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DECLARATION OF CONDOMINIUM OWNERSHIP

CUYAHOGA COUNTY RECORDER
PATRICK J. OMALLEY - 90
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FOR

ERIE BUILDING LOFTS CONDOMINIUM

A Mixed-Use Condominium

CLEVELAND, OHIO

AND

BYLAWS

OF

ERIE BUILDING LOFTS CONDOMINIUM ASSOCIATION, INC.

RECORDER NOTE:
FOR MAPS ACCOMPANYING THIS DECLARATIONS AND
BY-LAWS SEE VOL. 157 PAGES 64 TO 71
INCLUSIVE OF CONDOMINIUM MAP RECORDS.

DEVELOPED BY:

ERIE BUILDING CONDOMINIUMS, LTD.
an Ohio limited partnership

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EXHIBITS TO DECLARATION

DECLARATION OF CONDOMINIUM OWNERSHIP
FOR
ERIE BUILDING LOFTS CONDOMINIUM

a Mixed Use Condominium

CLEVELAND, OHIO

This Declaration made at Cleveland, Ohio, by **ERIE BUILDING CONDOMINIUMS, LTD**, an Ohio limited partnership organized and existing under Ohio law, hereinafter referred to as "**Declarant**,"

WITNESSETH: THAT

WHEREAS, the Declarant is the owner of the real estate referred to herein as the Property and described in Exhibit "1" attached hereto and made a part hereof; and

WHEREAS, it is the desire and intention of the Declarant to enable the Property together with the building, improvements and fixtures of whatsoever kind thereon, and all rights and privileges belonging or in anyway pertaining thereto, owned by Declarant and by each successor of the Declarant who stands in the same relation to the Property as the Declarant under that certain form of co-operative ownership commonly known as "CONDOMINIUM", and to submit the Property to the provisions of the "Property Act" of the State of Ohio, being Chapter 5311 of the Ohio Revised Code; and

WHEREAS, the Declarant is further desirous of establishing for its own benefit and for the mutual benefit of all future owners or occupants of the Property, or any part thereof, which shall be known as "Erie Building Lofts Condominium" certain easements and rights in, over and upon the Property and certain mutually beneficial restrictions, reservations and obligations with respect to the proper use, conduct and maintenance thereof; and

WHEREAS, the Declarant desires and intends that the several owners, mortgagees, occupants, and other persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to the rights, easements, privileges, and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the co-operative aspect of ownership and to facilitate the proper administration of the Property and are established for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property; and

WHEREAS, the Declarant hereby establishes by this Declaration a plan for the individual ownership of the Property consisting of the area or space contained in each of the Units, and the co-ownership by the individual and separate owners thereof, as tenants in common, of all of the remaining Property which is hereinafter defined and referred to herein as the "**Common Elements.**"

NOW, THEREFORE, Declarant hereby makes the following Declaration as to divisions, covenants, restrictions, limitations, conditions, easements, reservations and uses to which the Property may be put, hereby specifying that the provisions of this Declaration shall constitute covenants to run with the land and shall be binding on Declarant and each successor of Declarant who stands in the same relation to the Property as Declarant and its and their respective heirs, executors, administrators, successors and assigns, and all Unit Owners together with their grantees, successors, heirs, executors, administrators, devisees, successors and assigns.

ARTICLE I
DEFINITIONS

The following words and terms used in this Declaration are defined as set forth in Section 5311.01, of the Ohio Revised Code, except as otherwise herein provided.

(A) "**Act**" means the Ohio Condominium Act as contained in Chapter 5311 of the Ohio Revised Code, as the same may be amended or supplemented from time to time.

(B) "**Affiliate of Declarant**" means any person who controls, is controlled by, or is under common control with the Declarant. (1) A person "controls" the Declarant if the person (a) is a general partner, officer, director, member, manager or employer of the Declarant, (b) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries owns, controls, holds with power to vote, or holds proxies representing more than twenty percent of the voting interest in the Declarant, (c) controls in any manner the election of a majority of the directors of the Declarant; or (d) has contributed more than twenty percent of the capital of the Declarant; (2) A person "is controlled by" a Declarant if the Declarant (a) is a general partner, officer, director, member, manager or employer of the person, (b) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent of the voting interest in the person, (c) controls in any manner the election of a majority of the directors of the person, or (d) has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

(C) "**Association**" means an Ohio non-profit corporation that is the organization of all the owners of Units in the Property that administers the Property, the Association being known as the Erie Building Lofts Condominium Association, Inc.

(D) "**Board**" means the Board of Directors of the Association as the same may be constituted from time to time.

(E) **"Building"** means the structure that contain the Units.

(F) **"Bylaws"** means the Bylaws of the Association attached hereto as **Exhibit "B"** and incorporated in this Declaration by reference as if fully rewritten herein.

(G) **"City"** means the City of Cleveland, Ohio, a municipal corporation.

(H) **"Commercial Unit"** means Units which are not initially sold by the Declarant as Units meant for the Live/Work habitation thereof by the Unit Owner or it permittees, but which ownership of are retained by the Declarant as income producing investment property. The Commercial Units are Unit 101 and Unit 201. The Commercial Units are all Convertible Units. All or part of a Commercial Unit shall cease to be a Commercial Unit when such portion is either converted to a Common Element, or sold by the Declarant to a Unit Owner as a Live/Work Unit.

(I) **"Common Assessments"** means assessments charged proportionately against all Units for common purposes. Common Assessments are sometimes referred to as "Assessments."

(J) **"Common Elements"** includes, unless otherwise provided in the Declaration, the Property described in Article II(B)(1) of this Declaration.

(K) **"Common Expenses"** means those expenses designated as such in the Act or in accordance with the provisions of this Declaration, or both.

(L) **"Common Losses"** means the amount by which the Common Expenses during any period of time exceeds Common Assessments and Common Profits during that period.

(M) **"Common Profits"** means the amount by which the total income received from assessments charged for special benefits to specific Units, rents received from rentals of equipment or space in Common Elements, and any other fee, charge or income other than Common Assessments exceeds expenses allocable to the income, rental, fee or charge.

(N) **"Common Surplus"** means the amount by which Common Assessments collected during any period exceed Common Expenses.

(O) **"Condominium"** means a form of real property ownership in which a Declaration has been filed submitting the property to the condominium form of ownership pursuant to the Act and under which each Owner has an individual ownership interest in a Unit with the right to exclusive possession of that Unit and an Undivided Interest with the other Unit Owners in the Common Elements of the Property.

(P) **"Condominium"** means a Property in which two or more individual dwelling Units, together with Undivided Interests in the Common Elements of the Property, are offered for sale pursuant to a common promotional plan.

(Q) **"Condominium Instruments"** means this Declaration and accompanying Drawings, the Bylaws of the Association, the condominium disclosure statement described in Section 5311.26 of the Act, any contracts pertaining to the management of the Property, and all other documents, contracts, or instruments establishing ownership of or exerting control over the Property or a Unit.

(R) **"Condominium Ownership Interest"** or **"Ownership Interest"** means a fee simple estate in a Unit, together with an appurtenant undivided interest in the Common Elements.

(S) **"Convertible Unit"** means a Unit that may be converted by the Owner thereof into two or more Units and Common Elements, including Limited Common Elements, as provided in the Act. The Convertible Units are Unit 101, Unit 201, Unit 301, Unit 501, and Unit 603.

(T) **"Declarant"** means any person who directly or indirectly sells or offers for sale Condominium Ownership Interests in a Condominium. "Declarant" includes the developer of a Condominium and any successor to that developer who stands in the same relationship as the Declarant.

(U) **"Declaration"** means the instrument by which the Property is submitted to Chapter 5311 of the Ohio Revised Code and any and all amendments to the Declaration.

(V) **"Eligible Mortgage Holders"** means the holder, insurer or guarantor of a first mortgage on a Unit. Eligible Mortgage Holders are sometimes referred to herein as first mortgagees of Units.

(W) **"Enforcement Assessment"** means assessments imposed pursuant to Section 5311.08(B)(12) of the Act, including, but not limited to, the imposition of interest and late charges for late payment of Assessments, imposition of assessments for violation of the Declaration, Bylaws and Rules, and reasonable charges for damage to the Common Elements or other property.

(X) **"Exclusive Use Area"** means Common Elements that the Declaration reserves for delegation by the Board of Directors to the use of a certain Unit or Units, to the exclusion of other Units.

(Y) **"Façade Easement"** means any façade, conservation, or "loss of development rights" easement which may be granted by the Declarant or the owner of Commercial Unit 101 encumbering said Unit 101, which easement will be recorded in the Cuyahoga County Records. It is anticipated that the grantee of such Façade Easement may be the Historic Warehouse District Development Corporation. This Façade Easement will initially only burden Unit 101, but if portions of Unit 101 (such as the Building façade and the air space above the Building) are ever converted to Common Elements, the Façade Easement will burden the Common Elements. In general, it is anticipated that the Façade Easement will prohibit alterations to the façade of the building without the prior approval of the easement grantee, and will prohibit development of further building area within the Property, such constructing additional stories in the air space above the building. The Declarant, an Affiliate of Declarant, and/or the Owner of Unit 101 shall have the right to grant a Façade Easement without the consent of the Association or other Unit Owners being required.

(Z) **"Limited Common Elements"** means the Common Elements designated in the Declaration as reserved for a certain Unit or Units to the exclusion of other Units.

(AA) **"Live/Work Unit"** means a Unit intended to be sold by the Declarant to a Unit Owner for the Live/Work habitation thereof by the Unit Owner or its permittees. The initial Live/Work Units are Unit 301, 401, 402, 403, 501, 601, 602, and 603. Any additional Unit(s) created out of Units 301, 501, or 603 (each a Convertible Unit) shall be a Live/Work Unit. Convertible Commercial Unit 201 may be converted to Live/Work Units upon its subdivision into additional Units by the Owner thereof.

(BB) **"Occupant"** means a person or persons, natural or artificial, in possession of a Unit.

(CC) **"Property"** means the Property, the Building, improvements and structures on the Property, all easements, rights and appurtenances belonging to the Property, and all articles of personal property submitted to the provisions of the Act.

(DD) **"Purchaser"** means a person who purchases a Condominium Ownership Interest for consideration pursuant to an agreement for the conveyance or transfer of that interest for consideration.

(EE) **"Rules"** means such rules and regulations governing the operation and use of the Property or any portion thereof as may be adopted from time to time by the Association or the Board.

(FF) **"Sale of a Condominium Ownership Interest"** means the execution by both parties of an agreement for the conveyance or transfer for consideration of a Condominium Ownership Interest. Sale of a Condominium Ownership Interest does not include a transfer of one or more Units from the Declarant to another developer, a subsidiary of the Declarant, or a financial institution for the purpose of facilitating the sale of or the development of the remaining or unsold portion of the Property.

(GG) **"Special Declarant Rights"** means those rights reserved for the benefit of the Declarant as provided for in the Act and in the Condominium Instruments, and shall include, without limitation, the following rights: (1) to complete improvements indicated on the Drawings referred to in Article II hereof; (2) to convert Convertible Units to Common Elements and/or additional Units, as provided in the Act; (3) to create Units, Common Elements and Limited Common Elements; (4) to maintain sales offices, management offices, customer services offices, signs advertising the Property and models; (5) to use easements through the Common Elements for the purpose of making improvements, repairs and replacements within the Property; and (6) to appoint or remove any Board Members or officers of the Association during the period that the Declarant has the right to elect or designate members of the Board of Directors.

(HH) **"Undivided Interests"** means the interest of the Unit in the Common Elements as set forth in **Exhibit "D"** of this Declaration.

(II) **"Unit"** means the part of the Property that is designated as a Unit in the Declaration and delineated as a Unit on the Drawings prepared pursuant to Section 5311.07 of the Act and consists of one or more rooms on one or more floors of a Building. A Unit may include all or portions of the exterior of the Building. "Unit" is more fully defined in Article II(A) hereof.

(JJ) **"Unit Owner"** means a person who owns a Condominium Ownership Interest in a Unit.

ARTICLE II
ESTABLISHMENT OF CONDOMINIUM OWNERSHIP AND DIVISION OF PROPERTY

Declarant, in order to establish a plan of condominium ownership for the Property, hereby submits the Property, hereinbefore described, to the provisions of Chapter 5311 of the Ohio Revised Code. The Property, including the structure thereon, containing an aggregate of eleven (11) separate Units, is hereby divided into eleven (11) separately designated and legally described freehold estates, and one freehold estate hereinafter described and referred to as **"Common Elements"**.

Insofar as is possible, all the particulars of the land, Buildings, and other improvements, including but not limited to, the layout, location, designations and dimensions of each Unit, the layout, location and dimensions of the Common Elements and Limited Common Elements, and the location and dimensions of all appurtenant easements are shown graphically on the set of drawings incorporated herein by reference as **Exhibit "A"**, prepared and bearing the certified statements of Kenneth L. Bohning, Registered Surveyor, of Donald G. Bohning & Associates, Inc., 7979 Hub Parkway, Valley View, Ohio, 44125, and Jonathan Sandvick, Registered Architect, of Sandvick Architects, 1265 West 6th Street, Cleveland, Ohio 44113, as required by Section 5311.07, of the Ohio Revised Code. Such set of drawings is hereinafter referred to as the "Drawings" and the separate drawings comprising the set are hereinafter referred to by reference to the exhibit designations thereon.

(A) **Units.** Each of the eleven (11) Units hereby declared and established as a freehold estate shall consist of all the space bounded by the unfinished surface of the lowest floor of the Unit, the interior surfaces of the *structure* of the perimeter walls of the Unit (such as wood or metal studs, or masonry), and the interior surface of the *structure* of the ceiling of the uppermost floor in each such Unit, (such as floor or roof joists or trusses), all projected, if necessary, by reason of structural divisions such as interior walls, floors, and other partitions, to form a complete enclosure of space, but excepting, however, except for Unit 101, all structural components of the Building located therein, including all wall studs, beams, columns, floor joists, floor decking, ceiling joists, roof joists, and roof trusses therein, the layout, location, designation and dimensions of each such Unit being further shown on the Drawings incorporated herein by reference as **Exhibit "A"**, and further including, without limitation:

- All of the space contained as defined above, including the space between interior wall components, the spaces between interior floor structure components, the space within mechanical rooms serving exclusively one Unit, interior stairway structures serving only the Unit, fixtures, equipment, cabinets, counters, and appliances;

- All drywall or plaster contiguous to the undecorated interior surfaces of the perimeter walls and ceilings of a Unit;

- All doors (including all frames and hardware) in the perimeter walls of the Unit;

- The decorated surfaces of the walls, floors, and ceilings of a Unit, including, but not limited to, paint, stain, polyurethane, wallpaper, floor tile, vinyl and other resilient floorings, wood flooring, carpet and padding, and any other finishing materials applied to said perimeter walls, floors and ceilings, and also the aforesaid finishing materials applied to the interior walls, floors, and ceilings;

- The receptacle and switch plates and covers, grills, vent covers, registers, and other coverings of space, light fixtures, exhaust fans, and control knobs, within the bounds of a Unit and which serve only the Unit;

- The space within all fixtures located within the bounds of a Unit and the spaces occupied by the fixtures themselves;

- All non-structural interior walls (other than walls separating Units) and all space between interior walls, floors and ceilings, including the space occupied by structural and component parts of the Building and by utility pipes, wires and conduits;

- The portion of fireplaces, if any, actually within the interior of a Unit and the vents and dampers therefor accessible from the Unit's interior;

- The portion of fireplaces, if any, actually within the interior of a Unit and the vents and dampers therefor accessible from the Unit's interior;

- All interior doors and hardware;

- All draperies, shades and blinds;

- All kitchen and bathroom cabinetry, and other similarly attached cabinetry within a Unit;

- All kitchen and laundry appliances within a Unit;

- All plumbing fixtures within a Unit, including, but not limited to, sinks, faucets, spray hoses, toilets, showers, tubs, shower heads, etc.;

- All electric fixtures within a Unit, including, but not limited to, outlets, switches, connections, equipment, fixtures, lights, fans, etc. serving only that Unit;

- The entirety of the telephone, cable television, and other telecommunications systems serving only that Unit, including, for example - all telephone, cable television, co-axial, fiber optic, and other telecommunications lines commencing at the point the line serving that Unit branches from a line serving any other Unit; and all boards, panels, disconnects, outlets, switches, connections, equipment, fixtures, etc. serving only that Unit;

- HVAC system components within the Unit serving only that Unit, unless otherwise described as being Common Elements herein, including all grills, registers, and thermostats within a Unit;

- **Unit 101:** In addition to the above, Unit 101 also includes the following areas and improvements of the Property:

    - All improvements constituting the façade of the building which will be or are restricted by the Façade Easement, including, but not limited to the entire structure of the exterior walls of the Building, all brick and other masonry therein (excluding any plaster, furring, and/or drywall attached to the interior of such walls), all windows and doors therein (including the sash, frames, hardware, and screens, if any), all wood siding and trim, and the building cornice;

    - The roof decking and the roofing membrane of the Building; and

    - The air space above the Property.

but <u>excepting therefrom</u> all items located within the bounds of the Unit as described above, which are defined in this Declaration as being either Common Elements or Limited Common Elements

The layout, location, designation and dimensions of all Units are shown on the Drawings in **<u>Exhibit "A"</u>** incorporated herein by reference. Each Unit has a direct exit to a public street or to a Common Element (including a permanent easement) leading to a public street.

A narrative description of the Building and the Units contained therein is set forth in **<u>Exhibit "C"</u>** attached hereto and made a part hereof. Any inconsistencies between the narrative description of the Building and the Units and/or of the Common Elements on one hand, as set forth in **<u>Exhibit "C"</u>**, and the Drawings on the other hand shall be resolved in favor of the Drawings.

(B) <u>Common Elements.</u>

(1) **<u>Description of Common Elements</u>**. The entire balance of the land and improvements thereon, including but not limited to:

(a) the real estate described in the Declaration (excluding the air space above the Building, which is part of Unit 101);

(b) the exterior space within the "pass through" between the two sections of the first floor of the building;

(c) all other areas, facilities, places and structures that are not part of a Unit, including, but not limited to:

(i) to the extent not a part of Unit 101, as described above, all walls, floors and ceilings separating or delineating Units, except the plaster or drywall or the wood subfloor contiguous to the undecorated interior surfaces of the perimeter walls,

(ii) to the extent not a part of Unit 101, as described above, all structural portions of the Building, whether exposed or contained within a perimeter or interior wall, including the foundations, columns, beams, supports, floor and ceiling joists, rafters, trusses, masonry or concrete walls, wall studs, exterior wall sheathing, floor and roof decking, and all other structural components, of the Buildings;

(iii) common mechanical rooms, pump rooms, electrical rooms, trash chutes, and duct and pipe chases as shown on the Drawings;

(iv) common stairway and elevator components, common corridors;

(v) all insulation, siding, and roofing materials, gutters, rain leaders, and downspouts;

(vi) all plumbing components (including all water or gas supply piping), within the Property, except as described as part of the Unit above;

(vii) all electrical system components within the Property, except as described as part of the Unit above;

(viii) all telephone, cable television, and other telecommunications systems serving Common Elements or more than one Unit;

(ix) all heating, cooling and ventilating equipment, units and installations within the Property, except as described as part of the Unit above;

(x) the roadways, driveways, sidewalks, yards, gardens, landscaping and plant materials, parking areas, signs, fencing (if any) and light poles within the Property (if any);

(xi) easements created for the benefit of the Property;

(xii) fireplace stacks, liners and chimneys, if any;

(xiii) in general all apparatus and installations existing for common use; and

(xiv) all other parts of the Property necessary or convenient to its existence, maintenance and safety or normally in common use, or that have been designated as Common Elements in the Declaration, Bylaws or Drawings.

