures and equipment which are connected to utilities and are installed within the unit commencing at a point where they enter the unit, shall be maintained and kept in repair by the owner thereof. Such right to repair, alter and remodel shall carry the obligation to replace any finishing or other materials removed with similar or other types or kinds of materials of like or better quality.

- b. Association's Responsibility. Subject to the provisions of Section 13, the Association shall maintain, repair and replace the common areas and facilities.

8. COMMON EXPENSES.

- a. The term "common expense" means and includes the expense of administration, maintenance, repair or replacement of the common areas and facilities; the expenses (including any reserves established for anticipated expenses) declared common expenses by the Association, so long as the same are not inconsistent with the provisions of this Declaration or the By-Laws of the Association; and such other expenses as may be declared to be common expenses by the provision of the Law, this Declaration or the By-Laws of the Association.
- b. The common expenses shall be borne and paid by all of the unit owners, and each owner is personally liable for and is bound to contribute his pro-rata share thereof according to his ownership percentage; provided, however, the Declarant and the Association may enter into

- a contract under the terms of which the Declarant agrees to underwrite the expenses of administration, operation, repair and maintenance in excess of a specified amount in exchange for a waiver of payment of assessments by the Declarant.
- c. The manner of assessing and collecting the common expenses from the unit owners shall be set forth in the By-Laws of the Association.
- d. The Association shall keep books of account of the receipts and expenditures affecting the common areas and facilities, specifying and itemizing the maintenance and repair expenses of the common areas and facilities and any other expenses incurred.
- e. Upon a voluntary conveyance, the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the unit for the grantor's share of the common expenses up to the time of conveyance, without prejudice to the grantee's right to recover from the grantor amounts paid by the grantee therefor. The grantee, however, shall be entitled to a statement from the Association setting forth the amount of the unpaid assessments against the grantor, and such grantee shall not be liable for, nor shall the unit conveyed be subject to a lien for, any unpaid assessments against the grantor which were incurred prior to the date of such statement and which are in excess of the amount therein set forth. An installment contract for the sale of the unit shall not be deemed a conveyance for the purposes hereof.

9. LIENS FOR UNPAID CHARGES FOR COMMON EXPENSES.

- a. All sums assessed by the Association for the share of the common expenses chargeable to any unit shall constitute a lien from time of assessment of such unit and shall be prior to all other liens except only (i) property tax liens on the unit in favor of any assessing unit and special district, and (ii) the lien of a first mortgage place of record prior to the date of assessment. Such lien shall be enforced as provided in the Law.

In the event an owner is in default in the payment of any sum assessed by the Association for the owner's share of the common expenses for more than thirty days, the Association may charge interest on such unpaid assessment, at a rate to be fixed by the By-Laws, from

the date the assessment was due until paid together with reasonable attorney's fees and costs of collection. In addition to such lien, the owner shall be personally liable for such assessment, interest, attorney's fees and costs, and any judgment recovered shall be without relief from valuation and appraisal laws and shall be joint and several as to all owners of such unit.

- b. Where the mortgagee of a first mortgage of record or other purchaser of a unit obtains title to the unit as a direct result of foreclosure of the first mortgage, including a conveyance in lieu of foreclosure, such acquirer of title, his successors and assigns shall not be liable for the share of the common expenses chargeable to such unit which became due prior to the acquisition of title to such unit by the acquirer. Such unpaid share of common expenses shall be deemed to be the common expenses collectible from all of unit owners including such acquirer, his successors and assigns.

10. MECHANICS' LIENS AND OTHER LIENS.

- a. Subsequent to the recording of this Declaration, and while the property remains subject to the Law, no lien shall thereafter arise or be effective against the property as a whole. During such period liens or encumbrances shall arise or be created only against each unit and the percentage of undivided interest in the common areas and facilities appurtenant to such units, in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel or real property subject to individual ownership; provided that no labor performed or material furnished with the consent or at the request of a unit owner or his agent, or his contractor or sub-contractor, shall be the basis for the filing of a lien pursuant to any lien law against the unit or any other property of any other owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by the owner of any unit in the case of emergency repairs thereto. Labor performed or materials furnished for the common areas and facilities, if duly authorized by the Association in accordance with the Law, the Declaration or By-Laws of the Association, shall be deemed to be performed

or furnished with the express consent of each owner and shall be the basis for the filing of a lien pursuant to any lien law against each of the units and shall be subject to the provisions of subsection (b) of the Section 10.