The foregoing are hereby declared and established as Common Elements, the care, maintenance, repair and replacement of which shall be the responsibility of the Association.

(2) Limited Common Elements. Each Unit Owner is hereby granted an exclusive and irrevocable license to use and occupy to the exclusion of all others the Limited Common Elements which are located within the bounds of his or her Unit or which serve only his or her Unit. The Limited Common Elements with respect to each Unit (or group of Units) shall consist of such of the following, to the extent that the same may be construed to be Common Elements:

(a) One-half of any wall, floor or ceiling separating one Unit from the other;

(b) The entirety of the plumbing system serving only that Unit, including all water or gas supply piping commencing at and including the first shut-off valve on such line; including, for example - all valves, shut-offs, hose bibs, meters, water heaters, etc. serving only that Unit; and all sanitary sewer lines, drains, and vents serving only that Unit and continuing until the last clean-out access located within that Unit or the point that the line joins with a line serving any other Unit;

(c) The entirety of the electrical system serving only that Unit commencing with and including the electric meter box serving that Unit, including, for example - all electrical panels, circuit breakers, disconnects, connections, equipment, etc. serving only that Unit;

(d) The entirety of the HVAC system serving only that Unit;

(e) The communication, security, and smoke detector systems located within the bounds of a Unit and serving only that Unit;

(f) Rooftop decks, as shown on the Drawings, but only if and when Unit 101 is converted to a Common Element (prior to such time, such rooftop decks shall be permitted as an easement over Unit 101, and shall be maintained as a Limited Common Element);

(g) The mailbox exclusively serving each Unit;

(h) All other parts of the Common Elements located within the bounds of such Unit and which serve only such Unit;

(i) The construction of an addition to or an expansion of a Unit into Limited Common Elements or Common Elements may not be authorized without the consent of all Unit Owners.

(3) **Use of Common Elements.** Each Unit Owner shall own an undivided interest in the Common Elements as a tenant in common with all other Unit Owners, and, except as otherwise limited in this Declaration and in the Bylaws attached hereto as **Exhibit "B"**, each Unit Owner shall have the right to use the Common Elements for all purposes incident to the use and occupancy of his or her Unit as a place of residence and such other incidental uses permitted by this Declaration and the Bylaws, including the non-exclusive easement, together with other Unit Owners, to the use and enjoyment of the Common Elements and for ingress and egress to and from the respective Units to a public street or highway, or to a Common Element leading to a public street or highway, which rights shall be appurtenant to and shall run with his or her Unit. The extent of such ownership in the Common Elements is hereby deemed and expressed by the Undivided Interest hereinafter set forth; such Undivided Interest shall remain constant and shall not be changed except by an amendment to this Declaration unanimously approved by all Unit Owners affected.

(4) **Ownership of Common Elements.** The Undivided Interest in the Common Elements attributable to the Ownership Interest in each Unit, together with the Undivided Interest in the Association for the division of Common Expenses, Common Assessments, Common Surplus, Common Profits and Common Losses, as hereinafter described in Article V, Section (B), of this Declaration, shall be in accordance with the schedule set forth in **Exhibit "D"** attached hereto and made a part hereof.

The Undivided Interest in the Common Elements is computed in the proportion that the square footage of each Unit bears to the aggregate square footage of all Units. For purposes of conveyance of title to Purchasers of individual Units, description by Unit number and reference to this Declaration, any amendments hereto and the Drawings and any amendments to the Drawings shall be sufficient to convey the Unit and the Ownership Interest in the Common Elements (including the Limited Common Elements) appurtenant thereto.

(5) **Partition.** There shall be no partition of the Common Elements through judicial proceedings or otherwise until this Declaration is terminated and the Property is withdrawn from its terms or from the terms of any statute applicable to Condominium Ownership; provided, however, that if any Unit shall be owned by two or more co-owners as tenants in common or as joint tenants, nothing herein contained shall be deemed to prohibit a voluntary or judicial partition of such Unit ownership as between such co-owners.

(6) Use of Common Elements.

(a) Regulation by Association. No person shall use the Common Elements or any part thereof in any manner contrary to or not in accordance with such Rules pertaining thereto as from time to time may be adopted by the Association. Without in any manner intending to limit the generality of the foregoing, the Association shall have the right, but not the obligation, to promulgate Rules limiting the use of the Common Elements to members of the Association and their respective families, guests, invitees, tenants, agents and servants. Subject to the Rules from time to time promulgated by the Association, all Owners may use the Common Elements in such manner as will not restrict, interfere with or impede the use thereof by other Owners.

(b) Management Agreement. The Association may, but shall not be required to, delegate all or any portion of its authority and responsibilities to a manager, managing agent, or management company (herein referred to as the "**Managing Agent**"). Such delegation may be evidenced by a management agreement which shall provide for the duties to be performed by the Managing Agent and for the payment to the Managing Agent of a reasonable compensation as a Common Expense. Upon the expiration of each management agreement, the Association may renew said agreement or enter into a different agreement with a different Managing Agent; provided, however, that no management agreement or renewal thereof shall be for a term longer than five (5) years. In addition, no management agreement executed by Declarant on behalf of the Association shall provide for a term expiring more than ninety (90) days following the assumption of control of the Association by the Unit Owners, as specified in the Act, unless said management agreement is renewed by a vote of Unit Owners pursuant to the Bylaws and as required by Sections 5311.08 and 5311.25(D) of the Act. Notwithstanding the foregoing, either the Association or the Managing Agent shall have the right to terminate the management agreement at any time, upon not more than ninety (90) days notice to the other party thereto. The Managing Agent, whether selected by the Declarant or the Association, may be an entity owned in whole or in part, associated with in whole or in part, or in any other manner connected or associated with Declarant and with any partner, agent, contractor or employee of Declarant, without in any manner restricting, limiting or affecting the validity of the management agreement with said Managing Agent.

(C) Management, Maintenance, Repairs, Alterations and Improvements.

(1) The Association. The Association shall manage the Common Elements and shall maintain and keep the same in a state of good working order, condition and repair, in a clean, neat, safe and sanitary condition, and in conformity with all laws, ordinances and regulations applicable to the Common Elements, by promptly, properly and in a good and workmanlike manner, making all repairs, replacements, alterations and other improvements necessary to comply with the foregoing. The Association shall also be responsible for repairing all damage to a Unit caused by the Association, including

damage caused by performance by the Association of its obligations hereunder. As provided in Article II(B)(6)(b) hereof, the Association may delegate all or any portion of its authority to discharge such responsibility to a manager or Management Agent.

(2) **Unit Owner.** Except as may otherwise be provided herein, the responsibility of each Unit Owner shall be as follows:

(a) To maintain, repair and replace at his or her expense all portions of his or her Unit, as defined herein, and to assume the same responsibility with respect to the Limited Common Elements belonging to his or her Unit (including rooftop decks, if maintained by easement rather than as a Limited Common Element as provided above).

(b) Not to make any alterations in the portions of the Common Elements, including Limited Common Elements, which are to be maintained by the Association or remove any portion thereof or make any additions thereto or do anything which would or might jeopardize or impair the safety or soundness of the Units or the Common Elements without first obtaining the written consent of the Board, nor shall any Unit Owner impair any easement without first obtaining the written consents of the Board and of the person or persons for whose benefit such easement exists.

(c) Not to enclose, paint or otherwise decorate or change the appearance of any portion of the Property not within the walls of the Unit, unless the written consent of the Board of the Association is first obtained.

(d) To report promptly to the Association or its agent any defect or need for repairs, the responsibility for the remedying of which is with the Association.

(e) To perform his or her responsibilities in such a manner so as not unreasonably to disturb other persons residing within the Property.

(f) To maintain, repair and replace at his or her expense all portions of the Property which may be damaged or destroyed by reason of his or her own act or neglect, the act or neglect of any Occupant of his or her Unit, or the willful or uninsured act or neglect of any invitee, licensee or guest of such Unit Owner or Occupant, to the extent such damage or destruction is not covered by insurance maintained by the Association. Notwithstanding the foregoing obligation of the Unit Owner, the Association (or other Unit Owner in respect to his or her own Unit) may, but shall not be obligated to, repair and replace the property damaged or destroyed by reason of the act or neglect of a Unit Owner, an Occupant, or their invitee, licensee or guest, and charge and collect from such Unit Owner the cost and expense paid or incurred in making any such repair or replacement. If the repair or replacement is made by the Association, the cost and expense thereof shall be a lien against the Unit Owner's Ownership Interest which the Association may assert and collect in the same manner as the Association may assert and collect a lien against a Unit Owner's Ownership Interest for non-payment of his or her share of assessments for Common Expenses. The right herein of the Association to assert and collect upon a lien shall not be exclusive, but shall be in addition to all other rights and remedies available to the Association, herein, in law and in equity for recovery of the cost and expense so incurred.

(g) To pay all costs for utility services (such as, without limitation, water, gas, electricity, sewage, rubbish and trash disposal or treatment and the like) furnished to his or her Unit or to the Limited Common Elements designated for his or her use, unless any or all of such services are provided or paid for by the Association and charged to the Unit Owner as part of the Common Expenses, in which case all or any of such services so provided by the Association shall be paid for by the Unit Owner as part of his or her share of the Common Expenses.

(h) Not to take any actions that would violate the terms and conditions of the Façade Easement.

(3) **Rights Against Third Parties**. The obligation of the Association and of Unit Owners to repair, maintain and replace the portions of the Property for which they are respectively responsible shall not be limited, discharged or postponed by reason of the fact that any maintenance, repair or replacement may be necessary to cure any latent or patent defects in material or workmanship in the construction, repair, alteration or improvement of the Property. The undertaking of repair, maintenance or replacement by the Association or Unit Owners shall not constitute a waiver of any rights against any warrantor but such rights shall be specifically reserved.

Notwithstanding the fact that the Association and/or any Unit Owner may be entitled to the benefit of any guarantee of material and workmanship for any construction defects, or to benefits under any policies of insurance providing coverage for loss or damage for which they are respectively responsible, the existence of construction guarantee or insurance coverage shall not excuse any delay by the Association or any Unit Owner in performing his or her obligations hereunder.

ARTICLE III
PROVISIONS AS TO EASEMENTS, UNITS, AND COMMON ELEMENTS

Declarant hereby creates by grant or reservation, as the case may be, in perpetuity, for its benefit and for the benefit of each Unit Owner, each mortgagee in whose favor a mortgage shall be granted with respect to any Unit, the Association, and to any other person now having or hereafter having an interest in the Property or any part thereof owned or acquired by Declarant, and the respective heirs, devisees, executors, administrators, personal representatives, successors and assigns of the foregoing persons, the following non-exclusive rights and easements:

(A) **Utility, Emergency and Service Easements, and Other Easements**. The right and easement to construct, install, repair, replace, relocate, operate and maintain water mains with service connections, storm and sanitary sewer lines, storm systems, steam, electric, gas and telephone lines, conduits, and transmission and meter devices and other utilities, in, on, under and/or over the Property; the right and easement to construct, install, repair, replace, relocate, operate and maintain television cable lines and other television reception devices and security devices; the right and easement to construct, install, repair, replace, relocate, operate and maintain that portion of the heating, air-conditioning and other equipment and systems located outside of the bounds of a Unit but which serves only a particular Unit. Easements are hereby granted for fire, police, health, sanitation, medical, ambulance, utility company, mail service and other public and quasi-public emergency and service personnel for ingress and egress over Common Elements for the performance of their respective duties.

(B) **Encroachments**. If by reason of the construction, repair, restoration, partial or total destruction and rebuilding, or settlement or shifting of any of the Building(s) or improvements constituting a part of the Property, any part of the Common Elements shall encroach upon any part of a Unit, or any part of a Unit shall encroach upon any part of the Common Elements, or any part of a Unit shall encroach upon any part of any other Unit, or if by reason of the design or construction or rebuilding of the utility systems comprised within the Property any pipes, ducts or conduits serving a Unit shall encroach upon any other Unit, easements in favor of the Unit Owner or Association, as the case may be, for the maintenance of any such encroachment are hereby established; provided, however, in no event shall a valid easement for any encroachment be created in favor of a Unit Owner if such encroachment occurred due to his or her willful conduct.

(C) **Maintenance Easements**. Easements in favor of the Declarant and/or the Association over the Units and Limited Common Elements for access as may be necessary for the purpose of maintaining the Common Elements and easements in favor of each Unit Owner over the Common Elements for access to his or her Unit. Easements in favor of each Unit Owner to and through the Common Elements as may be necessary for the use of water, gas, storm and sanitary sewers, electric, telephone, television cable, and other telecommunications lines, and other utilities now or hereafter existing within the walls; subject to the provisions of Article VII(D) hereof; easements for the use of security alarms and other security devices.

(D) **Easements Through Units and Limited Common Elements.** Easements in favor of the Declarant and/or the Association through the Units and the Limited Common Elements for the purpose of installing, laying, maintaining, repairing and replacing any pipes, wires, ducts, conduits, public utility lines or structural components through the walls of the Units.

(E) **Unit Owner's Right to Ingress and Egress and Support**. Each Unit Owner shall have the perpetual right as an appurtenance to such Unit Owner's Unit to ingress and egress over, upon and across the Common Elements necessary for access to his or her Unit, and to any Limited Common Elements designated for use in connection with his or her Unit, and shall have the right to the horizontal and lateral support of his or her Unit, and such rights shall be appurtenant to and pass with the title to each Unit.

(F) **Association's Right to Use of Common Area**. The Declarant and the Association shall have a nonexclusive easement to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions required or permitted pursuant to this Declaration, including the right to construct and maintain in the Common Elements mechanical, maintenance and storage facilities for use by the Association.

(G) **Reservation by Declarant of Easements for Ingress and Egress, Utilities, Construction and Sales**. The Declarant herein hereby reserves unto itself, its successors and assigns for as long as the Declarant owns a Condominium Ownership Interest in the Property the easement and right for the benefit of and use by Declarant, and its agents, officers, directors, employees, licensees, servants, tenants, personal representatives, successors and assigns for ingress and egress for utility and facility purposes and for model, sales and display purposes, over, through and under the Property and any part thereof other than a Unit not owned by the Declarant. The Declarant further reserves easements for Special Declarant Rights, including the right to maintain facilities in the Common Elements which are reasonably necessary to market Units. Such facilities may include sales or construction trailers, management offices, model units, parking areas, and advertising signs.

(H) **Future Easements to Others**. Such easements as Declarant, or the Association from time to time may hereafter grant to others on behalf of the Property for roadway, access and utility purposes, including, but not limited to, the right to install, lay, maintain, repair and replace roadways, sidewalks, water mains and pipes, storm and sanitary sewer lines, drainage ditches, gas mains, electrical, telephone, television, and other telecommunications equipment, cables, conduits and wire over, under and along any portion of the Common Elements (other than Limited Common Elements), provided that it shall be a condition precedent to the use and enjoyment of any such easements that the owner or owners of land benefited thereby shall, at his or her, its or their expense, restore the Common Elements to the same condition as existed just prior to the installation of any such utility improvements, and provided further that the owner or owners of such benefited land shall pay their fair share of the cost and expense of repairing, replacing, relocating and operating said improvements, said fair share to be determined in accordance with the provisions of the last section of this Article III or otherwise determined by agreement between the Declarant or the Association and any such third party. Each Unit Owner and his or her respective mortgagee by acceptance of a deed conveying such Condominium Ownership Interest or a mortgage encumbering such Condominium Ownership Interest, as the case may be, hereby irrevocably appoints the Declarant or the Association, his or her Attorney-in-Fact, coupled with an interest, and authorizes, directs and empowers such Attorney, at the option of the Attorney, to execute, acknowledge and record for and in the name of such Unit Owner and his or her mortgagee such easements or other instruments as may be necessary to effect the foregoing.

Each grantee of a Unit and each mortgagee in whose favor a mortgage with respect to any Unit is granted shall be subject to and have the benefit of (as the case may be) each of the easements herein provided in the same manner and to the same extent as though such easements were expressly provided for and fully set forth in the deed of conveyance or mortgage (as the case may be), notwithstanding the omission from such deed of conveyance or mortgage (as the case may be) of reference to such easements.

(I) <u>Easement Rights</u>. The easements set forth in this Article are to be enjoyed in common with the grantees, their heirs, executors, administrators, successors and assigns, with the right reserved in the Declarant, its successors and assigns, to grant, assign, or convey or assign to public use or dedicate to public use all or a portion of the easement rights herein to one or more assignees or grantees as an appurtenance to the Property without it being considered by the grantees, their heirs, executors, administrators, successors and assigns, as an additional burden on said easement and/or the Property. Any assignment, conveyance or dedication of said easement rights by the Declarant may be made at the same time or at successive times, and the residuary easement rights of the Declarant shall not cease or determine until the Declarant, its successors and assigns, has no remaining interest, of record, in the Property. However, the rights of all assignees or grantees in the reserved easements shall remain in full force and effect.

(J) <u>No Severance of Ownership</u>. No owner shall execute any deed, mortgage, lease, or other instrument affecting title to his or her Condominium Ownership Interest without including therein both his or her Undivided Interest in the Unit and his or her corresponding Undivided Interest in the Common Elements, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, lease or other instrument purporting to affect the one without including also the other shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described therein.

(K) <u>Easements Reserved by Declarant for Warranty Obligations</u>. The Declarant further reserves the right to enter upon the Common Elements or Units to fulfill any warranty obligations to the Association or the Unit Owners.

(L) <u>Easements through Unit 101</u>. Each Unit Owner shall have the right and easement to pass through the doorways in the façade of the Building, and to use the windows in the façade of the Building, which doorways and windows are initially part of Unit 101. Each Unit having a penthouse roof deck shall have an easement to maintain and use said roof deck for so long as such roof deck is constructed within the air space above the Building which is part of Unit 101. (If Unit 101 is converted to a Common Element by conversion of Convertible Space, and if by such conversion said air space becomes a Common Element, the roof decks shall then be a Limited Common Element appurtenant to the subject Unit.)

ARTICLE IV
UNIT OWNERS' ASSOCIATION OF ERIE BUILDING LOFTS CONDOMINIUM

(A) <u>Membership</u>. Declarant has formed or shall cause to be formed an Ohio corporation not for profit to be called the **ERIE BUILDING LOFTS CONDOMINIUM ASSOCIATION, INC.** which shall administer the Property. The Association shall be formed no later than the date that the deed or other evidence of ownership is filed for record following the sale of the first Unit in the Property. Each Unit Owner, upon acquisition of title to a Unit, shall automatically become a member of the Association. Such membership shall terminate upon the sale or other disposition by such member of his or her Unit ownership, at which time the new owner of such Unit shall automatically become a member of the Association. The Board of Directors and officers of the Association elected as provided in the Bylaws of the Association, attached hereto as **Exhibit "B"**, shall exercise the powers, discharge the duties and be vested with the rights conferred by operation of law, by the Bylaws and by this Declaration upon the Association, except as otherwise specifically provided; provided, however, that in the event any such power, duty or right shall be deemed exercisable or dischargeable by, or vested in, an officer or a member of the Board of Directors, solely in his or her capacity as an officer or a member of the Board of Directors, he or she shall be deemed to act in such capacity to the extent required to authenticate his or her acts and to carry out the purposes of this Declaration and the Bylaws attached hereto as **Exhibit "B"**. The number of members constituting the Board of Directors and the terms of such members are set forth in the Bylaws attached hereto as **Exhibit "B."** If the number of members of the Board of Directors is not divisible by three (3), the terms of not less than one-fifth (1/5th) of the members of the Board of Directors shall expire annually.

(B) **Administration of Property.** The administration of the Property shall be in accordance with the provisions of this Declaration and the Bylaws of the Association which are attached hereto as **Exhibit "B"**, and each Unit Owner, tenant or occupant of a Unit shall comply with the provisions of this Declaration, the Bylaws, decisions, rules, regulations and resolutions of the Association or its representative, as lawfully amended from time to time, and failure to comply with any such provisions, decisions, rules, regulations, and resolutions, shall be grounds for an action to recover sums due for damages, or for injunctive relief.