- b. In the event a lien against two or more units become effective, the unit owners of the separate units may remove their unit and their percentage of undivided interest in the common areas and facilities appurtenant to such unit from the lien by payment of the fractional or proportional amounts attributable to each of the units affected. Subsequent to any such payment, discharge or other satisfaction, the unit and the percentage of undivided interest in the common areas and facilities appurtenant thereto shall thereafter be free and clear of the lien so paid, discharged or satisfied. Such partial payment, satisfaction or discharge shall not prevent the lienholder from proceeding to enforce his rights against any unit and the percentage of undivided interest in the common areas and facilities appurtenant thereto remaining subject to the lien not so paid, satisfied or discharged.
- c. Each owner shall and hereby does agree to indemnify and hold harmless each of the other owners from and against all liability arising from a claim of any lien against the unit of any other owner or against the common areas and facilities for construction performed or for labor, materials, services or other products incorporated in the indemnifying owner's unit at such owner's request. The provisions herein contained are subject to all rights of the Association as set forth in this Declaration.

11. ASSOCIATION'S AUTHORITY TO MANAGE THE PROPERTY.

- a. The Association is hereby authorized and empowered by the owners, jointly and severally, to manage and administer the property in the name of the Association, for and on behalf of and as attorney-in-fact for each and all of the owners, in accordance with the Articles of Incorporation and By-Laws of the Association and the provisions of this Declaration and the Law.
- b. Each unit owner shall be a member of the Association and shall remain a member during the period of his ownership. Each owner shall be bound by and comply strictly with the Articles of Incorporation and By-Laws of the Association and with the administrative rules

and regulations adopted pursuant thereto, as any of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in this Declaration and in the deed to his unit, and with all decisions, determinations, agreements and other acts of the Association, its Board of Directors, officers, agents and employees, lawfully made from time to time. The Association shall have, and is hereby granted, the power to adopt, amend, modify, otherwise alter and enforce additional rules and regulations concerning the management, operation, repair, maintenance and replacement of the property and the use thereof, including the common areas and facilities and the units. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief or for any other legal or equitable relief maintainable by the Association or, in a proper case, by an aggrieved owner.

- c. In the exercise of its authority, the Association may, among other things, acquire, hold and dispose of tangible personal property or real property for the use and benefit of all of the owners, either alone or in common with others. All such property so acquired shall be owned by all of the owners according to their respective ownership percentages, and no owner's undivided interest in such property shall be transferable except as a part of the transfer of a unit. A transfer of a unit shall transfer to the transferee the ownership of the transferor's beneficial interest in such property without any reference thereto. Each owner entitled to use of such property shall use it in accordance with the purpose for which it was intended, without hindering or encroaching upon the lawful rights of other owners.

The Association or the Declarant may enter into contracts with third parties for the management of the property and all charges made in accordance therewith shall be common expenses.

12. ASSOCIATION'S RIGHT OF ACCESS.

The Association shall have the irrevocable right, to be exercised by its Board of Director or by its duly authorized officers, agents or employees, to have access to each unit and to the common areas and facilities, from time to time during reasonable hours as may be necessary

for the purposes of inspection in connection with the enforcement of any provisions of this Declaration, the Articles of Incorporation, By-laws or the rules and regulations of the Association; for the maintenance, repair or replacement of any of the common areas and facilities therein or accessible thereof, or any other facility or easement this Association is obligated to maintain; or, at any time, for the purpose of making emergency repairs therein, which are deemed by the Association necessary to prevent damage to the common areas and facilities or to another unit.

Damage to any part of a unit resulting from the maintenance, repair, emergency repair or replacement of any of the common areas and facilities, or as a result of emergency repair within another unit at the instance of the Association, shall be a common expense of all the owners. Notwithstanding the foregoing, if such damage in any case is the result of the negligence or willful or intentional act of a unit owner, then such owner shall be responsible for all of such damage; such damage may be repaired by the Association and if the Association so elects, it may recover its costs by a special assessment against the offending owner, which shall be payable on demand. Damaged improvements shall be repaired, replaced or restored to substantially the same condition existing prior to the occurrence of the damage.

13. DAMAGE TO BUILDING - RESTORATION- INSURANCE.

a. Association's Right to Insure. Without prejudice to the right of each owner to carry insurance on his own unit and other property, the Association shall purchase a master casualty policy affording fire and extended coverage insuring buildings and facilities for full insurable replacement cost, against loss or damage by fire and such other hazards, under such policies and with such companies, as the Association may determine from time to time. Premiums for such insurance shall be paid by the Association as a common expense.

Such insurance coverage shall be written in the name of, losses under such policies shall be adjusted by, and the proceeds of such insurance shall be payable to the Association as Trustee for each of the owners in accordance with their respective ownership percentages.

The Association may engage the services of any bank or trust company authorized to do trust business in Indiana to act as trustee, agent or depository (hereinafter called "insurance trustee") on behalf of the Association for the purpose of receiving and disbursing the insurance proceeds resulting from any loss, upon such terms as the Association shall determine consistent with the provisions of the Law and this Declaration. The fees of the insurance trustee shall be a common expense. In the event of any loss in excess of \$50,000.00 in the aggregate, the Association shall engage an insurance trustee, or in the event of any loss resulting in the destruction or the major portion of one or more units, the Association shall engage an insurance trustee upon the written demand of the mortgagee or owner of any unit so destroyed.

The proceeds shall be applied by the Association or by the insurance trustee in accordance with the provisions of this Declaration and the Law, and the rights of the mortgagee of any unit under any standard mortgage clause endorsement to such policies shall, notwithstanding anything to the contrary therein contained, at all time be subject to the provisions of the Law with respect to the application of insurance proceeds to reconstruction of the property.

Payment by an insurance company to the Association or to an insurance trustee of the proceeds of any policy, and the receipt of a release of the insurance company's liability under such policy from the Association, shall constitute a full discharge of such insurance company. Such company shall be under no obligation to inquire into the terms of any trust under which proceeds may be held pursuant hereto, or to take notice of any standard mortgage clause endorsement inconsistent with the provisions hereof, or to see to the

application of any payments of the proceeds of any policy by the Association or the insurance trustee.

The ownership and title to each unit is hereby declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of any conveyance from the Declarant or from any owner, or the acceptance of title to any unit by any heir or devisee, shall constitute appointment of the Association as trustee for the purposes stated herein. The Association is empowered to deal with the property upon its damage or destruction. The Association or the insurance trustee is empowered to receive the proceeds of any insurance on the property carried by the Association and to disburse and apply such proceeds in accordance with the provisions of this Declaration. As such trustee, the association is hereby authorized and empowered to make, execute, acknowledge and deliver any deed, contract or other instrument with respect to the interest of an owner which may, in the sole discretion and judgment of the Association, be necessary or appropriate to exercise the powers herein granted.

The Association shall also purchase a master liability policy in an amount required by the By-Laws, Declaration, or revised from time to time by a decision of the board of directors of the Association, which policy shall cover the Association, the executive organ, in any, the managing agent, if any, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the condominiums, all unit owners and all other persons entitled to occupy any unit or other portions of the property. The Association may also purchase other types of insurance authorized by the Law and which the Association may determine to be necessary and proper.

- b. **Owner's Right to Insure.** Each owner may carry insurance on his own unit; this shall not relieve the owner from liability for payment of his share of the common expenses incurred by the Association by payment of insurance premiums pursuant to Section 13 (a) hereof. Each owner shall be responsible for his own insurance on the contents, furnishings and

personal property in his unit and the personal property stored elsewhere on the property, and for personal liability to the extent not covered by the liability insurance for all of the owners obtained as part of the common expenses as above provided.