(C) **Service of Process.** Service of summons or other process upon the Association may be made in accordance with the provisions of the Ohio Revised Code, Sections 5311.05(B)(8) and 5311.20. The President, a Vice President, the Secretary or Treasurer of the Association shall be designated by the Board of Directors of the Association as its statutory agent and the statutory agent so designated shall be a resident of the Condominium and an owner of one of its Units. Until such time as a statutory agent is designated, service may be made upon Mr. David M. Perkowski, 2504 West 10th Street, Cleveland, Ohio 44113. When and after the Association is lawfully constituted the statutory agent thereof shall be the person to receive service of process, and his or her name and address (and that of each successor) shall be filed with the Ohio Secretary of State on such forms as are prescribed for the subsequent appointment of a statutory agent for an Ohio corporation not for profit.

ARTICLE V
ASSESSMENTS

(A) **General.** Assessments for the management, maintenance, repair and insurance of the Common Elements and amounts determined by the Board of Directors of the Association for the establishment and maintenance of the reserve fund to meet the cost and expense of repair and replacement of the Common Elements together with the payment of the Common Expenses, shall be made in the manner provided herein, and in the manner provided in the Bylaws attached hereto as **Exhibit "B."**

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(B) Division of Common Expenses, Common Assessments, Common Surplus, Common Profits and Common Losses. The proportionate shares of the separate owners of the respective Units in the Common Expenses, Common Assessments, Common Surplus, Common Profits and Common Losses of the operation of the Property is based upon the Undivided Interest in the Common Elements of such Units expressed in Article II (B)(4) hereof. The acquisition or occupancy of any Unit shall be conclusive evidence against the Unit Owner or Occupant thereof that the Undivided Interest set forth opposite each Unit in **Exhibit "D"** of this Declaration is in the proportion that the square footage of the Unit bears to the aggregate square footage of all Units on the date this Declaration is filed for record, or the date an amendment to this Declaration is filed for record pursuant to Article X hereof, and the proportionate share of Common Profits and Common Expenses of each Unit Owner shall be in accordance with said Undivided Interest set forth in Article II, (B)(4) hereof. The obligation of an Owner to pay his or her proportionate share of Common Assessments shall commence upon such Owner's acquisition of his or her Unit.

(C) Non-Use of Facilities. No owner of a Unit may exempt himself from liability for his or her contribution toward the Common Expenses by waiver of the use or enjoyment of the Common Elements, or by the abandonment of his or her Unit.

(D) Lien of Association. The Association shall have the right to place a lien upon the estate or interest in any Unit of the owner thereof and his or her percentage of interest in the Common Elements for the payment of the portion of the Common Expenses chargeable against such Unit which remains unpaid for ten (10) days after such portion has become due and payable by filing a certificate therefor with the office of the recorder of the County, pursuant to authorization given by the Board of Directors of the Association. The certificate shall contain a description of the Unit, the name or names of the record owner or owners, and the amount of the unpaid portion of the Common Expenses. The lien is valid for a period of five (5) years after the date of filing, unless sooner released or satisfied in the same manner provided by law for the release and satisfaction of mortgages on real property or discharged by the final judgment or order of a court in an action brought to discharge the lien as hereinafter provided. In addition, each Unit Owner shall be personally liable for all assessments levied by the Association against his or her Unit during the period he or she has an ownership interest therein, and any Common Assessment not paid within ten (10) days after the same shall become due and payable, shall bear interest at the maximum rate allowed by law until such time as the Common Assessment has been paid in full and the Association shall be entitled to levy against the delinquent Unit Owner a late fee or service charge of ten percent (10%) of the amount of the delinquent payment or Twenty-Five Dollars ($25.00), whichever is greater (**"Charge"**), in order to defray the administrative costs of collection, and, in addition, the Association shall be entitled to levy against the delinquent Unit Owner court costs and attorney and paraprofessional (paralegal) fees.

(E) Priority of Association's Lien. The lien provided for in Section (D) of this Article V is prior to any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments of political subdivisions and liens of first mortgages that have been filed for record. The lien provided for in Section (D) of this Article V may be foreclosed in the same manner as a mortgage on real property in an action brought on behalf of the Association by its president or any other chief officer pursuant to authority given to him or her by the Board of Directors. In the foreclosure action, the Association, or its agent, duly authorized by action of the Board of Directors, is entitled to become a Purchaser at the foreclosure sale. Suit to recover for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing payment of the same.

(F) Dispute as to Common Expenses. A Unit Owner who believes that the portion of Common Expenses chargeable to his or her Unit, for which a certificate of lien has been filed by the Association, has been improperly charged against him or her or his or her Unit may commence an action for the discharge of the lien in the Court of Common Pleas for the County. In the action, if it is finally determined that the portion of Common Expenses has been improperly charged to the owner or his or her Unit, the court shall make an order as is just, which may provide for a discharge of record of all or a portion of the lien.

(G) Non-Liability of Judicial Sale Purchaser for Past Due Common Expenses. Where the mortgagee of record or other Purchaser of a Unit acquires title to the Unit as a result of a judicial sale resulting from litigation, or where the mortgagee of a first mortgage of record in lieu of the foreclosure of its mortgage acquires title to the Unit by accepting a deed to the Unit, such acquirer of title, its successors and assigns, shall not be liable for the share of the Common Expenses or other assessments by the Association chargeable to such Unit which become due prior to the acquisition of title to such Unit by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from the Owners of all of the Units, including the Unit of such acquirer, his or her heirs, executors, administrators, successors or assigns at the time the first assessment next following the acquisition of title to such Unit by such acquirer.

(H) Liability for Assessments Upon Voluntary Conveyance. In a voluntary conveyance of a Unit, other than by deed in lieu of foreclosure, the grantee of the Unit shall be jointly and severally liable with the grantor for all unpaid assessments levied by the Association against the grantor and his or her Unit for his or her share of Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the Board of Directors setting forth the amount of all unpaid assessments against the grantor due the Association, and such grantee shall not be liable for nor shall the Unit conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount set forth in such statement for the period reflected in such statement.

(I) Rights of Association in a Foreclosure Action. In a foreclosure action commenced by the holder of a first mortgage or other lien on a Unit, or commenced by the Association, the Unit Owner shall be required to pay reasonable rental for the Unit during the pendency of the action. The Association or the holder of the lien is entitled to the appointment of a receiver to collect the rental. Each rental payment a receiver collects during the pendency of the foreclosure action shall be applied first to the payment of the portion of the Common Expenses chargeable to the Unit during the foreclosure action. In a foreclosure action brought by a lienholder other than the Association, the lienholder shall name the Association as a defendant in the action. In a foreclosure action, it is not a defense, setoff, counterclaim, or cross-claim that the Association has failed to provide the Unit Owner with any services, goods, work or material, or failed in any other duty.

(J) **Right of Holder of a Mortgage to Advance Payments.** A mortgage on a Unit may contain a provision that secures the mortgagee's advances for payment of the portion of the Common Expenses chargeable against the Unit upon which the mortgagee holds the mortgage.

(K) **Order of Priority of Payments.** In accordance with Ohio Revised Code Section 5311.18(A)(2), the Association shall credit payments made by a Unit Owner in the following order of priority:

(1) First, to interest owed the Association;

(2) Second, to administrative late fees owed to the Association;

(3) Third, to collection costs, attorney's fees and paralegal fees incurred by the Association; and

(4) Fourth, to the principal amounts the Unit Owner owes to the Association for Common Expenses or Enforcement Assessments chargeable against the Unit.

ARTICLE VI
INSURANCE AND RECONSTRUCTION; RIGHT TO APPOINT AN INSURANCE TRUSTEE

(A) **Insurance.** The insurance which shall be carried upon the Property shall be governed by the following provisions:

(1) **Casualty Insurance.** The Association shall carry casualty (hereinafter called "**Casualty Insurance**") insurance on the following: (i) all insurable improvements comprising the Common Elements; (ii) all personal property owned by the Association or for which the Association is responsible; and (iii) all other structures and insurable improvements constituting a part of the Property, including insurable improvements specified in the next sentence, that were part of the Unit when this Declaration was recorded, or insurable improvements incorporated into the Unit by the Declarant or the Association. That is, the Casualty Insurance shall insure the fixtures, installations, wall and floor coverings, plaster or plasterboard (drywall), cabinetry, sinks, dishwashers, disposals, toilets, non-loadbearing partitions and other improvements, whether a part of the Common Elements or Unit, as each are defined in Article II herein, that were located in the Unit on the date this Declaration was recorded or which have been installed or shall in the future be installed (including replacements) by the Declarant or the Association. The Association is not responsible for insuring improvements located in the bounds of a Unit that did not exist in the Unit on the date of recording of this Declaration or which were not placed therein by the Declarant or the Association, including all personal property (i.e., furniture, clothing, etc.) of a Unit Owner, and all subsequent replacement

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or additional improvements made by a Unit Owner, including, but not limited to, upgrades to or replacements of finishes, fixtures, floor covering, cabinets, etc. The burden shall be upon the Unit Owner to determine whether improvements located within the bounds of such Owner's Unit shall be insured under the Association's Casualty Insurance policy or directly by the Unit Owner. The Casualty Insurance shall be in an amount not less than one hundred percent (100%) of the insurable replacement cost of the improvements insured under the Casualty Insurance, with a "Guaranteed Replacement Cost Endorsement" (excluding excavation and foundation costs and other items normally excluded from coverage), as determined by a qualified appraiser, the amount determined and the insurance to be reviewed annually and adjusted if necessary. The cost of the appraisal shall be a Common Expense. Such Casualty Insurance shall include the following coverages:

(a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement;

(b) if available, a "Construction Code Endorsement" or its equivalent, a "Demolition Cost Endorsement" or its equivalent, an "Increased Cost of Construction Endorsement" or the equivalent, a "Contingent Liability from Operation of Building Laws Endorsement", or its equivalent, and an "Agreed Amount and Inflation Guard Endorsement" or its equivalent; and

(c) coverage against such other risks (including flood insurance if such insurance is available) as from time to time customarily shall be covered with respect to buildings similar to the Buildings in construction, location and use, including, but not limited to, debris removal, vandalism, malicious mischief, windstorm and water damage, subject to such deductible amounts as the Board shall determine, provided, however, such deductible amounts shall not exceed the lesser of Five Thousand Dollars ($5,000) or one percent (1%) of the policy amount. The deductible amounts shall be treated as a Common Expense. The Casualty Insurance shall provide that notwithstanding any provision thereof which gives the carrier an option to restore damage in lieu of making a cash settlement therefor, such option shall not be exercisable in the case of removal of the Property from the provisions of Chapter 5311 as provided for in this Declaration and shall further provide that the coverage thereof shall not be terminated for non-payment of premiums without at least ten (10) days' written notice to the Unit Owner, the Association and to each Unit first mortgagee. All Casualty Insurance policies shall be purchased by the Association for the benefit of the Declarant, the Association, the Unit Owners and their respective mortgagees, as their interests may appear, and shall provide (i) for the issuance of certificates of insurance with mortgagee endorsements to the holders of mortgages on the Units, if any; (ii) that the insurer waives its rights of subrogation against Unit Owners, Occupants of Units, and the Association; (iii) that the Casualty Insurance will not be prejudiced by any acts or omissions of Unit Owners that are not under the control of the Association; and (iv) the policy is primary, even if a Unit Owner has other insurance that covers the same loss. The Casualty

Insurance policies and any endorsements thereto shall be deposited with the Association or with the Insurance Trustee (as hereinafter defined), if one is appointed, who must first acknowledge that the policies and any proceeds thereof will be held in accordance with the provisions hereof. All Casualty Insurance policies shall provide that all proceeds payable as a result of casualty losses shall be paid to the Association as exclusive agent for each of the Unit Owners and each holder of a mortgage or other lien on any Unit unless the Board determines to appoint an Insurance Trustee in accordance with Subsection (6) of Section (A) of this Article VI.

(2) **Liability Insurance.** The Association shall insure itself, the members of the Board, the Unit Owners and Occupants of Units other than Unit Owners against liability for personal injury, disease, illness or death and for injury to or destruction of property occurring upon, in or about, or arising from or relating to the Common Elements, including, without limitation, water damage, legal liability, hired automobile, non-owner automobile and off-premises employee coverage, such insurance to afford protection to a limit of not less than One Million Dollars ($1,000,000) in respect to personal injury, disease, illness or death suffered by any one person, and to the limit of not less than One Million Dollars ($1,000,000) in respect to any one occurrence, and to the limit of not less than One Million Dollars ($1,000,000) in respect to damage to or destruction of property arising out of any one accident. All liability insurance shall contain cross-liability endorsements to cover liabilities of the Unit Owners as a group to a Unit Owner and shall further provide that the coverage thereof shall not be terminated for non-payment of premiums without at least ten (10) days written notice to the Association and to each Unit first mortgagee. If such liability insurance shall, for any reason, not fully cover any such liability, the amount of any deficit shall be a Common Expense to the Unit Owners, and any Unit Owner who shall have paid all or any portion of such deficiency in an amount exceeding his or her proportionate share thereof based on his or her Undivided Interest in the Common Elements shall have a right of contribution from the other Unit Owners according to their respective Undivided Interests in the Common Elements. The Association shall also obtain directors and officers liability coverage if reasonably available.

(3) **Fidelity Bonds.** A fidelity bond indemnifying the Association, the Board and the Unit Owners for loss of funds (including reserve funds) resulting from fraudulent or dishonest acts of any employee of the Association or of any other person handling the funds of the Association, the Board or the Unit Owners in such amount as the Board shall deem desirable, but in no event shall the amount of the bond be less than an amount equal to three (3) months' Common Assessments. The fidelity bond shall name the Association (or the Insurance Trustee) as the obligee, and the premium for such bond shall be a Common Expense. Such bond shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Such bond shall provide that it may not be canceled for non-payment of any premiums or otherwise substantially modified without ten (10) days prior written notice to the Association and to all holders of first mortgages of record. Where a management agent has the responsibility for handling or administering funds of the

Association, the management agent shall be required to maintain fidelity bond coverage for its officers, employees and agents handling or responsible for funds on behalf of the Association. Such coverage by the management agent shall comply with the other provisions of this Section (3).

(4) **Premiums.** Premiums upon insurance policies purchased by the Association shall be paid by the Association at least thirty (30) days prior to the expiration date of such policies and shall be assessed as Common Expenses.

(5) **Unit Owner Insurance**. Each Unit Owner may, at his or her own expense, obtain insurance covering the portions of his or her Unit not covered by the Association's Casualty Insurance Policy under Section (A)(1) of this Article, including the contents of his or her Unit, and all floor and wall coverings, furniture, fixtures and other betterments installed by the Unit Owner, and any personal property which a Unit Owner stores elsewhere on the Property, but such Casualty Insurance shall provide that it shall be without contribution as against the Casualty Insurance purchased by the Association and shall contain the same waiver of subrogation as that referred to in subsection (A)(1)(c)(ii) above; and each Unit Owner may, at his or her own expense, obtain public liability insurance for personal injuries or damage arising out of the use and occupancy of his or her Unit.

(6) **Insurance Trustee.** If the amount of the loss exceeds $100,000, the Board shall designate and appoint an insurance trustee who shall be a bank in the County having trust powers and total assets of more than One Billion Dollars ($1,000,000,000). (Such trustee shall be herein referred to as the "**Insurance Trustee**".) The Insurance Trustee shall not be liable for payment of premiums nor for the renewal of the policies, nor for the sufficiency of coverage, nor for the form or contents of the policies, nor for the failure to collect any insurance proceeds. The sole duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Association, the Unit Owners, and their respective mortgagees. The Insurance Trustee may rely upon a certificate of the Association certifying as to whether or not the damaged property is to be reconstructed or repaired which such certificate shall be delivered, upon request of the Insurance Trustee as soon as practicable.

(B) Responsibility for Reconstruction or Repair.

(1) If any portion of the Property shall be damaged by perils covered by the Casualty Insurance, the Association shall cause such damaged portion to be promptly reconstructed or repaired to the extent of the funds made available to the Association (or the Insurance Trustee if one has been appointed), as hereinafter provided, and any such reconstruction or repair shall be substantially in accordance with the Drawings; provided, however, if such damage renders two or more of the Units within the Property untenantable, the Unit Owners may unanimously elect not to reconstruct or repair such damaged part at a meeting which shall be called within ninety (90) days after the occurrence of the casualty, or, if by such date the insurance loss has not been finally

adjusted, then within thirty (30) days after such final adjustment. Upon such election, all of the Property shall be subject to an action for sale as upon partition at the suit of any Unit Owner. In the event of any such sale or a sale of the Property after such election by agreement of all Unit Owners, the net proceeds of the sale together with the net proceeds of insurance, if any, and any other indemnity arising because of such damage or destruction, shall be considered as one fund and shall be distributed to all Unit Owners in proportion to their respective Undivided Interest in the Common Elements. No Unit Owner, however, shall receive any portion of his or her share of such proceeds until all liens and encumbrances on his or her Unit have been paid, released or discharged. Each Unit Owner and his or her respective mortgagee by acceptance of a deed conveying such Condominium Ownership Interest or a mortgage encumbering such Condominium Ownership Interest, as the case may be, hereby irrevocably appoints the Association his or her attorney-in-fact, coupled with an interest, and authorizes, directs and empowers such attorney, at the option of the attorney, to carry out the provisions of this Article VI.

(2) Each Unit Owner shall be responsible for the repair of his or her Unit (and the Limited Common Elements attributable solely to his or her Unit) after casualty that are not covered by the Association's Casualty Insurance.

(C) <u>Procedure for Reconstruction or Repair.</u>

(1) Immediately after a casualty causing damage to any portion of the Common Elements, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as the condition of the property before the casualty. Such costs may include professional fees of public adjuster firms and others and premiums for such bonds as the Board deems necessary.

(2) If the proceeds of the Casualty Insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association (including the aforesaid fees and premiums, if any) one or more special assessments shall be made against all Unit Owners in sufficient amounts to provide funds for the payment of such costs, and the proceeds of such special assessments shall be deposited with the Association or the Insurance Trustee, as the case may be.

(3) The proceeds of the Casualty Insurance referred to in Subsection (1) of Section (A) of this Article VI and the sums deposited from collections of special assessments against Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed to the Insurance Trustee and be applied to the payment of the cost of reconstruction and repair of the portion of Property that is covered by the Association's Casualty Insurance policy from time to time as the work progresses, but not more frequently than once in any calendar month. The Association or the Insurance Trustee, as the case may be, shall make such payments upon receipt of a certificate, dated not more than fifteen (15) days prior to such request, signed by the architect or contractor in charge of the work, who shall be selected by the Association, setting forth (a) that the sum then requested is justly due to contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished

materials in connection with the work, giving a brief description of the services and materials, and that the sum requested does not exceed the value of the services and materials described in the certificate, (b) that except for the amount stated in such certificates to be due as aforesaid less any prescribed holdback of funds, and for work subsequently performed, there is no outstanding indebtedness known to the person signing such certificate after due inquiry which might become the basis of a vendor's, mechanic's, materialmen's or similar lien arising from such work, and (c) that the cost as estimated by the person signing such certificate of the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining in the hands of the Association or the Insurance Trustee, as the case may be, after the payment of the sum so requested. It shall be presumed that the first monies disbursed in payment of such costs of reconstruction and repair shall be from insurance proceeds; and if there is a balance in any construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be disbursed to the Owners of the damaged Units. The distribution shall be in the shares that the estimated costs of reconstruction and repair for each damaged Unit bears to the total of these costs for all damaged Units. If there is a mortgage upon such damaged Unit, the distribution shall be paid to the Unit Owner and the mortgagee jointly and they may use the proceeds as they may determine.

(4) The Insurance Trustee (if any) may rely upon a certificate of the Association certifying as to whether or not the damaged property is to be reconstructed or repaired. The Association, upon request of the Insurance Trustee, shall deliver such certificate as soon as practical.

(5) If the estimated cost of reconstruction and repair is less than the total of the annual Assessments for Common Expenses made during the calendar year preceding that in which the casualty occurred, then, notwithstanding the appointment of any Insurance Trustee as herein provided, the construction fund may be disbursed upon the order of the Board; provided, however, that at the request of a mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such proceeds shall be disbursed by the order of the Board; in the manner provided for disbursement in subsection (3) above.

(6) Each Unit Owner shall be deemed to have delegated to the Board his or her right to adjust with insurance companies all losses under the Casualty Insurance policies referred to in Subsection (1) of Section (A) of this Article VI.

(D) <u>Minor Repairs</u>.

(1) Notwithstanding the foregoing provisions of this Article, if the aggregate amount of the estimated costs of repairing any damage to the Common Elements is less than Ten Thousand Dollars ($10,000), the instrument (or draft) by means of which any insurance proceeds are paid shall be endorsed by the Insurance Trustee and delivered to the Association and the damage shall be repaired in accordance with Article VI(D)(2) below.

(2) Such insurance proceeds shall be used by the Association to defray the cost of repairing the damage to the portions of the Property that are covered by the Association's Casualty Insurance policy. If the cost of such repairs is less than the amount of such insurance proceeds, the excess shall be distributed to the Owners of the damaged Units in accordance with Subsection (C)(3) above. The distribution shall be in the shares that the estimated costs of reconstruction and repair for each damaged Unit bears to the total of these costs for all damaged Units. If there is a mortgage upon a Unit, the distribution shall be paid to the Unit Owner and the mortgagee jointly and they may use the proceeds as they may determine. If the cost of such repairs exceeds the amount of such insurance proceeds, such excess may be provided either by means of a Common Assessment levied by the Board against all Unit Owners in proportion to their respective Undivided Interests in the Common Elements or by means of an appropriation from the contingency fund or such other fund as may be established for the purpose of providing for the maintenance, repair and replacement of the Common Elements, as the Board may determine.

(E) **Negligence of Unit Owner.** Each Unit Owner shall be liable for the expenses of any maintenance, repair or replacement rendered necessary by his or her negligence or by that of any member of his or her family or his or her or their guests, employees, agents or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Association. A Unit Owner shall pay the amount of any increase in insurance premiums occasioned by his or her use, misuse, occupancy or abandonment of his or her Unit or its appurtenances or of the Common Elements or Limited Common Elements.

ARTICLE VII
COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY

The Units and Common Elements shall be occupied and used as follows:

(A) All Units may be used for any use permitted within a "Live-Work Overlay District" by Part 3, Title VII, Chapter 346 of the City of Cleveland Codified Ordinances, as the same may be amended from time-to-time, however no business activity within a Unit shall involve door-to-door solicitation of Occupants of the Condominium Property; and such business activity shall not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Condominium Property, as may be determined in the sole discretion of the Board. The interior of Unit 101 may also be used for commercial or private parking garage purposes only. Furthermore, no trade or business may be conducted in or from any Unit without the written approval of the Board first obtained. Such approval shall be granted so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (b) the business activity conforms to all applicable zoning requirements; (c) the business activity does not involve persons coming to the Unit who do not reside in the Unit except by appointment only; (d) the business activity does not involve door-to-door solicitation of Occupants of the Property; and (e) the business activity is consistent with the Live/Work character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board. The Board may adopt Rules which intensify, relax or amend the prohibitions of this Section. Nothing in this Section shall preclude the leasing of a Unit by the Declarant or an Owner; the right of the Declarant to maintain a brokerage or sales office for sales of Units within the Property; the right of the Declarant to utilize a Unit for model and/or for office purposes.

(B) There shall be no obstruction of the Common Elements nor shall anything be stored in the Common Elements without the prior consent of the Board except as hereinafter expressly provided. Each owner shall be obligated to maintain and keep in good order and repair his or her own Unit.

(C) Except as expressly permitted by Section 5311.191 of the Act (Display of U.S. Flag), nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance on the Common Elements without the prior written consent of the Board. No owner shall permit anything to be done or kept in his or her Unit or in the Common Elements which will result in the cancellation of insurance on the building, or contents thereof, or which would be in violation of any law. No waste shall be committed in the Common Elements.

(D) Except as expressly permitted by Section 5311.191 of the Act (Display of U.S. Flag), Unit Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of a building and no sign, awning, canopy, shutter, radio or television antenna shall be affixed to or placed upon the exterior walls or roof or any part thereof, or exposed on, at or from any window, without the prior consent of the Board. Notwithstanding the foregoing, the Unit Owner may install a satellite dish (not to exceed one (1) meter in diameter) or television antenna within a Limited Common Area, so long as such installation conforms in all respects to the design, construction, installation, location, maintenance, and any other reasonable criteria established by the Board. The Board shall determine whether or not the Unit Owner meets such criteria. The criteria shall not cause the Unit Owner to incur unreasonable installation, maintenance or usage costs, nor shall the criteria cause unreasonable interference with a broadcast signal. No curtains, drapes, shades or blinds shall be displayed in or from any window or glass door of the Building(s) without the prior written consent of the Board unless the part thereof within view from the exterior of the Building(s) is white in color.

(E) No animals, rabbits, livestock, fowl, poultry or reptiles of any kind shall be raised, bred, or kept in any Unit or in the Common Elements, or in the Limited Common Elements, except that dogs, cats, or other normal household pets, may be kept in a Unit, subject to rules and regulations adopted by the Board, including, without limitation, the right to levy fines and enforcement charges against persons who do not clean up after their pets. Furthermore, pets may not be 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' notice from the Board. Dogs shall at all times whenever they are outside of a Unit be confined to a leash held by a responsible person.

(F) No noxious or offensive activity shall be carried on in any Unit or in the Common Elements or Limited Common Elements nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or Occupants.

(G) Nothing shall be done in any Unit or in, on or to the common elements which will impair the structural integrity of the building or which would structurally change the building except as is otherwise provided herein.

(H) No clothes, sheets, blankets and/or other articles shall be hung out or exposed on any part of the Common Elements or Limited Common Elements. The Common Elements shall be kept free and clear of rubbish, debris and other unsightly materials.

(I) There shall be no storage of personal property of Owners and Occupants of Units and there shall not be parking of motor vehicles on any part of the Common Elements, except that motor vehicles may be parked in designated parking spots; and that roof deck areas, if any, must be used for their intended purposes.

(J) Except as provided in Section (A) of this Article, no industry, business, trade, occupation or profession of any kind, commercial, religious, educational, or otherwise, designed for profit, altruism, exploration, or otherwise, shall be conducted, maintained, or permitted on any part of the Property, nor shall any "For Sale" or "For Rent" signs or other window displays or advertising be maintained or permitted on any part of the Property or in any Unit therein, except as otherwise set forth in this Declaration. Nothing in this Declaration or the Bylaws shall be construed to prohibit, and the right is hereby reserved by the Declarant and granted to the Association, to offer garage service, cable T.V. service, and coin-operated washers and dryers or vending machines, or other "commercial" enterprises in the Common Elements, provided that such operation shall be primarily intended for the convenience and welfare of the Unit Owners of the Property notwithstanding that the enterprise(s) may produce a profit. The right is reserved by the Declarant, or its agent, and their respective successors and assigns, to place "For Sale" or "For Rent" signs on the Common Elements and within any unsold or unoccupied Units, and the right is hereby given to any mortgagee, who is the owner of any Unit, to place such signs within the window of a Unit owned by such mortgagee. The right is reserved by the Declarant, or its agent, and their respective successors and assigns, to use any unsold Unit or Units for office, sales, model or display purposes.

(K) Nothing shall be altered or constructed in or removed from the Common Elements except upon the prior written consent of the Board.

ARTICLE VIII
SALE OF THE PROPERTY

The Unit Owners by unanimous vote (and with the vote of at least sixty-seven percent (67%) of the holders of first mortgages) may elect to sell the Property as a whole. Upon such action, it shall become the duty of every Unit Owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect such sale. If the Property is sold, the proceeds of sale shall be received and held by the Association in trust for the benefit of the Unit Owners and their respective mortgagees as their respective interests may appear, and such proceeds shall be disbursed as soon as possible to satisfy first mortgage liens, unpaid assessments and other liens and encumbrances, with the balance to be distributed to the Unit Owners, in accordance with their interest in the Common Elements of the Condominium.

ARTICLE IX
REMEDIES FOR BREACH OF COVENANTS, RESTRICTIONS AND REGULATIONS

(A) **Abatement and Enjoyment.** If any Unit Owner (either by his or her own conduct or by the conduct of any other Occupant of his or her Unit) shall violate any restriction or condition or Rule adopted by the Board, or the breach of any covenant or provision contained in this Declaration or the Bylaws, the Association shall have the right, in addition to the rights hereinafter set forth in this Article IX and those provided by law:

(1) to the extent permitted by law, enter upon the portion of the Condominium which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions of this Declaration or of the Bylaws or the Rules, and the Declarant, or its successors or assigns, or the Board, or its agents, shall not thereby be deemed guilty in any manner of trespass; or

(2) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach. The Association shall be entitled to be reimbursed for legal fees incurred in connection with any such action.

(B) **Involuntary Sale.** If any Unit Owner (either by his or her own conduct or by the conduct of any other Occupant of his or her Unit) shall violate any of the covenants or restrictions or provisions of this Declaration or the Rules adopted by the Board, and such violation shall continue for thirty (30) days after notice in writing from the Board, or shall occur repeatedly during any thirty (30) day period after written notice or request to cure such violation from the Board, then the Board shall have the right, upon the giving of at least ten (10) days' prior written notice, to terminate the rights of such Unit Owner to continue as an owner and continue to occupy, use or control his or her Unit and thereupon an action in equity may be filed by the members of the Board against the Unit Owner for a decree of mandatory injunction against the Unit Owner or Occupant or, in the alternative, a decree declaring the termination of the right of such Unit Owner to occupy, use or control the Unit owned by him or her, and ordering that all the right, title and interest of the Unit Owner in the Property shall be sold at a judicial sale upon such notice and terms as the court shall establish, except that the court shall enjoin and restrain such Unit Owner from re-acquiring his or her interest at such judicial sale. The proceeds of any such judicial sale shall be paid to discharge court costs, mortgages and any other liens and encumbrances of record, in the order of their priority, and all such items shall be taxed against such Unit Owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments owing to the Association or any liens required to be discharged shall be paid to the Unit Owner. Upon the confirmation of such sale, the Purchaser thereat shall thereupon be entitled to a deed to the Unit ownership and to immediate possession of the Unit sold and may apply to the court for a writ for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the decree shall so provide, that the Purchaser shall take the interest in the Property sold subject to this Declaration.

ARTICLE X
AMENDMENT OF DECLARATION

(A) **In General.** Except where otherwise provided in this Article X or in any of the other Articles of this Declaration or by the Act, the provisions of this Declaration may be amended by an instrument in writing setting forth specifically the item or items to be amended and/or any new matter to be added, which instrument shall have been duly authorized by the affirmative vote of those Unit Owners having at least seventy-five percent (75%) of the voting power of the Association. Said instrument shall be signed and acknowledged by any two (2) officers of the Association and must contain the certification by the President or Secretary of the Association that a copy of the amendment has been mailed or hand delivered to all Unit Owners and all first mortgagees of Units and that Unit Owners having at least seventy-five percent (75%) of the voting power of the Association affirmatively approved the amendment. No amendment shall be made: (1) to the Undivided Interests of each Unit in the Common Elements as set forth in Article II(B)(4) and **Exhibit "D"** of this Declaration except by an amendment to this Declaration unanimously approved by all Unit Owners affected; (2) to the boundaries of any Unit; or (3) permitting the construction of an addition to or an expansion of a Unit into Limited Common Elements or Common Elements, except by an amendment to this Declaration unanimously approved by all Unit Owners. An amendment hereunder must be executed with the same formalities as this instrument and must refer to the County's recording information by which this instrument and amendments hereto are identified. No amendment by the Board or Unit Owner shall have any effect, however, upon the Declarant, the rights of Declarant under this Declaration and upon the rights of bona fide mortgagees until the written consent of the Declarant and/or such mortgagees to such amendment has been secured. Such consents shall be retained by the Secretary of the Association or the Declarant, as the case may be, and the Secretary's certification in the instrument of amendment as to the consent or non-consent of Declarant and the names of the consenting and non-consenting mortgagees of the various Units may be relied upon by all persons for all purposes. An amendment hereunder shall be effective upon recordation of the amendment in the office of the county recorder of the County; provided, however, that no provision in the Declaration may be amended so as to conflict with the obligatory provisions of the Act.

(B) **Special Amendment.** Without a vote of the Unit Owners, the Declarant and the Board shall each have the right and power, to record a special amendment ("**Special Amendment**") to this Declaration at any time, and from time to time, which amends this Declaration: (1) to meet the requirements of the Façade Easement, or institutional mortgagees, guarantors and insurers of first mortgage loans, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, Mortgage Guaranty Insurance Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, or (2) to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages covering Condominium Ownership Interests, or (3) to bring this Declaration into compliance with the Act, or (4) to correct clerical or typographical errors or obvious factual errors and inconsistencies in this Declaration or any Exhibit hereto or any supplement or amendment hereto, or (5) to correct obvious factual errors or inconsistencies between the Declaration and any exhibit thereto and other documents governing the Condominium, the correction of which would not materially impair the interest of any Unit Owner or mortgagee, or (6) to comply with the underwriting requirements of insurance companies providing casualty insurance, liability insurance, title insurance and other insurance coverages for the Property, or (7) to bring any provision hereof into compliance with the provisions of any applicable governmental statute, ordinance, rule or regulation (including any conditions imposed by governmental authorities in connection with approvals of the Condominium) or any judicial determination, or (8) to designate a successor to the person named to receive service of process for the Association and to file with the Secretary of State of the State of Ohio an appropriate change of statutory agent designation. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant and/or to the Board to vote in favor of, make, or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of the power to the Declarant and/or to the Board to vote in favor or, make and record Special Amendments.

(C) Declaratory Judgment Action Under (B) of this Article X. Any Unit Owner who is aggrieved by a Special Amendment to the Declaration that the Board makes pursuant to (B) above may commence a declaratory judgment action to have the Special Amendment declared invalid as violative of (B) above. Any action filed pursuant to this paragraph shall be filed in the common pleas court of the county in which the Property is situated within one (1) year after the date of the recording of the Special Amendment.

ARTICLE XI
RELOCATION OF BOUNDARIES

(A) The boundaries between adjoining Units and their appurtenant Limited Common Elements and Exclusive Use Areas may be relocated, and the Undivided Interests in the Common Elements, Limited Common Elements and Exclusive Use Areas appurtenant to those Units may be reallocated, by an amendment to the Declaration pursuant to the following procedures:

(1) **Application**

(a) The Owners of the adjoining Units shall submit to the Board a written application for the relocation and reallocation. The application shall be accompanied by the written consents of the holders of all liens on those Units, except liens for real estate taxes and assessments of political subdivisions not due and payable.

(b) In the application, the Owners of the adjoining Units may request a specific reallocation of their Undivided Interests in the Common Elements allocated to the adjoining Units.

(2) Unless the Board finds any requested reallocation of the Undivided Interests in the Common Elements to be unreasonable, within thirty days after the Board receives the application, the Association shall prepare, at the expense of the Owners of the adjoining Units, an amendment to the Declaration that is executed by the Owners of the affected Units and that includes all of the following:

(a) Identification of the affected Units;

(b) Words of conveyance between the Owners of the Units;

(c) A specification of the Undivided Interests in the Common Elements, the proportionate shares of Common Surplus and Common Expenses, and the voting powers of each Unit resulting from the relocation and reallocation, the total of which shall equal the interests, shares, and powers of the former adjoining Units.

(3) At the expense of the Owners of the affected Units, the Association shall record the amendment to the Declaration together with both of the following:

(a) Any drawing, plat, or plans necessary to show the altered boundaries of the affected Units, and their appurtenant Common Elements, Limited Common Elements, and Exclusive Use Areas;

(b) The dimensions and identifying number of each Unit that results from the relocation and reallocation.

(B) Existing liens automatically shall attach to each Unit that results from the relocation and reallocation.

(C) Rights to the use of Limited Common Elements may be reallocated between or among Units by an amendment to the Declaration pursuant to the following procedures.

(1) The Owners of the affected Units shall prepare and execute at their expense an amendment to the Declaration that identifies the affected Units and specifies the reallocated rights to the affected Limited Common Elements.

(2) The Owners of the affected Units shall submit to the Board the amendment, accompanied by the written consents of the Owners of all affected Units and the holders of all liens on those Units except liens for real estate taxes and assessments of political subdivisions not due and payable.

(3) At the expense of the Owners of the affected Units, the Association shall record the submitted amendment to the Declaration.

(D) If this Declaration reserves any Common Element as an Exclusive Use Area, the Board may delegate that Common Element to the use of a certain Unit or Units, to the exclusion of other Units. The delegation of a Common Element as an Exclusive Use Area may be subject to criteria that the Association establishes, including the payment of an additional fee that is part of each benefited Unit's Common Expenses and that is only to be used for the delegated Common Element.

(E) Nothing in division (D) of this section affects a Unit Owner's right to exclusive use of any Common Element that the Declaration designates as a Limited Common Element appurtenant to the Owner's Unit.

ARTICLE XII
CONDEMNATION

(A) If the entire Property is taken by eminent domain or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Condominium shall terminate. The condemnation award shall be apportioned among the Unit Owners in accordance with their respective Undivided Interests in the Common Elements. The Association shall as soon as practicable determine the share of the condemnation award to which each Unit Owner is entitled and each such share shall be paid into separate accounts and disbursed as soon as practicable to the Unit Owners entitled to same. No Unit Owner, however, shall receive any portion of his or her share of such award until all liens and encumbrances on his or her Unit have been paid, released or discharged.

(B) If less than the entire Property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Property hereunder shall not terminate. Each Unit Owner shall be entitled to a share of the condemnation award to be determined in the following manner: As soon as practicable the Association shall, reasonably and in good faith, allocate the condemnation award between compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the Unit Owners, as follows: (1) the total amount allocated to taking of or injury to the Common Elements shall be apportioned among Unit Owners in proportion to their respective Undivided Interests in the Common Elements; (2) the total amount allocated to severance damages shall be apportioned to those Units which were not taken or condemned; (3) the respective amounts allocated to the taking of or injury to a particular Unit and/or improvements a Unit Owner has made within his or her own Unit shall be apportioned to the particular Unit involved, and (4) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable under the circumstances. If an allocation of the condemnation award is already established in negotiation, judicial decree, or otherwise, then in allocating the condemnation award the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made by checks payable jointly to the respective Unit Owners and their respective first mortgagees.

(C) If a partial taking results in the taking of a complete Unit, the Unit Owner thereof automatically shall cease to be a member of the Association. Thereafter the Board shall reallocate the ownership, voting rights, assessment ratio and other rights determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception and shall file an amendment of this Declaration evidencing such reallocation, which amendment need only be approved by the Board and by all Unit Owners whose undivided interests in the Common Elements are affected.

(D) The payment of funds by the condemning authority pursuant to this Article XII and any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article VI hereof (Insurance and Reconstruction).

(E) Each Unit Owner and his or her respective mortgagee by acceptance of a deed conveying such Condominium Ownership Interest or a mortgage encumbering such Condominium Ownership Interest, as the case may be, hereby irrevocably appoints the Association his or her attorney-in-fact, coupled with an interest, and authorizes, directs and empowers such attorney, at the option of the attorney, to carry out the provisions of this Article XII.