- c. **Additional Insurance.** The Association shall not be responsible for obtaining insurance on any additions, alterations or improvements made by any owner to his unit unless and until such owner shall request the Association in writing so to do, and shall make arrangements satisfactory to the Association to reimburse the Association for any additional premiums attributable thereto; and upon the failure of such owner so to do, the Association or insurance trustee shall not be obligated to apply any insurance proceeds to restore the affected unit to a condition better than the condition existing prior to the making of such additions, alterations or improvements.
- d. **Application of Insurance Proceeds.** In case of fire or any other casualty or disaster, other than complete destruction of all buildings containing the condominium units, the improvements shall be reconstructed and the insurance proceeds applied to reconstruct the improvements.

In the event of complete destruction of all the buildings containing condominium units, the buildings shall not be reconstructed, except as otherwise provided, and the insurance proceeds, if any, shall be divided among the co-owners in the percentage by which each owns an undivided interest in the common areas and facilities, as specified in this Declaration, and the property shall be considered as to be removed from the condominium unless by a vote of two-thirds of all of the co-owners a decision is made to rebuild, in which case the insurance proceeds shall be contributed as provided herein in the event of less than total destruction of the buildings.

A determination of total destruction of the buildings containing condominium units shall be determined by a vote of two-thirds of all co-owners at a special meeting of the Association of Co-owners called for that purpose.

- e. **Apportioning Damage Not Covered by Insurance.** Where the improvements are not insured or where the insurance proceeds are not sufficient to cover the cost of repair or reconstruction and the property is not to be removed from the horizontal property regime, the co-owners shall contribute the balance of any such costs in accordance with their ownership percentage in the common areas and facilities as expressed in this Declaration. Such amount shall be assessed as part of the common expense and shall constitute a lien a lien from the time of assessment.
- f. **Failure to Repair or Rebuild.** If, pursuant to Section 13 (d), it is not determined by the Association to rebuild after a casualty or disaster has occurred, then in that event:
- (1) The property shall be deemed to be owned in common by the unit owners;
 - (2) The undivided interest in the property owned in common which shall appertain to each unit owner shall be the ownership percentage of undivided interest previously owned by such owner in common areas and facilities;
 - (3) Any liens affecting any of the units shall be deemed to be transferred in accordance with the existing priorities to the percentage of the undivided interest of the unit owner in the property; and
 - (4) The property shall be subject to an action for partition at the suit of any unit owner, in which event the net proceeds of sale, together with the net proceeds of insurance on the property, if any, shall be considered as one fund and shall be divided among all the unit owners in a percentage equal to the ownership percentage owned by each owner in the common areas and facilities, after first paying out of the respective shares of the unit owners, to the extent sufficient for the purpose, all liens on the undivided interest in the property owned by each unit owner.
- g. **Miscellaneous Provisions Regarding Insurance.** Any owner who obtains individual insurance policies covering his unit, other than personal property, shall file a copy or memorandum of such individual policy or policies with the Association within thirty (30) days after the purchase of said insurance.

Each insurer of any such owner's interest in said units or personal property shall be bound by the provisions of this Section and shall, to the extent that such practice is normal and customary in the insurance industry, by appropriate provision in each policy of insurance concerned, waive all its rights of subrogation against the Association and its officers, managers, employees, agents and representatives.

Each owner hereby waives and releases any and all claims which he may now or hereafter have against any other owner, the Association, its officers and directors, or the manager, and their respective employees and agents for damage to the common areas and facilities, the units, or to any personal property located in the units or common areas and facilities, caused by fire or other casualty, to the extent that such damage is covered by fire or other form of casualty insurance, and to the extent this release is not prohibited by policies for such fire or other casualty insurance.

The Association shall, at least annually, review insurance coverage with its insurer to ascertain the full insurable replacement cost of the property. If it conducts such review at least annually, the Association shall not be liable for failure to carry sufficient amounts of insurance on any unit or on the property.