(F) The holder, insurer or guarantor of a first mortgage on a Unit shall receive timely written notice of any condemnation that affects either a material portion of the Condominium or the Unit securing its mortgage.

ARTICLE XIII
RIGHTS OF FIRST MORTGAGEES

The following provisions inure to the benefit of each holder, insurer or guarantor of a first mortgage encumbering a Unit:

(A) **Default By Unit Owner.** The holder of any first mortgage encumbering a Unit in respect of which the Unit Owner shall be in default for a period of sixty (60) days in the performance of his or her obligations under this Declaration, the Bylaws and/or the Rules shall be provided with notice of said default by the Association. Within sixty (60) days after receiving said notice from the Association, the holder of the mortgage encumbering said Unit may (but shall not be obligated to do so) cure said default. If, however, said default is not curable within said sixty (60) day period by reason of delay(s) beyond the reasonable control of said mortgagee, then, providing said mortgagee has commenced to cure said default within said sixty (60) day period and has continued thereafter with due diligence to complete the curing of said default, the time within which said mortgagee shall be permitted to cure said default shall be extended for a period co-extensive with said delay(s).

(B) **Statement of Default.** A first mortgagee, upon written request to the Board, shall be given a written statement by the Board of the number of Unit Owners who are more than one (1) month delinquent in the payment of monthly Common Assessments at the time said written request is received by the Board.

(C) **Compliance With Mortgage Insurance Regulations.** In general, and in order to facilitate the marketability of the Units, the Board shall comply, to the best of its ability, with requests by first mortgagees for information required by regulations of the Federal Home Loan Bank Board, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Government National Mortgage Association, Mortgage Guaranty Insurance Corporation, the Department of Housing and Urban Development, the Federal Housing Corporation and the Veteran's Administration (or other private mortgage insurance company), or required by any other secondary mortgage market lender, or by any governmental insurer or guarantor of the first mortgage of any Unit.

(D) **Notices to Mortgagees.** Upon written request to the Association, each mortgagee shall have the right to receive notices of all meetings of the Association and to designate a representative to attend any such meeting. Furthermore, the holder, insurer or guarantor of a first mortgage on a Unit shall receive timely written notice from the Association of: (1) a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; (2) any condemnation or casualty loss that affects either a material portion of the Condominium or the Unit securing its mortgage; and (3) any proposed action that requires the consent of a specified percentage of first mortgage holders.

(E) **Other Notices to Each Holder, Insurer of Guarantor of a First Mortgage Encumbering a Unit.** Timely notice shall be given of:

(1) Any proposed amendment hereto that effects a change in:

(a) the boundaries of any Unit or the Limited Common Elements appertaining thereto;

(b) the interests in the Common Elements appertaining to any Unit or the liability for Common Expenses appertaining thereto;

(c) the voting rights appertaining to any Unit; or

(d) purposes to which any Unit or the Common Elements are restricted; and

(2) Any proposed termination of the Property.

(F) **Special Federal Home Loan Mortgage Corporation Provisions.**

(1) Except as required by the Act, unless Unit Owners exercising at least seventy-five percent (75%) of the voting power of the Association (and first mortgagees holding at least fifty-one percent [51%] of the first mortgages on Units) give their

consent, the Association shall not effect amendments to the Condominium Instruments that would change:

(a) voting rights;

(b) Common Assessments, liens for Common Assessments or the priority of liens for Common Assessments;

(c) reserves for maintenance, repair and replacement of Common Elements;

(d) responsibility for maintenance and repairs;

(e) right to use the Common Elements;

(f) allocation of Undivided Interests in the Common Elements or Limited Common Elements or rights to their use and Article XI (Relocation of Boundaries);

(g) redefinition of any Unit boundaries except as provided in Article XII;

(h) convertibility of Units into Common Elements or vice versa, except as provided in Article XI;

(i) expansion or contraction of the Condominium, or addition, annexation or withdrawal of the Property to or from the Condominium;

(j) requirements for insurance policies or fidelity bonds;

(k) leasing of Units;

(l) imposition of any restrictions on a Unit Owner's right to sell or transfer or otherwise convey his or her Unit;

(m) a decision of the Association to establish self-management when professional management had been required previously by the Condominium Instruments or by an eligible mortgage holder;

(n) restoration or repair of the Condominium (after a hazard, damage or partial condemnation) in a manner other than that specified in the Condominium Instruments;

(o) any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs;

(p) any provisions that expressly benefit mortgage holders, insurers or guarantors; or

(q) the reallocation of Undivided Interests in the Common Elements resulting from a partial condemnation or partial destruction.

(2) The provisions of this Section shall not be construed to reduce the percentage vote that must be obtained from mortgagees or Unit Owners or a larger percentage vote as otherwise required for any of the actions contained in this Declaration or required by the Act.

(3) First mortgagees may, jointly or singularly, pay taxes or other charges which are in default or which may or have become a charge against the Common Elements and may pay overdue premiums of casualty insurance policies or secure new casualty insurance coverage upon the lapse of a policy, for the Common Elements and first mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

(4) The implied approval of a first mortgagee may be assumed when such first mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a return receipt requested.

(G) Audited Financial Statements. Upon written request by an Eligible Mortgage Holder to the Association, the Association shall be required to prepare and furnish within a reasonable period of time an audited financial statement of the Association for the immediately preceding fiscal year.

ARTICLE XIV
SALE, LEASING OR OTHER ALIENATION OF UNITS

(A) **Unit Owner's Right of Transfer.** The Association shall have no right of first refusal with respect to the purchase or lease of a Unit, and a Unit Owner shall be able to transfer his or her Unit freely by sale, gift, devise, lease or otherwise without restriction except as provided below.

(B) **Unit Owner's Right to Lease Unit.**

(1) Any Unit Owner shall have the right to lease all (but not less than all) of his or her Unit upon such terms and conditions as the Unit Owner may deem advisable, except that no Unit shall be leased or sub-leased for transient or hotel purposes. Any lease or sublease of a Unit for a period of less than six (6) months shall be deemed to be a lease or sublease for transient or hotel purposes. Any lease or sublease of a Unit shall be in writing and shall provide: (a) that the lease or sublease shall be subject to the terms of this Declaration, the Bylaws and Rules and that any failure of a lessee to comply with the terms of this Declaration, the Bylaws and Rules shall be in default under the lease or sublease; and (b) that the Association shall have the right to require the Unit Owner to deposit with the Association such an amount not to exceed one (1) month's rent as

security to provide funds for repairs and to assure compliance with this Declaration, the Bylaws and Rules. The limitations with respect to the leasing of Units shall not apply to the: (a) Declarant; or (b) a first mortgagee of a Unit in connection with a mortgage foreclosure (or acceptance of a deed in lieu of foreclosure), or with respect to any sale or transfer by the first mortgagee or any other party who acquired the Unit in connection with the foreclosure or deed-in-lieu.

(2) **Association's Rights with Respect to Leased Units**. A tenant shall comply with all covenants, conditions and restrictions set forth in this Declaration, the Bylaws and the Rules of the Association, as lawfully amended. Violations of those covenants, conditions or restrictions shall be grounds for the Association or any Unit Owner to commence a civil action for damages, injunctive relief, or both, and an award of court costs and reasonable attorneys' fees in both types of action. The Association has the following rights under Section 5311.19(B) of the Act in order to implement the provisions of this Article XIV(B)(2):

(a) The Association may initiate eviction proceedings pursuant to Chapters 5321 and 1923 of the Ohio Revised Code to evict a tenant for a violation of division (B)(2) of this Section. The action shall be brought by the Association, as the Unit Owner's agent, in the name of the Unit Owner.

(b) In addition to any procedures required by Chapters 5321 and 1923 of the Revised Code, the Association shall give the Unit Owner at least ten (10) days' written notice of the intended eviction action.

(c) The costs of any eviction action brought pursuant to division (B)(2)(a) of this Section, including reasonable attorneys' fees, shall be charged to the Unit Owner and shall be the subject of a special assessment against the offending Unit and made a lien against that Unit.

(d) The remedies to the Association under this section are in addition to the remedies accorded the Association in Article XVI of this Declaration.

(C) Association Making Available Condominium Documents and Financial Information. The Association shall make available to Unit Owners, lenders and holders and insurers of first mortgages on any Unit, current copies of this Declaration, the Bylaws, Rules and other books, records and financial records of the Association. The Association shall also make available to prospective purchasers current copies of the Declaration, Bylaws, Rules, and the most recent annual statement, if such is prepared. "Available" shall at least mean available for inspection upon request, during normal business hours or under other reasonable circumstances. Upon written request by any agency or corporation who makes, purchases, sells, insures or guarantees mortgages on Units, the Association shall prepare and furnish within a reasonable time a financial statement of the Association for the immediately preceding year. The Association shall have the right to impose a reasonable fee to defray the cost of copying such information.

ARTICLE XV
INFORMATION OF OWNERSHIP AND OCCUPANCY OF UNITS

(A) **Unit Owner Information.** Within thirty (30) days after a Unit Owner obtains a Condominium Ownership Interest, the Unit Owner shall provide the following information in writing to the Association through the Board of Directors:

(1) The home and business mailing addresses, and home and business telephone numbers of the Unit Owner and all Occupants of the Unit; and/or

(2) The name, business address and business telephone number of any person who manages the Owner's Unit as an agent of that Owner.

(B) **Change of Information.** Within thirty (30) days after a change in any of the information that (A) of this Section requires, a Unit Owner shall notify the Association, through the Board of Directors, in writing, of the change. When the Board of Directors requests, a Unit Owner shall verify or update the information.

ARTICLE XVI
COMPLIANCE AND NON-MONETARY DEFAULT

(A) **Enforcement.** In the event of a violation by any Unit Owner or any tenant of a Unit Owner (other than the nonpayment of Common Assessments or any other charge, which is governed by Article V of this Declaration) of any of the provisions of this Declaration, the Bylaws or the Rules, the Association shall notify the Unit Owner and any tenant or other Occupant of the violation, by written notice. If such violation is not cured as soon as is reasonably practical and in any event within seven (7) days after such written notice, or if the violation is not capable of being cured within such seven (7) day period, if the Unit Owner or tenant or other Occupant fails to commence and diligently proceed to completely cure such violation as soon as is reasonably practical within seven (7) days after written demand by the Association, or if any similar violation is thereafter repeated, the Association may, at its option:

(1) Impose an Enforcement Assessment against the Unit Owner or tenant or other Occupant as provided in Subsection (B) of this Article; and/or

(2) Commence an action to enforce performance on the part of the Unit Owner or tenant or other Occupant, and to require the Unit Owner to correct such failure, or for such other relief as may be necessary under the circumstances, including injunctive relief; and/or

(3) The Association may itself perform any act or work required to correct such failure and, either prior to or after doing so, may charge the Unit Owner with all reasonable costs incurred or to be incurred by the Association in connection therewith, plus a service fee equal to fifteen percent (15%) of such costs. In connection with the foregoing, the Association may perform any maintenance or repairs required to be

performed, may remove any change, alteration, addition or improvement which is unauthorized or not maintained in accordance with the provisions of this Declaration, and may take any and all other action reasonably necessary to correct the applicable failure; and/or

(4) Commence an action to recover damages.

(B) Enforcement Assessments.

(1) Prior to imposing a charge for damages or an Enforcement Assessment pursuant to this Article and pursuant to Article II, Section 10.(s) of the Bylaws, the Board shall give the Unit Owner a written notice that includes all of the following:

(a) A description of the property damage or violation, including the provision(s) of the Declaration, Bylaws or Rules, which have allegedly been violated;

(b) The amount of the proposed charge for damages or the Enforcement Assessment;

(c) A statement that the Owner has a right to a hearing before the Board to contest the proposed charge for damages or the Enforcement Assessment;

(d) A statement setting forth the procedures to request a hearing pursuant to (B)(2) of this Section;

(e) A reasonable date by which the Unit Owner must cure the violation to avoid the proposed charge for damages or the Enforcement Assessment.

(2) Hearings.

(a) To request a hearing, the Owner shall deliver a written notice to the Board not later than the tenth (10^{th}) day after receiving the notice required by division (1) of this Section. If the Owner fails to make a timely request for a hearing the right to that hearing is waived, and the Board may immediately impose a charge for damages or an Enforcement Assessment pursuant to this Section (B).

(b) If a Unit Owner requests a hearing, at least seven (7) days prior to the hearing, the Board shall provide the Unit Owner with a written notice that includes the date, time, and location of the hearing.

(c) The Unit Owner shall have an opportunity to respond, to present evidence and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Board.

(3) The Board shall not levy a charge for damages or the Enforcement Assessment before holding any hearing requested pursuant to (B)(2) of this Section.

(4) The Unit Owners, through the Board, may allow a reasonable time to cure a violation described in Section 10.(s) of the Bylaws before imposing a charge for damages or Enforcement Assessment.

(5) Within thirty (30) days following a hearing at which the Board imposes a charge or assessment, the Association shall deliver a written notice of the charge for damages or Enforcement Assessment to the Unit Owner, which will be due and payable within ten (10) days after such notice. Any Enforcement Assessment levied against a Unit Owner shall be deemed a Common Assessment and if not paid when due, all of the provisions of this Declaration relating to the late payment of Common Assessments shall be applicable except as otherwise provided by the Act.

(6) Any written notice that Section (B)(1) requires shall be delivered to the Unit Owner or any Occupant of the Unit by personal delivery, by certified mail, return receipt requested, by Federal Express or another recognized overnight courier for delivery on the next business day or by regular mail.

(D) **Negligence**. A Unit Owner shall be liable and may be charged by the Association for the expense of any maintenance, repair or replacement rendered necessary by his or her act, neglect or carelessness, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a Unit or its appurtenances or of the Common Elements.

(E) **Responsibility of Unit Owner for Tenants**. Each Unit Owner shall be responsible for the acts and omissions, whether negligent or willful, of any tenant of his or her Unit, and for all employees, agents and invitees of the Unit Owner or any such tenant, and in the event the acts or omissions of any of the foregoing shall result in any damage to the Property, or any liability to the Association, the Unit Owner shall be charged for same, limited where applicable to the extent that the expense or liability is not met by the proceeds of insurance carried by the Association. Furthermore, any violation of any of the provisions of this Declaration, the Bylaws or any Rule, by any tenant of any Unit, or any employees, agents or invitees of a Unit Owner or any tenant of a Unit, shall also be deemed a violation by the Unit Owner, and shall subject the Unit Owner to the same liability as if such violation was that of the Unit Owner.

(F) **Costs and Attorney's and Paralegal's Fees.** In any legal proceedings commenced by the Association to enforce this Declaration, the Bylaws, and/or the Rules, as said documents may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorney's and paralegal's fees. Any such cost or attorney's and paralegal's fees awarded to the Association in connection with any action against any Unit Owner shall be charged to the Unit Owner.

(G) No Waiver of Rights. The failure of the Association or any Unit Owner to enforce any covenant, restriction or any other provision of this Declaration, the Bylaws, or the Rules, as the said documents may be amended from time to time, shall not constitute a waiver of the right to do so thereafter.

ARTICLE XVII
REMOVAL FROM CONDOMINIUM OWNERSHIP

For reasons other than substantial destruction of the Condominium (in which event the provisions of Article VI would apply) or condemnation of the Condominium (in which event the provisions of Article XII would apply), the Unit Owners exercising at least ninety percent (90%) of the voting power of the Association (and with the vote of at least 67% of the holders of first mortgages) may elect to remove the Property from the provisions of the Act. In the event of such election, all liens and encumbrances, except taxes and assessments of political subdivisions not then due and payable, upon all or any part of the Property, shall be paid, released, modified, or discharged, and a certificate setting forth that such election was made shall be filed with the recorder of County, and by him or her recorded. Such certificate shall certify therein under oath that all liens and encumbrances, except taxes and assessments of political subdivisions not then due and payable, upon all or part of the Common Elements have been paid, released or discharged; and, shall also be signed by the Unit Owners, each of whom shall certify therein under oath that all such liens and encumbrances on his or her Unit or Units have been paid, released, modified or discharged. A Property is deemed removed from the provisions of the Act upon the filing of the Certificate with the recorder of the County, and upon that removal, the Property is owned in common by the Unit Owners. The Undivided Interest in the Property owned by each Unit Owner is the Undivided Interest in the Common Elements appurtenant to the Unit in the Property previously owned by each Owner.

ARTICLE XVIII
TRANSFER OF SPECIAL DECLARANT RIGHTS

(A) A Declarant may transfer Special Declarant Rights created or reserved under the Act or provided for in the Condominium Instruments by an instrument evidencing the transfer recorded in the land records of the County in which the Property is located. The instrument is not effective unless executed by both the transferor and transferee.

(B) Upon transfer of any Special Declarant Right, the liability of a transferor Declarant is as follows:

(1) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon the transferor

Declarant by the Act. Lack of privity (direct contractual relationship) does not deprive the Association or any Unit Owner of standing to bring an action to enforce any obligation of the transferor.

(2) If the successor to any Special Declarant Right is an Affiliate of a Declarant, the transferor is jointly and severally liable with the successor for any obligation or liability of the successor which related to the Property.

(3) If a transferor retains any Special Declarant Rights, but transfers other Special Declarant Rights to a successor who is not an Affiliate of the Declarant, the transferor is also liable for any obligations and liabilities relating to the retained Special Declarant Rights imposed on a Declarant by the Act or the Condominium Instrument arising after the transfer.

(4) A transferor has no liability for any act or omission, or any breach of contractual or warranty obligation arising from the exercise of a Special Declarant Right by a successor Declarant who is not an Affiliate of the transferor.

(C) Unless otherwise provided in a mortgage held by a first mortgagee, in case of foreclosure of a mortgage (or deed in lieu of foreclosure), tax sale, judicial sale, or sale under the Bankruptcy Code or receivership proceedings, of any Units owned by a Declarant in the Property, a person acquiring title to all the Units being foreclosed (or deed in lieu of foreclosure) or sold, but only upon his or her request, succeeds to all Special Declarant Rights related to such Units, or only to any rights reserved in the Condominium Instruments to maintain models, sales offices, customer service offices and signs. The judgment or instrument conveying title shall provide for transfer of only the Special Declarant Rights requested.

(D) Upon foreclosure (or deed in lieu of foreclosure), tax sale, judicial sale, Units in a Property owned by a Declarant: (1) the Declarant ceases to have any Special Declarant Rights, and (2) right of a Declarant to elect or designate Board Members pursuant to the Bylaws and Act terminates unless the judgment or instrument conveying title provides for transfer of all Special Declarant Rights held by that Declarant to a successor Declarant.

(E) The liabilities and obligations of persons who succeed to Special Declarant Rights are as follows:

(1) A successor to any Special Declarant Right who is an Affiliate of a Declarant is subject to all obligations and liabilities imposed on the transferor by the Act or by the Condominium Instruments.

(2) A successor to any Special Declarant Right, other than a successor described in paragraphs (3) or (4) of this Subsection, who is not an Affiliate of a Declarant, is subject to all obligations and liabilities imposed by the Act or the Condominium Instruments: (a) on a Declarant which relate to such Declarant's exercise or non-exercise of Special Declarant Rights; or (b) on the transferor, other than: (i) misrepresentations by any previous Declarant; (ii) warranty obligations on improvements made by any previous Declarant, or made before the Condominium was created; (iii)

breach of any fiduciary obligation by any previous Declarant or appointees to the Board of Directors; or (iv) any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

(3) A successor to only a Special Declarant Right reserved in the Condominium Instruments to maintain models, sales offices, customer service offices and signs, if such successor is not an Affiliate of a Declarant, may not exercise any other Special Declarant Right, and is not subject to any liability or obligation as a Declarant, except the obligation to provide a Disclosure Statement under Sections 5311.25, 5311.26 and 5311.27 of the Act and any liability arising as a result.

(4) A successor to all Special Declarant Rights held by the transferor who is not an Affiliate of that Declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to Units under Subsection (B), may declare the intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all Special Declarant Rights to any person acquiring title to any Unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by the transferor to control the Board of Directors in accordance with the provisions of the Act and the Condominium Instruments for the duration of the period that a Declarant has the right to elect or designate Board Members, and any attempted exercise of those rights is void. So long as a successor Declarant may not exercise Special Declarant Rights under this subsection, such successor Declarant is not subject to any liability or obligation as a Declarant.

(F) Nothing in this Article subjects any successor to a Special Declarant Right to any claims against or other obligations of a transferor Declarant, other than claims and obligations arising under the Act or the Condominium Instruments.

ARTICLE XIX
MISCELLANEOUS PROVISIONS

(A) Right of Declarant to act as Board of Directors. Declarant reserves unto itself the right to manage, control and exercise all of the rights of the Association in accordance with and to the extent permitted by the provisions of Sections 5311.08 and 5311.25 of the Act.

(B) Record of Mortgagees of Units. Any Unit Owner who morfgages his or her Ownership Interest shall notify the Association in such manner as the Association may direct, of the name and address of his or her mortgagee and thereafter shall notify the Association of the payment, cancellation or other alteration in the status of such mortgage. The Association shall maintain such information in a record entitled "Mortgagees of Units".

(C) Rights of Mortgagees of Units to Receive Notices. Upon written request to the Board, the holder of any duly recorded mortgage or trust deed against any Unit ownership shall be given a copy of any and all notices permitted or required by this Declaration to be given to the owner or owners whose Unit ownership is subject to such mortgage or trust deed.

(D) **Notices to Association.** Notices required to be given to the Board or the Association may be delivered to any member of the Board or officer of the Association either personally or by mail to such member or officer at his or her Unit.

(E) **Notices.** All notices required or permitted hereunder, and under the Bylaws and the Act, to the Declarant, the Association, the Board of Directors and its delegates shall be in writing and shall be given by personal delivery or sent by regular U.S. mail to the Board of Directors or its delegates at the address of the Property or to such other address as the Board may designate from time to time by notice in writing to all Unit Owners. All notices to the Declarant shall be sent by registered or certified mail, return receipt requested, to: Mr. David M. Perkowski, 2504 West 10th Street, Cleveland, Ohio 44113, with a copy of same to Richard A. Rosner, Esq., Kahn Kleinman, A Legal Professional Association, 2600 Erieview Tower, 1301 East Ninth Street, Cleveland, Ohio 44114, or to such other address as the Declarant or its counsel may designate from time to time by notice in writing to all Unit Owners. All notices to any Unit Owner shall be sent by personal delivery or sent by regular U.S. mail to such Unit Owner's Unit address or to such other address as may be designated by him or her from time to time, in writing, to the Board of Directors. All notices shall be deemed to have been given and therefore effective not later than forty-eight (48) hours after the date that such notice is deposited in the U.S. Mail, except notices of change of address which shall be deemed to have been given when received, and except as otherwise provided herein. Any notice required or permitted to be given to any Occupant of a Unit other than a Unit Owner shall effectively be given if hand delivered to such Occupant or placed in his or her mail box or placed under the door to such Occupant's Unit.

(F) **Title to Units Subject to Declaration.** Each grantee of an interest in a Unit, by the acceptance of a deed of conveyance, accepts the same subject to all easements, restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights, and powers created or reserved by this Declaration and in the documents referred to in this Declaration, and all rights, benefits and privileges of every nature hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in the Property, and shall inure to the benefit of such owner in like manner as though the provisions of the Declaration were recited and stipulated at length in each and every deed of conveyance.

(G) **Non-Liability of Declarant.** Except as otherwise provided in the Property Act, neither Declarant nor its representatives, successors or assigns shall be liable for any claim whatsoever arising out of or by reason of any actions performed pursuant to any authorities granted or delegated to it by or pursuant to this Declaration or the Bylaws in Declarant's (or its representative's) capacity as owner, manager or seller of the Property whether or not such claim (1) shall be asserted by any Unit Owner, an Occupant of a Unit, the Association, or by any person or entity claiming through any of them; or (2) shall be on account of injury to person or damage to or loss of property wherever located and however caused; or (3) shall arise ex contractu or (except in the case of gross negligence) ex delictu. Without limiting the generality of the foregoing, the foregoing enumeration includes all claims for, or arising by reason of, the Property or any part thereof being or becoming out of repair or containing any patent or latent defects, or by reason of any act or neglect of any Unit Owner, an Occupant of a Unit, the Association, and their respective agents, employees, guests and invitees, or by reason of any neighboring property or personal property located on or about the Property, or by reason of the failure to function or disrepair of any utility services (heat, air-conditioning, electricity, gas, telephone, water or sewage).

(H) Declarant Assessments. Except as otherwise provided in the Act, the Declarant shall not be required to pay any assessments or monies to finance any claim or litigation against the Declarant.

(I) Non-Waiver. No covenants, restrictions, conditions, obligations, or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

(J) Saving Clause. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration, or of any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration.

(K) Rule Against Perpetuities. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful or void for violation of (1) the rule against perpetuities or some analogous statutory provision, (2) the rule restricting restraints on alienation, or (3) any other statutory or common-law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of George W. Bush, President of the United States of America, and Richard Cheney, Vice President of the United States of America.

(L) Headings. The heading of each Article and of each such paragraph in this Declaration and in the Bylaws is inserted only as a matter of convenience and for reference and in no way defines, limits or describes the scope or intent of this Declaration or the Bylaws nor in any way affects this Declaration or the Bylaws.

(M) Gender. The use of the masculine gender herein or in the Bylaws shall be deemed to include the feminine and the neuter genders, as the case may be, and the use of the singular shall be deemed to include the plural, whenever the context so requires.

(N) Rights of Action. The Association and any aggrieved Unit Owner shall have a right of action against Unit Owners for failure to comply with the provisions of this Declaration, Bylaws, Rules or other Condominium Instruments, or with decisions of the Association which are made pursuant to authority granted the Association in such documents. Unit Owners shall have similar rights of action against the Association.

(O) Liberal Interpretation. The provisions of this Declaration shall be liberally interpreted to effectuate its purpose of creating a uniform plan for the development and operation of a first-class Condominium.

(P) <u>Successors and Assigns</u>. The provisions of this Declaration shall be binding upon and shall inure to the benefit of the Declarant and its successors and assigns.

(Q) <u>Non-Retention of Property Interest in Common Elements by Declarant</u>. The Declarant shall not retain a property interest in any of the Common Elements after control of the Condominium is assumed by the Association except in the Declarant's capacity as a Unit Owner of unsold Condominium Ownership Interests and except as permitted by Section 5311.25(B) of the Act.

(R) <u>Declarant's Obligation with Respect to Unsold Units</u>. The Declarant shall assume the rights and obligations of a Unit Owner in its capacity as owner of unsold Units in the Condominium, including, without limitation, the obligation to pay Common Expenses attributable to such Units, from the date the Declaration (or amendment adding additional Units) is filed for record, even if the construction of the Units and the appurtenant Common Elements subject to the Condominium Ownership Interests has not started or is not complete.

IN WITNESS WHEREOF, the Declarant has caused its name to be signed to these presents as of this 16th day of May, 2006.

ERIE BUILDING CONDOMINIUMS, LTD.
an Ohio limited partnership

By: **1260 West 4th Street, LLC**
an Ohio limited liability company
its General Partner

By: ______________________
David M. Perkowski, its Managing Member

{MJS\K0552350.1}

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

Before me, a Notary Public in and for said County and State aforesaid, personally appeared **ERIE BUILDING CONDOMINIUMS, LTD.**, an Ohio limited partnership, by and through 1260 West 4th Street, LLC, an Ohio limited liability company, its general partner, by and through David M. Perkowski, its Managing Member, who acknowledged that he did sign the foregoing instrument and that the same was his free act and deed individually and as such officer, and the free act and deed of said limited liability company and said limited partnership.

GIVEN, under my hand and Notarial Seal this ______ day of _____________, 200___.

Robert M. Greggo

NOTARY PUBLIC Robert M. Greggo
My Commission Expires: Attorney at Law
My commission has no expiration date

THIS INSTRUMENT PREPARED BY:

MARK J. STOCKMAN, ATTORNEY AT LAW
KAHN KLEINMAN, A Legal Professional Association
1301 EAST NINTH STREET, SUITE 2600
CLEVELAND, OHIO 44114-1899
TEL: (216) 696-3311

EXHIBIT "1"

TO DECLARATION OF CONDOMINIUM OWNERSHIP FOR ERIE BUILDING LOFTS CONDOMINIUM

Situated in the City of Cleveland, County of Cuyahoga, State of Ohio and known as being part of Original Two Acre Lot 30, and bounded and described as follows:

Beginning at a nail found in the centerline of West 4th Street, 33 ft. wide, at its intersection with the centerline of Lakeside Avenue, 99 ft. wide, and from which point a stone monument found in the centerline of West 4th Street bears South 33° 56' 32" East, 0.39 ft;

Thence South 33° 56' 32" East along the centerline of West 4th Street, 49.50 ft. to its intersection with the southeasterly line of Lakeside Avenue;

Thence South 56° 07' 45" West along the southeasterly line of Lakeside Avenue, 16.50 ft. to its intersection with the southwesterly line of West 4th Street;

Thence South 33° 56' 32" East along the southwesterly line of West 4th Street, 132.00 ft. to its intersection with the southeasterly line of a parcel of land conveyed to Weston Inc. by deed recorded in Volume 94-05799, Page 40 of the Official Records of Cuyahoga County, and the principal place of beginning of the parcel herein described, and from which point a drill hole set bears North 56° 07' 45" East, 0.50 ft.;

Thence South 33° 56' 32" East along the southwesterly line of West 4th Street, 133.60 ft. to its intersection with the northwesterly line of Parcel 3 of land conveyed to White-Cort, Limited Partnership by deed recorded in Volume 85-4380, Page 10 of the Official Records of Cuyahoga County, and being also the northwesterly line of Parcel "C-1" as shown by the White-Cort Lot Split Map No.2 (no recorded), and from which point a drill hole set bears North 55° 58' 35" East, 0.50 ft.;

Thence South 55° 58' 35" West along the northwesterly line of said Parcel "C-1", 65.98 ft. to a nail set at its intersection with the northeasterly line of Parcel 5 of said land conveyed to White-Cort, Limited Partnership;

Thence North 34° 01' 25" West along the northeasterly line of said Parcel 5 of land conveyed to White-Cort Limited Partnership, 15.52 ft. to its intersection with the southeasterly line of Parcel 4 of said land conveyed to White-Cort Limited Partnership;

Thence North 55° 58' 35" East along the southeasterly line of said Parcel 4 of land conveyed to White-Cort Limited Partnership, 15.79 ft. to its intersection with the northeasterly line of said land so conveyed;

Thence North 33° 56' 32" West along the northeasterly line of said Parcel 4 of land conveyed to White-Cort Limited Partnership, 50.75 ft. to a nail set at an angle point, therein;

EXHIBIT "1"

TO DECLARATION OF CONDOMINIUM OWNERSHIP FOR ERIE BUILDING LOFTS CONDOMINIUM

Continued

Thence South 56° 03' 28" West along the northeasterly line of said Parcel 4 of land conveyed to White-Cort Limited Partnership, 3.25 ft. to a nail set at an angle point, therein;

Thence North 33° 56' 32" West along the northeasterly line of said Parcel 4 of land conveyed to White-Cort Limited Partnership, 67.47 ft. to a drill hole set at its intersection with the southeasterly line of said land conveyed to Weston Inc;

Thence North 56° 07' 45" East along the southeasterly line of said land conveyed to Weston Inc., 53.46 ft. to the principal place of beginning, and containing 7,176 sq. ft. or 0.1647 acres of land according to the survey by Donald G. Bohning & Associates, Inc., dated May, 1999.

The courses used in this description are referenced to the assumed bearing of North 33° 56' 32" West on the centerline of West 4th Street as shown by the plat recorded in Volume 266, Page 7 of Cuyahoga County Map Records, and are used to indicate angles only.

EXHIBIT "A"

TO DECLARATION OF LIBERTY POINTE CONDOMINIUM

REFERENCE TO DRAWINGS

The particulars of the land, the Building and other improvements, including, but not limited to, the layout, location, designation, dimensions of each Unit, the layout, locations and dimensions of the Common Elements and the location and dimensions of all appurtenant easements or encroachments are shown graphically on the set of Drawings incorporated in the Declaration of Condominium Ownership for Erie Building Lofts Condominium (the "Declaration") by reference as Exhibit "A", prepared and bearing the certified statements of Donald G. Bohning & Associates, Inc., Registered Surveyors and Licensed Professional Engineers, 7979 Hub Parkway, Valley View, Ohio 44125 and Jonathan Sandvick, Registered Architect, of Sandvick Architects, 1265 West 6th Street, Cleveland, Ohio 44113, as required by the Condominium Property Act of the State of Ohio. Such set of Drawings will be filed in the Condominium Map Records of the Office of the Recorder of Cuyahoga County, Ohio, simultaneously with the recording of the Declaration.

EXHIBIT "B"

TO DECLARATION OF CONDOMINIUM OWNERSHIP FOR

ERIE BUILDING LOFTS CONDOMINIUM

CLEVELAND, OHIO

BYLAWS

OF

ERIE BUILDING LOFTS CONDOMINIUM ASSOCIATION, INC.

An Ohio Non-Profit Corporation

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BYLAWS OF THE
ERIE BUILDING LOFTS CONDOMINIUM ASSOCIATION, INC.

The within Bylaws are executed and incorporated in the Declaration of Condominium Ownership for Erie Building Lofts Condominium ("**Declaration**") pursuant to Chapter 5311, Ohio Revised Code ("**Act**"). Certain of the terms used in these Bylaws have been defined in the Declaration and, when used herein, shall have the same meaning as set forth in the Declaration, unless the context clearly indicates a different meaning therefore. The purpose of the within Bylaws is to provide for the establishment of a unit owners' association for the government of the Condominium Property in the manner provided by the Declaration and by these Bylaws. This purpose shall be accomplished on a non-profit basis, and no part of the earnings of the Association shall inure to the benefit of any private person, firm, corporation, association or organization. All present or future Owners or tenants or their employees, or any other person who might use the facilities of the Condominium Property in any manner shall be subject to the covenants, provisions or regulations contained in the Declaration and these Bylaws and shall be subject to any restriction, condition or regulation hereafter adopted by the Association. The mere acquisition or rental of any of the Units located within the Condominium Property described in the Declaration, or the mere act of occupancy of any of the Units will constitute acceptance and ratification of the Declaration and of these Bylaws.

ARTICLE I
THE ASSOCIATION

Section 1. **Name and Nature of Association**. The Association shall be an Ohio not-for-profit corporation and shall be called Erie Building Lofts Condominium Association, Inc. in accordance with Article IV of the Declaration.

Section 2. **Membership**. Each Unit Owner upon acquisition of title to a Unit shall automatically become a member of the Association. Such membership shall terminate upon the sale or other disposition by such member of this Unit ownership, at which time the new Owner of such Unit shall automatically become a member of the Association. Membership in the Association shall be limited to Unit Owners. In addition to any other rights the Declarant may have pursuant to the Declaration, the Declarant shall be a member of the Association with respect to all Units owned by Declarant and shall have the right, without limitation, to exercise the voting power appurtenant to such Units and the power to vote the same.

Section 3. **Voting Rights**. On any question on which the vote of Unit Owners is permitted or required, the Owner or Owners of each Unit shall be entitled to exercise one (1) vote for each such Unit, and each such vote shall be weighted in proportion to the Undivided Interest appurtenant to the Unit casting such vote. In the case of a Unit owned or held in the name of a corporation, a partnership, or a limited liability company, a certificate signed by said Unit Owner shall be filed with the Secretary of the Association naming the person authorized to cast a vote for such Unit, which certificate shall be conclusive until a subsequent substitute certificate is filed with the Secretary of the Association. If such certificate is not on file, the vote of such corporation, partnership, or limited liability Company, shall not be considered nor shall the presence of such Unit Owner at a meeting be considered in determining whether the quorum requirement for such meeting has been met. Fiduciaries and minors who are Owners of record of a Unit may vote their respective interests as a Unit Owner. If two or more persons, whether fiduciaries, tenants in common or otherwise, own Undivided Interests in a Unit, each may exercise that proportion of the voting power of all of the Unit Owners of said Unit that is equivalent to their respective proportionate interests in said Unit. When any fiduciary or other legal representative of a Unit Owner has furnished to the Association proof, satisfactory to it, of his authority, he may vote as though he were the Unit Owner. The Declarant or its nominee shall be the voting member with respect to any Unit owned by the Declarant. The vote of the Association with respect to any Units owned by the Association shall be determined by the Board.

<u>Section 4.</u> <u>Majority</u>. Except as otherwise provided in the Act, the Declaration or these Bylaws, all actions taken by the Unit Owners shall require the affirmative vote of a majority of the voting power of the Association present at a meeting at which a quorum is present. Only Unit Owners voting their interest held as Owner of a Live/Work Unit shall have a vote with respect to matters that affect only Live/Work Units, and Unit Owners voting their interest held as Owner of a Commercial Unit shall not have a vote with respect to such matters. Only Unit Owners voting their interest held as Owner of a Commercial Unit shall have a vote with respect to matters that affect only Commercial Units, and Unit Owners voting their interest held as Owner of a Live/Work Unit shall not have a vote with respect to such matters. All Unit Owners shall have a vote with respect to matters that affect all Unit Owners, the entire Condominium Property, all Units, all Limited Common Elements, or Assessments due from all Unit Owners.

<u>Section 5.</u> <u>Proxies</u>. Unit Owners may vote or act in person or by proxy. The person appointed as proxy need not be a member of the Association. Designation by a member or members of a proxy to vote or act on his or their behalf shall be made in writing to the Secretary of the Association (or if there is no Secretary, then with the person conducting the meeting for which the proxy is given) at or before the meeting and shall be revocable at any time by actual notice to the Secretary of the Association by the member or members making such designation. Notice to the Association in writing or in open meeting of the revocation of the designation of a proxy shall not affect any vote or act previously taken or authorized. The presence at a meeting of the person appointing a proxy does not revoke the appointment.

<u>Section 6.</u> <u>Establishment of Unit Owners' Association and First Meeting of Members</u>

(a) <u>Establishment of Unit Owners' Association</u>. The Unit Owners' Association shall be established not later than the date the deed or other evidence of ownership is filed for record following the first sale of a Condominium Ownership Interest in the Building. Until the Unit

Owners' Association is established, the Declarant shall act in all instances where action of the Association or its officers is authorized or required by law or in the Declaration.

(b) First Meeting. The annual meeting of members of the Association for the election of members of the Board of Directors, the consideration of reports to be laid before such meeting, and the transaction of such other business as may properly be brought before such meeting shall be held at the office of the Association or at such other place in the County as may be designated by the Board and specified in the notice of such meeting at 8:00 o'clock P.M., or at such other time as may be designated by the Board and specified in the notice of the meeting. The first meeting of the members of the Association shall be held upon written notice given by the Declarant in accordance with Subsection (d) of this Section 6, said meeting to be held not later than the time that Condominium Ownership Interests to which at least twenty-five percent (25%) of the Undivided Interests in the Common Elements appertain have been sold and conveyed by the Declarant, unless the Declarant shall consent, in its sole discretion, to a lesser percentage.