14. MORTGAGING A UNIT - PRIORITY.

Any owner shall have the right from time to time to mortgage or encumber his interest by deed of trust, mortgage or other security instrument. A first mortgage shall be one which has first and paramount priority under applicable law and shall be subject to the provisions of the Declaration. The owners of a unit may create junior mortgages but: (1) any such junior mortgage shall always be subordinate to all of the terms, conditions covenants, restrictions, uses, limitations, obligations, liens for expenses and assessments and other obligations created by this Declaration, the Articles of Incorporation and the By-Laws of the Association; (2) the mortgagee under any junior mortgage shall release, for the purpose of repair and restoration of any improvements upon the mortgaged premises, all of his right, title and

interest in and to the proceeds under all insurance policies upon said premises which insurance policies were effected and placed upon the mortgaged premises by the Association. Such release shall be furnished forth-with by a junior mortgagee upon the written request of the Association.

15. TAXES AND ASSESSMENTS.

Pursuant to the Law, any taxes, assessments and other charge of this State, or any political subdivision, or of any special improvement district, or of any other taxing or assessing authority shall be assessed against and collected on each condominium unit, each of which shall be carried on the tax books as a separate and distinct entity for that purpose, and no taxes, assessments or charges shall ever divest or in anywise affect the title to a condominium unit so long as taxes, assessments and charges on the condominium unit are currently paid. If at any time, however, the common areas and facilities are taxed separately from the units, such taxes shall be common expenses.

16. REMOVAL OF PROPERTY FROM LAW.

All of the unit owners may remove a property from the provisions of the Law by an instrument to that effect, duly recorded provided that the holders of all liens affecting any of the units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the percentage of undivided interest of the unit owner in the property as herein provided.

In the event it is determined that all of the buildings containing condominium units have been totally destroyed, the property shall be considered removed from the provisions of the Law and an instrument reciting that fact in accordance with Section 13 of this Declaration shall be duly recorded and executed by the Association which property after such recording shall be removed from the provisions of the Horizontal Property Law.

Upon removal of the property from the provisions of the Law, the property shall be deemed to be owned in common by the unit owners. The undivided interest in the property owned in common which shall appertain to each unit owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities.

When the property is removed from the Law in accordance with this Section, the property shall be subject to an action for partition suit at the instance of any unit owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one (1) fund and shall be divided among all the unit owners in a percentage equal to the percentage of undivided interest owned by each owner in the property, after first paying out of the respective shares of the unit owners, to the extent sufficient for the purpose all liens on the undivided interest in the property owned by each condominium unit owner.

The removal hereinabove provided for shall in no way bar the subsequent resubmission of the property to the provisions of the Law.

17. ARTICLES OF INCORPORATION AND BY-LAWS OF THE ASSOCIATION.

The Articles of Incorporation and By-Laws of the Association, as set forth in documents attached hereto, are hereby made a part of this Declaration as if the same were fully set forth herein.

18. AMENDMENTS.

This Declaration may be amended by an instrument in writing duly executed and acknowledged by the owners representing at least three-fourths (3/4) of the aggregate ownership percentages as set forth in Section 4 (b) and such instrument shall be effective when recorded in the Office of the Recorder of Tippecanoe County, Indiana; Provided, however, that:

- a. No amendment shall adversely affect the rights of first mortgages unless the instrument of amendment bears the consent of each first mortgagee.
- b. No amendment shall alter the ownership percentages unless the instrument of amendment is executed and acknowledged by all owners.
- c. In case of any provision of any amendment is inconsistent with the Law, the latter shall govern. Notwithstanding the provisions of this Section, the Declarant may, without approval of any other owner, execute such amendments to this Declaration as may be necessary to comply with the provisions of the Law.
- d. Notwithstanding the foregoing provisions, the Articles of Incorporation of the Association may be amended as provided therein and in the Indiana General Not-for-Profit Corporation Act, as amended, and the By-Laws of the Association may be amended as provided in said By-Laws. Such amendments shall be considered amendments to the Declaration and shall become effective when recorded in the Office of the Recorder of Tippecanoe County, Indiana, provided, however, no such amendment shall be in conflict with the terms of the Declaration except to the extent that the Articles of Incorporation and By-Laws are part of the Declaration.