(c) Special Meeting. Special meetings of the members of the Association may be held on any business day when called by the President of the Association or by the Board of Directors of the Association or by members entitled to exercise at least twenty-five percent (25%) of the voting power of the Association or by the Declarant or any Unit Owner when a meeting is required for the election of members to the Board of Directors pursuant to Article II, Section 5. hereof. Upon request in writing delivered either in person or by certified mail to the President or the Secretary of the Association by any persons entitled to call a meeting of members, such officer shall forthwith cause to be given to the members entitled thereto notice of a meeting to be held on a date not less than seven (7) or more than sixty (60) days after the receipt of such request as such officer may fix. If such notice is not given within thirty (30) days after the delivery or mailing of such requests, the persons calling the meeting may fix the time of the meeting and give notice thereof. Each special meeting shall be called to convene at 8:00 o'clock P.M. and shall be held at the office of the Association or at such other place in the County as shall be specified in the notice of meeting.

(d) Notices of Meetings. Not less than seven (7) nor more than sixty (60) days before the day fixed for a meeting of the members of the Association, written notice stating the time, place and purpose of such meeting shall be given by or at the direction of the Secretary of the Association or any other person or persons required or permitted by these Bylaws to give such notice. The notice shall be given by personal delivery or by mail to each member of the Association who is an Owner of a Unit of record as of the day next preceding the day on which notice is given. If mailed, the notice shall be addressed to the members of the Association at their respective addresses as they appear on the records of the Association. Notice of the time, place and purposes of any meeting of members of the Association may be waived in writing, either before or after the holding of such meeting, by any members of the Association, which writing shall be filed with or entered upon the records of the meeting. The attendance of any member of the Association at any such meeting without protesting, prior to or at the commencement of the meeting, the lack of proper notice shall be deemed to be a waiver by such member of notice of such meeting.

(e) Quorum; Adjournment. Unless otherwise provided by law or by the Declaration, all meetings of the Association are open to the Unit Owners, and those present in person or by proxy when action is taken during a meeting of the Association shall constitute a sufficient quorum; provided, however, that no action required by law, by the Declaration, or by these Bylaws to be authorized or taken by a designated percentage of the voting power of the Association may be authorized or taken by a lesser percentage; and provided further, that the members of the Association entitled to exercise a majority of the voting power represented at a meeting of members, may adjourn such meeting from time to time; if any meeting is adjourned, notice of such adjournment need not be given if the time and place to which such meeting is adjourned are fixed and announced at such meeting.

Section 7. Order of Business. The order of business at all meetings of Unit Owners of the Association shall be as follows:

(a) Calling of meeting to order.

(b) Proof of notice of meeting or waiver of notice.

(c) Reading of minutes of preceding meeting.

(d) Reports of Officers.

(e) Reports of Committees.

(f) Election of Inspectors of election.

(g) Nomination and election of members of the Board of Directors.

(h) Unfinished and/or old business.

(i) New Business.

(j) Adjournment.

The order of business at each special meeting shall be that business specified in the notice therefore.

Section 8. Actions without a Meeting. All actions which may be taken at a meeting of the Association, except an action for the removal of a Board Member, may be taken without a meeting with the approval of, and in a writing or writings signed by the members of the Association having the percentage of voting power required to take such action if the same were taken for a meeting. Such writing or writings shall be filed with the Secretary of the Association.

ARTICLE II
BOARD OF DIRECTORS

__Section 1.__ __Qualifications__. Except as otherwise provided herein, all members of the Board of Directors (herein called "**Board Members**" or "**Board**") shall be Unit Owners; spouses of Unit Owners; mortgagees of Units; partners, agents or employees of partnerships owning a Unit, members or officers of limited liability companies owning a Unit; officers, directors, agents or employees of corporations or associations owning a Unit; or fiduciaries, officers, agents or employees of fiduciaries owning a Unit. Board Members elected or designated by the Declarant need not fulfill the qualifications imposed by this Section 1. of this Article II or any other qualifications imposed on Board Members elected by Unit Owners other than the Declarant, except as otherwise provided in these Bylaws or by law, and Board Members elected or designated by the Declarant may be removed only by the Declarant or as otherwise provided herein. If a Board Member shall cease to meet such qualifications during his term, he shall thereupon cease to be a member of the Board and his place on the Board shall be deemed vacant. No single Unit may be represented on the Board by more than one (1) person at any time.

__Section 2.__ __Number of Board Members__. Subject to such limitations as are or may be imposed by Chapters 1702 and 5311 of the Ohio Revised Code, the Declaration or these Bylaws, as any of the same may be lawfully amended from time to time, all power and authority of the Association shall be exercised by the Board of Directors consisting of three (3) members, in accordance with Section 4 hereof.

__Section 3.__ __Election of Board Members by Declarant and Unit Owners Prior to the First Annual Meeting__. Until such time as Condominium Ownership Interests to which less than twenty-five percent (25%) of the Undivided Interests in the Common Elements appertain have been sold and conveyed by the Declarant, the Declarant shall have the right to elect or designate all three (3) Board Members. Not later than sixty (60) days after the Declarant has sold and conveyed Condominium Ownership Interests to which twenty-five percent (25%) of the Undivided Interests in the Common Elements appertain, the Association shall meet and the Unit Owners, other than the Declarant, shall elect not less than one of the Members of the Board of Directors.

__Section 4.__ __First Annual Meeting__. Within sixty (60) days after the earlier of either: (a) three (3) years following the date of the establishment of the Association (or such earlier period of time as Declarant, at its option, may designate); or (b) the date of the sale and conveyance of Condominium Ownership Interests to which appertain seventy-five percent (75%) or more of the Undivided Interests in the Common Elements to purchasers in good faith for value, the Association shall meet (herein referred to as the "**First Annual Meeting**"), and all Unit Owners (including Declarant, if Declarant shall own any Units) shall elect all members of the Board of the Association. Immediately prior to such election all persons previously elected or designated, whether by the Declarant or by the other Unit Owners, shall resign; provided, however, that such persons shall be eligible for re-election to the Board. The persons so elected at the First Annual Meeting shall take office at the end of the meeting during which they are elected and shall, as soon as reasonably possible, appoint officers in accordance with Article III, and shall serve such terms for which they are elected in accordance with Section 5. of this Article II.

Section 5. Election of Board Members from and after the First Annual Meeting. Except for the procedures set forth in Section 3. of this Article II for the election of Board Members prior to the First Annual Meeting, Board Members shall be elected at the annual meeting of members of the Association, but when the annual meeting is not held or Board Members are not elected thereat, they may be elected at a special meeting called and held for that purpose. Such election shall be by written secret ballot whenever requested by any member of the Association; but, unless such request is made, the election may be conducted in any manner approved at such meeting.

Any Board Member elected or designated prior to the First Annual Meeting shall hold office for a term not to exceed one (1) year after his election or designation. Commencing with the First Annual Meeting, Board Members shall be elected for such terms so that the terms of office of not less than two (2) of the Board Members shall expire each year.

All Board Members shall be elected in accordance with the provisions of this Article II. At meetings of the Association subsequent to the First Annual Meeting which are called for the purpose of electing Board Members, each Board Member shall be elected for terms of three (3) years or to complete unfinished terms.

Except as otherwise provided herein, each Board Member shall hold office until the expiration of his term and until his successor is elected, or until his earlier resignation, removal from office or death. Any Board Member may resign at any time by oral statement to that effect made at a meeting of the Board or by a writing to that effect delivered to the Secretary of the Association; such resignation shall take effect immediately or at such other time as the Board Member may specify.

Each member of the Association may cast as many of his votes as there are Board Members to be elected. By way of example, if two (2) Board Members are to be elected, a member of the Association shall have the right to cast a maximum of two (2) votes, but not more than one (1) vote may be cast for any candidate. The candidates receiving the greatest number of votes shall be elected and those receiving the highest percentages of the total vote cast shall serve for the longest terms. Tie votes shall be decided by drawing of lots or by a flip of a coin. There shall be no cumulative voting.

Section 6. Organization Meeting. Immediately after each annual meeting of members of the Association, the newly elected Directors and those Directors whose terms hold over shall hold an organization meeting for the purpose of electing officers and transacting any other business. Notice of such meeting need not be given.

Section 7. Regular Meetings. Regular meetings of the Board of Directors may be held at such times and places as shall be determined by a majority of the Directors, but at least four (4) such meetings shall be held during each fiscal year.

Section 8. **Special Meetings**. Special meetings of the Board of Directors may be held at any time upon call by the President or any two (2) Directors. Written notice of the time and place of each such meeting shall be given to each Director either by personal delivery or by mail, telegram or telephone at least two (2) days before the meeting, which notice need not specify the purposes of the meeting; provided, however, that attendance of any Director at any such meeting without protesting (prior to or at the commencement of the meeting) the lack of proper notice shall be deemed to be a waiver by such Director of notice of such meeting and such notice may be waived in writing either before or after the holding of such meeting, by any Director, which writing shall be filed with or entered upon the records of the meeting. Unless otherwise indicated in the notice thereof, any business may be transacted at any organization, regular or special meeting.

Section 9. **Quorum; Adjournment**. A quorum of the Board of Directors shall consist of a majority of the Directors then in office; provided that a majority of the Directors present at a meeting duly held, whether or not a quorum is present, may adjourn such meeting from time to time, if any meeting is adjourned, notice of such adjournment need not be given if the time and place to which such meeting is adjourned are fixed and announced at such meeting. At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by a majority vote of those present, except as may be otherwise expressly provided in the Declaration or in these Bylaws.

Section 10. **Powers and Duties**. Except as otherwise provided by law, the Declaration or these Bylaws, all power and authority of the Association shall be exercised by the Board. In carrying out the purposes of the Condominium Property and subject to the limitations prescribed by law, the Declaration or these Bylaws, the Board, for and on behalf of the Association, may do the following:

(a) Maintenance, repair, replacement and surveillance of the Condominium Property and the Common Elements and certain of the Limited Common Elements as provided in the Declaration.

(b) Levy of Assessments against the Unit Owners and the collection of same.

(c) Designation and dismissal of the personnel necessary for the maintenance and operation of the Condominium Property, the Common Elements and the Limited Common Elements.

(d) In carrying out the purposes of the Association and subject to the limitations prescribed by law, the Declaration or these Bylaws, the Board, for and on behalf of the Association, may:

(1) Purchase or otherwise acquire, lease as lessee, hold, use, lease as lessor, sell, exchange, transfer, and dispose of property of any description or any interest therein.

(2) Make contracts.

(3) Effect insurance.

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the Board. Expenses incurred in connection with any transaction pursuant to this Section are Common Expenses.

(o) Acquire, encumber, convey and otherwise transfer personal property.

(p) Hold in the name of the Association the real property and personal property acquired pursuant to (n) and (o) of this Section.

(q) Grant easements, leases, licenses and concessions through or over the Common Elements.

(r) Impose and collect fees or other charges for the use, rental and operation of the Common Elements or for services provided to Unit Owners.

(s) Impose interest and late charges for the late payment of Assessments, impose returned check charges, and pursuant to Article XVI of the Declaration impose reasonable Enforcement Assessments for violations to the Declaration and these Bylaws and the Rules of the Association, and reasonable charges for damages to the Common Elements or other property.

(t) Adopt and amend Rules that regulate the collection of delinquent Assessments and the application of payments of delinquent Assessments.

(u) Impose reasonable charges for preparing, recording or copying amendments to the Declaration, resale certificates, or statements of unpaid Assessments.

(v) Enter a Unit for bona fide purposes when conditions exist that involve an imminent risk of damage or harm to Common Elements, another Unit, or to the health and safety of the Occupants of that Unit or another Unit.

(w) Borrow money and issue, sell or pledge notes and other evidence of indebtedness of the Association and give security for such borrowings, including assigning the Association's right to Common Assessments or other future income to lenders as security for loans to the Association.

(x) Suspend the voting privileges of a Unit Owner who is delinquent in the payment of Assessments for more than thirty (30) days.

(y) Purchase insurance and fidelity bonds for the Directors considered appropriate or necessary.

(z) Invest excess funds in investments that meet the standards for fiduciary investments under Ohio law.

(aa) Exercise all powers that are:

(e) Subject to Section 5311.25(D) of the Act, employ a managing agent to perform such duties and services as the Board may authorize.

(f) Employ lawyers and accountants to perform such legal and accounting services as the Board may authorize.

(g) Adopt and amend budgets for revenues, expenditures, reserves in an amount adequate to repair and replace major capital items in the normal course of operations without the necessity of Special Assessments. From and after the date of the First Annual Meeting, the amount set aside annually for reserves shall not be less than ten percent (10%) of the budget for that year unless the reserve requirement is waived annually by Unit Owners exercising not less than a majority of the voting power of the Association.

(h) Collect Assessments for Common Expenses from Unit Owners.

(i) Hire and fire managing agents, attorneys, accountants, and other independent contractors and employees that the Board determines are necessary or desirable in the management of the Condominium Property and the Association.

(j) Commence, defend, intervene in, settle or compromise any civil, criminal or administrative action or proceeding that is in the name of, or threatened against, the Association, the Board, or the Condominium Property, that involves two or more Unit Owners and relates to matters affecting the Condominium Property.

(k) Enter into contracts and incur liabilities relating to the operation of the Condominium Property.

(l) Regulate the use, maintenance, repair, replacement, modification and appearance of the Condominium Property.

(m) Adopt and amend Rules and regulate the use and occupancy of Units in the maintenance, repair, replacement, modification and appearance of Units, Common Elements and Limited Common Elements when the actions required by those Rules affect Common Elements or other Units, and establish Enforcement Assessments for the infraction thereof.

(n) Purchase, hold title to, operate, manage and sell real property that is not declared to be part of the Condominium Property. Any transaction pursuant to this Section that takes place prior to the date that the Unit Owners other than the Declarant assume control of the Association requires the approval of the Declarant, and the approval of Unit Owners other than the Declarant who exercise not less than seventy-five percent (75%) of the voting power of the Association, and the authorization of the Board. Any transaction pursuant to this Section that takes place after the Unit Owners assume control of the Association requires the approval of Unit Owners who exercise not less than seventy-five percent (75%) of the voting power of the Association and the authorization of

(1) Conferred by the Declaration, these Bylaws or the Board of Directors;

(2) Permitted to be exercised by an Ohio not-for-profit corporation; and

(3) Necessary and proper for the government and operation of the Association.

Section 11. **Removal of Board Members**. Except as otherwise provided herein and in the Act, the Board may remove any Board Member and thereby create a vacancy in the Board if by order of court such Board Member has been found to be of unsound mind, or if he is physically incapacitated, adjudicated a bankrupt, or fails to attend three consecutive meetings of the Board. At any regular or special meeting of members of the Association duly called at which a quorum shall be present, any one or more of the Board Members may be removed with or without cause by the vote of members entitled to exercise a majority of the voting power of the Association, and a successor or successors to such Board Member so removed may be elected at the same meeting for the unexpired term for each such removed Board Member. Any Board Member whose removal has been proposed by the members of the Association shall be given an opportunity to be heard at such meeting.

Section 12. **Vacancies**. Except as otherwise provided and subject to the provisions of the Act, vacancies in the Board may be filled by a majority vote of the remaining Board Members until an election to fill such vacancies is held. Members of the Association shall have the right to fill any vacancy in the Board (whether or not the same has been temporarily filled by the remaining Board Members) at any meeting of the members of the Association called for that purpose, and any Board Members elected at any such meeting of members of the Association shall serve until the next annual election of Board Members and until their respective successors are elected and qualified.

Section 13. **Fidelity Bonds**. The Board of Directors shall require that all officers and employees of the Association handling or responsible for Association funds to furnish adequate fidelity bonds. Said insurance shall be in accordance with Article VI of the Declaration. The premiums on such bonds shall be paid by the Association and shall be a Common Expense.

Section 14. **Compensation**. The Board of Directors shall not receive any salary or compensation for their services, as such, provided nothing herein contained shall be construed to preclude any director from having dealings with the Association in any other capacity and receiving compensation therefore.

Section 15. **Conduct of Meetings**. Unless otherwise determined by the Board, meetings of the Board shall be open to all Unit Owners. The Board shall have the prerogative to close its meetings to all non-Board Members whenever the same is necessary or convenient to the Board's affairs. A meeting of the Board may be held by any method of communication, including electronic or telephonic communication, provided each Member of the Board can hear (in the case of telephonic) or hear and view (in the case of electronic methods), the participants and respond to every other Member of the Board.

ARTICLE III
OFFICERS

Section 1. **Election and Designation of Officers**. The Board of Directors shall elect a President, a Vice President, a Secretary and a Treasurer, each of whom shall be a member of the Board of Directors. The Board of Directors may also appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary who are not members of the Board of Directors but who are members of the Association.

Section 2. **Term of Office; Vacancies**. The officers of the Association shall hold office until the next organizational meeting of the Board of Directors and until their successors are elected, except in case of resignation, removal from office or death. The Board of Directors may remove any officer at any time with or without cause by a majority vote of the Directors then in office. Any vacancy in any office may be filled by the Board of Directors.

Section 3. **President**. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Board of Directors. Subject to directions of the Board of Directors, the President shall have general executive supervision over the business and affairs of the Association. He may execute all authorized deeds, easements, contracts and other obligations of the Association and shall have such other authority and shall perform such other duties as may be determined by the Board of Directors or otherwise provided for in the Declaration or in these Bylaws. The President shall have the power to appoint committees from among the Officers and other Unit Owners as he may deem necessary to assist with affairs of the Association.

Section 4. **Vice President**. The Vice President shall perform the duties of the President whenever the President is unable to act and shall have such other authority and perform such other duties as may be determined by the Board of Directors.

Section 5. **Secretary**. The Secretary shall keep the minutes of meetings of the members of the Association and of the Board of Directors, shall give notices of meetings of the members of the Association and of the Board of Directors as required by law, or by these Bylaws or otherwise, and shall have such authority and shall perform such other duties as may be determined by the Board of Directors.

Section 6. **Treasurer**. The Treasurer shall receive and have in charge all money, bills, notes and similar property belonging to the Association, and shall do with the same as may be directed by the Board of Directors. He shall keep accurate financial accounts and hold the same open for the inspection and examination of the Directors and shall have such authority and shall perform such other duties as may be determined by the Board of Directors.

Section 7. **Other Officers**. The Assistant Secretaries and Assistant Treasurers, if any, and any other officers whom the Board of Directors may appoint shall, respectively, have such authority and perform such duties as may be determined by the Board of Directors.

Section 8. **Delegation of Authority and Duties**. The Board of Directors is authorized to delegate the authority and duties of any officer to any other officer and generally to control the action of the officers and to require the performance of duties in addition to those mentioned herein.

Section 9. **No Compensation to Officers**. None of the officers of the Association shall receive compensation for his services as such.

ARTICLE IV
GENERAL POWERS OF THE ASSOCIATION

Section 1. **Payments from Maintenance Funds**. The Association, for the benefit of all the Owners, shall acquire, and shall pay for out of the maintenance fund hereinafter provided for all Common Expenses arising with respect to, or in connection with, the Condominium Property, including, without limitation, the following:

(a) Utility Service for Common Elements. Water, waste removal, electricity, natural gas and any other necessary utility service for the Common Elements; and the expense of maintaining, repairing and replacing storm and sanitary sewers, water lines and other utilities situated on the Condominium Property or servicing the same;

(b) Casualty Insurance. A policy or policies of Casualty Insurance, as provided in the Declaration, the amount of which insurance shall be reviewed annually;

(c) Liability Insurance. A policy or policies insuring the Association, the members of the Board and the Owners against any liability to the public or to the Owners (of Units and of the Common Elements, and their invitees, or tenants), incident to the ownership and/or use of the Common Elements and Units, as provided in the Declaration, the limits of which policy shall be reviewed annually;

(d) Workmen's Compensation. Workmen's compensation insurance to the extent necessary to comply with any applicable laws;

(e) Wages and Fees for Services. The services of any person or firm employed by the Association, including, without limitation, the services of a person or firm to act as a manager or managing agent for the Condominium Property, the services of any person or persons required for the maintenance of or operation of the Condominium Property (including a recreation director, if any), and legal and/or accounting services necessary or proper in the operation of the Condominium Property or the enforcement of the Declaration and these Bylaws and for the organization, operation and enforcement of the rights of the Association.