19. GENERAL PROVISIONS.

- a. Each owner's general and special assessment provided for herein shall be a debt of such owner and a lien on his unit and his undivided ownership of the common areas and facilities. Each such assessment may be enforced and collected as provided by Section 9 of this Declaration.
- b. Unless a contrary intention clearly appears, whenever any authority is granted to the Association under this Declaration such authority may be exercised by its board of directors, or when expressly authorized by such board of directors, by the officers or manager of the Association.
- c. The failure of the Association to seek redress for any violation, or to enforce any term or provision of this Declaration or of any rule or regulation issued hereunder or pursuant hereto, shall never be deemed an estoppel or waiver of any such right of redress or

enforcement, either as to any subsequent violation of a similar or other nature or as to any further continuation of the same violation.

- d. Any notice to be given hereunder shall be deemed conclusively to have been given to the following recipients in the following manners respectively: (a) In the case of an owner, if delivered personally to him, or to a member of his household of the age of at least 16 years, or when placed in the United States Mail, first class and registered or certified, postage fully prepaid, addressed to him at his most recent address as shown on the records of the Association; (b) In the case of the Declarant, upon delivery to an officer of the Declarant or to its resident agent for service of process in person; (c) In the case of the Association, upon delivery to its president, its Secretary, its manager or its resident agent for service of process in person or when placed in the United States Mail first class and registered or certified, postage fully prepaid, addressed to the Association in care of its then resident agent.
- e. If any of the provisions of this Declaration or any paragraph, section, sentence, clause, phrase, or word, or the application thereof in any circumstances be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration, and the application of any such provision, paragraph, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.
- f. The provisions of this Declaration shall be in addition and supplemental to the Law and to all other applicable provisions of law.
- g. Whenever used herein, unless the context shall otherwise provide, the singular shall include the plural, the plural the singular, and the use of any gender shall include all genders.
- h. Any instrument permitted or required to be recorded by any provisions herein shall be recorded in the Office of the Recorder of Tippecanoe County, Indiana, or in such other place as may be specified by applicable law.

IN WITNESS THEREOF, Declarant, by its corporate officers, has duly executed this Declaration this _____ day of April 9, 2014.



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TIPPECANOE COUNTY RECORDER

05/30/2017 11:02:27AM

RESOLUTION AMENDING DECLARATION TO ENACT RENTAL RESTRICTIONS

WHEREAS, Article III, Section 6(g), of the Wabash Gardens Condominium Association, Inc., Bylaws give the Board the authority to promulgate, adopt, revise, amend, and alter the rules and regulations with respect to the use and occupancy of the Property; and

WHEREAS, the Board of Directors are empowered by Section 11 of the Declaration of Wabash Gardens Horizontal Property Regime (hereinafter "Declaration") to adopt, amend, modify or otherwise alter portions of both the Bylaws and the Declaration; and

WHEREAS, the members of the Board of Directors share a common purpose of ensuring the long-term health and stability of the Wabash Gardens Homeowner's Association and preventing the increase of insurance rates on any Unit, as stated in Section 5, Paragraph (d) of the Declaration; and

WHEREAS, the Board of Directors desires to ensure the security of its members and maintain uniform adherence to the rules and regulations of the Association; and

WHEREAS, the Board of Directors desires to uphold the already existing prohibition of commercial activity under Section 5, Paragraph (i) of the Declaration;

NOW, THEREFORE, BE IT RESOLVED that Section 5 of the Declaration of the Wabash Gardens Homeowners Association, Inc., Declaration is hereby amended to include the following new covenants and restrictions, under new Paragraph (l):

- (l) No Owner may rent or lease his Unit for transient or hotel purposes, and no rental or lease, notwithstanding any other covenant or restriction found in this Declaration, may be for a term shorter than twelve (12) months.

Duly adopted this 25th day of May, 2017.

Wabash Gardens Homeowners Association Board of Directors

Beth Tucker Beth Tucker
President

Casey Smith Casey Smith
Vice President

Jamie Metzinger Jamie Metzinger
Member

Andrea Pluckbaum Andrea Pluckbaum
Member

Philip Hoffman Philip Hoffman
Member