(f) Care of Common Elements. Landscaping, gardening, snow removal, painting, cleaning, tuck pointing, maintenance, decorating, repair and replacements of the Common Elements as provided in the Declaration, and the maintenance, repair and replacement of such furnishings and equipment for the Common Elements as the Association shall determine are necessary and proper, and the Association shall have the exclusive right and duty to acquire the same for the Common Elements;

(g) Additional Expenses. Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance or assessments which the Association is required to secure or pay for pursuant to the terms of the Declaration and these Bylaws or by law of which in its opinion shall be necessary or proper for the maintenance and operation of the Condominium Property as a first-class condominium property or for the enforcement of the Declaration and these Bylaws;

(h) Discharge of Mechanic's Liens. Any amount necessary to discharge any mechanic's lien or other encumbrances levied against the entire Condominium Property or any part thereof which may in the opinion of the Association constitute a lien against the Condominium Property or against the Common Elements, rather than merely against the interests therein of particular Owners; it being understood, however, that the foregoing authority shall not be in limitation of any statutory provisions relating to the same subject matter. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Association by reason of said lien or liens shall be specially assessed to said Owners;

(i) Certain Maintenance of Units and Limited Common Elements. Maintenance and repair of any Unit and appurtenant Limited Common Elements if such maintenance or repair is necessary, in the discretion of the Association, to protect the Common Elements, or any other portion of a building, and the Owner or Owners of said Unit have failed or refused to perform said maintenance or repairs within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Association to said Owner or Owners, provided that the Association shall levy a special Assessment against such Unit Owner for the cost of said maintenance or repair;

(j) Association's Right to Enter Units. The Association or its agents may enter any Unit when necessary in connection with any maintenance or construction for which the Association is responsible. It may likewise enter any Limited Common Area or Exclusive Use Area for maintenance, repairs, construction or painting. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Association from insurance proceeds, or, in the event that the damage is not covered by insurance, the damage shall be repaired by the Association at the expense of the maintenance fund. The Association reserves the right to retain a pass key to each Unit and no locks or other devices shall be placed on the doors to the Units to obstruct entry through the use of such pass key, without the consent of the Association. In the event of any emergency originating in or threatening any Unit at a time when required alterations or repairs are scheduled, the management agent or his representative or any other person designated by the Board of Directors may enter the Unit immediately, whether the Owner is present or not;

(k) Limitation on Capital Additions and Improvements. The Association's powers hereinabove enumerated shall be limited in that the Association shall have no authority to acquire and pay for out of the maintenance fund any acquisitions, capital additions and improvements, or structural alterations to the Common Elements (other than for purposes of maintaining, replacing, restoring or repainting portions of the Common Elements, subject to all the provisions of the Declaration and these Bylaws) having a total cost in excess of Five Thousand Dollars ($5,000.00), nor having an aggregate cost in any one (1) calendar year period in excess of Ten Thousand Dollars ($10,000.00), without in each case the prior approval of the members of the Association entitled to exercise a majority of the voting power of the Association entitled to vote on a particular matter pursuant to the provisions of Article II, Section 4 above, provided, however, so long as Declarant has the authority to elect or designate a majority of the Board Members, the Declarant's prior written consent to such expenditure shall be required. The limitations of expenditures by the Association contained in this Section shall not apply to repair of the Condominium Property due to casualty loss, emergency repairs immediately necessary for the preservation and safety of the Condominium Property or for the safety of persons or to avoid suspension of any necessary services. The foregoing provisions of this Section 1.(K) also shall not apply to the rehabilitation and renewal of obsolete property which shall be governed by the Declaration;

(l) Certain Utility Services to Units. The Association may pay from the maintenance fund for waterlines, waste removal and/or any utilities which are not separately metered or otherwise directly charged to individual Owners. However, the Association may discontinue such payments at any time, in which case each Owner shall be responsible for direct payment of his share of such expenses as shall be determined by the Board of Directors of the Association. The Association reserves the right to levy additional Assessments against any Owner to reimburse it for excessive use, as shall be determined by the Board of Directors or by such Owner of any utility service, the expense of which is charged to the maintenance fund;

(m) Miscellaneous. The Association shall pay such other costs and expenses designated as ""Common Expenses" in the Declaration and in these Bylaws.

Section 2. **Rules**. The Board of Directors, by vote of the members entitled to exercise a majority of the voting power of the Board, may adopt such reasonable Rules and from time to time amend the same supplementing the Rules set forth in the Declaration and these Bylaws as it may deem advisable for the maintenance, conservation and beautification of the Condominium Property, and for the health, comfort, safety and general welfare of the Owners and Occupants of the Condominium Property. Written notice of such Rules shall be given to all Owners and Occupants and the Condominium Property shall at all times be maintained subject to such Rules. In an action or proceeding brought by the Association against an Owner and/or Occupant of a Unit to enforce Rules, the Association shall be entitled to collect costs of suit and reasonable attorneys' fees from such Owner and/or Occupant. In the event such supplemental rules shall conflict with any provisions of the Declaration or of these Bylaws, the provisions of the Declaration and of these Bylaws shall govern.

Section 3. **No Active Business to be Conducted for Profit**. Nothing herein contained shall be construed to give the Association authority to conduct an active business for profit on behalf of all the Owners or any of them.

Section 4. **Special Services**. The Association may arrange for the provision of any special services and facilities for the benefit of such Owners and/or Occupants as may desire to pay for the same, including, without limitation, cleaning, repair and maintenance of Units. Fees for such special services and facilities shall be determined by the Board of Directors and may be charged directly to participating Owners, or paid from the maintenance fund and levied as a special Assessment due from the participants.

Section 5. **Delegation of Duties**. Nothing herein contained shall be construed so as to preclude the Association, through its Board of Directors and officers, from delegating to persons, firms or corporations of its choice, including any manager or managing agent, such duties and responsibilities of the Association as the Directors of the Association shall from time to time specify, and to provide for reasonable compensation for the performance of such duties and responsibilities.

Section 6. **Applicable Laws**. The Association shall be subject to and governed by the provisions of any statute adopted at any time and applicable to property submitted to the Condominium form of ownership (including without limitation, Chapter 5311, Ohio Revised Code); provided, however, that all inconsistencies between or among the permissive provisions of any statute and any provision of the Declaration and these Bylaws, shall be resolved in favor of the Declaration and these Bylaws, and any inconsistencies between any statute applicable to associations formed to administer property submitted to the Condominium form of ownership, and the Articles or Bylaws of the Association shall be resolved in favor of the statute. In the event of any conflict or inconsistency between the provisions of the Declaration and the Articles or Bylaws of the Association, the terms and provisions of the Declaration shall prevail, and the Owners and all persons claiming under them covenant to vote in favor of such amendments in the Articles or Bylaws as will remove such conflicts or inconsistencies.

ARTICLE V
DETERMINATION AND PAYMENT OF ASSESSMENTS

Section 1. **Payment of Assessments**. Following the establishment of the Association and prior to the preparation of the estimated budget in accordance with Section 2 of this Article V, monthly Assessments shall be paid by Unit Owners, including Declarant in its capacity as Owner of any unsold Units, in an amount estimated by the Board of Directors as being sufficient to cover the initial working capital requirements for the Association (the respective amounts payable by each Unit Owner being based upon such Unit Owner's Undivided Interest in the Common Elements as set forth in the Declaration) and if such monthly Assessments shall be less than required to meet current Common Expenses, all Unit Owners, including the Declarant in its capacity as Owner of any unsold Units, shall make up any deficiency with respect to such Common Expenses as are assessed against such Owner's Unit on a pro rata basis in accordance with their respective Undivided Interest in the Common Elements as set forth in the Declaration.

In addition to such regular monthly Assessments, each purchaser of a Unit from the Declarant will be required to make, at the time such purchaser acquires title to a Unit, an initial capital contribution to the Association in an amount (specified by the sales and purchase agreement entered into between the Declarant as seller and the Unit Owner as buyer of the Unit). The general purpose of this contribution is to provide the Association with a portion of the necessary initial working capital and/or a contingency reserve and/or for such other purposes as the Board may determine. This initial capital contribution is not an escrow or advance toward regular Assessments, is not refundable and shall not be required of the Declarant, but only from those persons who or which purchase a Unit or Units from the Declarant.

Regular monthly Assessments shall be paid to the Association commencing on the first day of the calendar month immediately following the date on which the first Unit is sold and the deed evidencing such sale shall have been filed for record with the recorder of the County and shall continue to be due and payable on the first day of each and every calendar month thereafter. Said Assessments shall be deposited when received by the Association in an account established in the name of the Association at a bank or savings and loan association in the County. Unit Owners (including Declarant as to unsold units) shall continue to pay such monthly Assessments as aforesaid until revised Assessments are made by the Board of Directors in the manner herein provided.

Section 2. **Preparation of Estimated Budget**. Each year on or before December 1st, the Board of Directors of the Association shall estimate the total amount necessary to pay the cost of wages, materials, insurance, services and supplies which will be required during the ensuing calendar year for the rendering of all services, together with a reasonable amount considered by the Association to be necessary for a reserve for contingencies and replacements, and shall on or before December 15th notify each Owner in writing as to the amount of such estimate, with reasonable itemization thereof. Said "estimated cash requirement" shall be assessed to the Owners according to each Owner's Undivided Interest in the Common Elements as set forth in the Declaration. On or before January 1st of the ensuing year, and the 1st of each and every month of said year, each Owner shall be obligated to pay to the Association or as it may direct one-twelfth (1/12) of the Assessment made pursuant to this Section. On or before the date of the annual meeting of each calendar year, the Association shall supply to all Owners an itemized accounting of the maintenance expenses for the preceding calendar year actually incurred and paid together with a tabulation of the amounts collected pursuant to the estimate provided, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited according to each Owner's percentage of ownership in the Common Elements to the next monthly installment of such Assessments due from Owners under the current year's estimate, until exhausted, or applied to reserves, and any net shortage shall be added according to each Owner's percentage of ownership in the Common Elements to the installments of such Assessments due in the succeeding six months after rendering of the accounting.

Section 3. **Reserve for Contingencies and Replacements**. The Association shall be obligated to build up and maintain a reasonable working capital reserve fund to finance the cost of repair or replacement of the components of the Common Elements s the Association is charged with repairing and replacing. Such working capital reserve fund shall be deposited in a segregated account when control of the Association is turned over to the Unit Owners pursuant to Article II, Section 4. of these Bylaws. Included in such reserve fund is the amount (if any) referred to in Section 1 of this Article V payable by each Purchaser of a Unit at the time such Purchaser acquires title to his Unit. Upon the sale of a Unit by any Unit Owner, such Unit Owner shall have no right to any portion of the funds in the reserve fund; nor shall any such Unit Owner have any claim against the Association with respect thereto. Extraordinary expenditures not originally included in the annual estimate which may be necessary for the year, shall be charged first against such working capital reserve fund. If said "estimated cash requirement" proves inadequate for any reason, including non-payment of any owner's assessment, the Association shall prepare an estimate of the additional cash requirements then necessary, or necessary for the balance of the year, which additional amount of cash requirements shall be assessed to the Owners according to each Owner's percentage of ownership in the Common Elements. The Association shall serve notice of such further assessment on all Owners by a statement in writing giving the amount and reasons therefor, and such further assessment shall become effective with the monthly maintenance payment which is due not more than ten (10) days after the delivery or mailing of such notice of further assessments. All Owners shall be obligated to pay the adjusted monthly amount. The Declarant shall not use the working capital reserve fund to defray its expenses, reserve contributions or construction costs or to make up any budget deficits. When unsold Units are sold, the Declarant may use funds collected at closings to Purchasers to reimburse itself for funds it paid to the Association for each unsold Unit's share of the working capital reserve fund. Any checks drawn on the working capital reserve fund account shall require the signature of two (2) Board members. After the First Annual Meeting of Unit Owners under Article II, Section 4 of these Bylaws, the amount set aside annually for reserves shall not be less than ten percent (10%) of the budget for that year unless the reserve requirement is waived annually by Unit Owners exercising not less than a majority of the voting power of the Association. If the Association has Common Profits or has collected Common Surplus at the end of any fiscal year, the Board may determine that such amount(s) will be applied toward reserves pursuant to Section 5311.21 of the Act.

Section 4. **Budget for First Year**. When the first Board of Directors elected hereunder takes office, the Board of Directors of the Association shall determine the "estimated cash requirement" as hereinabove defined, for the period commencing thirty (30) days after said election and ending on December 31st of the calendar year in which said election occurs. Assessments shall be levied against the Owners during said period as provided in Section 2 of this Article V.

Section 5. **Failure to Prepare Annual Budget**. The failure or delay of the Board of Directors of the Association to prepare or serve the annual or adjusted estimate on the Owner shall not constitute a waiver or release in any manner of such Owner's obligation to pay the maintenance costs and necessary reserves, as herein provided, whenever the same shall be determined, and in the absence of any annual estimate or adjusted estimate, the Owner shall continue to pay the monthly maintenance charge at the existing monthly rate established for the previous period until the monthly maintenance payment which is due not more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

Section 6. **Status of Funds Collected by Association**. All funds collected hereunder shall be held and expended solely for the purposes designated herein, and (except for such Special Assessments as may be levied hereunder against less than all of the Owners, and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the use, benefit and account of all of the Owners in proportion to their respective Undivided Interest in the Common Elements as set forth in the Declaration.

Section 7. **Annual Statements**. Within one hundred twenty (120) days after the end of each fiscal year of the Association, the Board shall furnish to each Unit Owner a financial statement consisting of: (a) a balance sheet containing a summary of the assets and liabilities of the Association as of the date of such balance sheet; and (b) a statement of the income and expenses for the period commencing with the date marking the end of the period for which the last preceding statement of income and expenses required hereunder was made and ending with the date of said statement, or in the case of the first such statement, from the date of formation of the Association to the date of said statement. The financial statement shall have appended thereto a certificate signed by the President or the Vice President or Secretary or the Treasurer of the Association or by a public accountant or firm of public accountants to the effect that the financial statement presents fairly the financial position of the Association and the results of its operations in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding period except as may be specified therein.

Section 8. **Annual Audit**. The books of the Association shall be reviewed once a year by the Board of Directors, and such review shall be completed prior to each annual meeting. If requested by three or more members of the Board of Directors, such review shall be made by a Certified Public Accountant. In addition, and at any time, if requested by Unit Owners having more than fifty percent (50%) of the voting power of the Association, or upon the request of three or more members of the Board of Directors, the Board shall cause an additional review to be made.

Section 9. **Remedies for Failure to Pay Assessments**. If an Owner is in default in the monthly payment of the aforesaid charges or Assessments for thirty (30) days, the members of the Board of Directors may bring suit for and on behalf of themselves and as representatives of all Owners, to enforce collection thereof or to foreclose the lien therefore as provided in the Declaration. To the extent permitted by the Declaration, any decision or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or Assessments, and interest, costs and fees as above provided shall be and become a lien or charge against the Condominium Ownership Interest of the Owner involved when payable and may be foreclosed by an action brought in the name of the Board of Directors as in the case of foreclosure of liens against real estate, as provided in the Declaration. Any mortgagee shall be entitled to written notice of such failure to pay such Assessment. Pursuant to Section 5311.081(B)(18) of the Act, the Board of Directors shall have the power by a majority vote to suspend the voting rights and the right to use of the recreational facilities of a Unit Owner during any period in which such Unit Owner shall be in default in the payment of any Assessment levied by the Association.

Any encumbrancer may from time to time request in writing a written statement from the Board of Directors setting forth the unpaid Common Expenses with respect to the Unit covered by his or its encumbrance and unless the request shall be complied with within twenty (20) days, all unpaid Common Expenses which become due prior to the date of the making of such request shall be subordinate to the lien of such encumbrance. Any encumbrancer holding a lien on a Unit may pay any unpaid Common Expenses payable with respect to such Unit and upon such payment such encumbrancer shall have a lien on such Unit for the amounts paid at the same rank as the lien of his encumbrance.

ARTICLE VI
BOOKS AND RECORDS

The Association shall keep all of the following:

(a) Correct and complete books and records of account that specify the receipts and expenditures relating to the Common Elements and other common receipts and expenses;

(b) Records showing the allocation, distribution and collection of Common Profits, Common Losses, Common Expenses, among and from the Unit Owners;

(c) Minutes of the meetings of the Association and the Board of Directors; and

(d) Records of the names and addresses of the Unit Owners and their respective Undivided Interests in the Common Elements.

Within thirty (30) days after a Unit Owner obtains a Condominium Ownership Interest, the Unit Owner shall provide the following information in writing to the Association through the Board of Directors:

(a) The home address, home and business mailing addresses, and the home and business telephone numbers of the Unit Owner and all Occupants of the Unit;

(b) The name, business address and business telephone number of any person who manages the Unit Owner's Unit as an agent of the Unit Owner.

Within thirty (30) days after a change of any information that Section 2 of this Article VI requires, a Unit Owner shall notify the Association, through the Board, in writing, of the change. When the Board requests, a Unit Owner shall verify and update the information.

Upon ten (10) days' notice to the Board, and upon payment of a reasonable fee, any Unit Owner shall be furnished a statement of his account setting forth the amount of any unpaid Assessments or other charges due and owing from said Unit Owner.

Except as prohibited below, any Member of the Association may examine the books, records and minutes of the Association pursuant to reasonable standards as may be set forth in the Declaration, these Bylaws, or Rules promulgated by the Board, which standards may include, but are not limited to, standards governing the type of documents that are subject to examination, the times and locations of which those documents may be examined or copied, and the specification of a reasonable fee for copying the documents. The Association is not required to permit examining and/or copying of any of the following from books, records or minutes:

(a) information that pertains to Condominium Property, related personnel matters;

(b) communications with legal counsel or attorney work product pertaining to pending litigation or other condominium related matters;

(c) information that pertains to contracts or transactions currently under negotiation, or information that is contained in a contract or other agreement containing confidentiality requirements and that is subject to those requirements;

(d) information that relates to the enforcement of the Declaration, Bylaws or Rules of the Association against Unit Owners; or

(e) information, the disclosure of which is prohibited by state or federal law.

ARTICLE VII
INDEMNIFICATION

Section 1. **In General**. The Association shall indemnify any member of the Board, officer, employee, or agent of the Association or any former member of the Board, officer, employee or agent of the Association and/or its or their respective heirs, executors and administrators, against reasonable expenses, including attorneys' fees, judgments, decrees, fines, penalties or amounts paid in settlement actually and necessarily incurred by him in connection with the defense of any pending or threatened action, suit, or proceeding, criminal or civil, to which he is or may be made a party by reason of being or having been such member of the Board, officer, employee or agent of the Association, provided it is determined in the manner hereinafter set forth (a) that such member of the Board, officer, employee or agent of the Association was not, and is not, adjudicated to have been grossly negligent or guilty of willful misconduct in the performance of his duty to the Association, (b) that such member of the Board acted in good faith in what he reasonably believed to be in the best interest of the Association, (c) that, in any matter the subject of a criminal action, suit or proceeding, such Board member had no reasonable cause to believe that this conduct was unlawful, and (d) in case of settlement, that the amount paid in the settlement was reasonable. Such determination shall be made either by the members of the Board of the Association acting at a meeting at which a quorum consisting of members of the Board who are not parties to or threatened with any such action, suit or proceeding is present, or, in the event of settlement, by a written opinion of independent legal counsel selected by the members of the Board.

Section 2. Advance of Expenses. Funds to cover expenses, including attorneys' fees, with respect to any pending or threatened action, suit, or proceeding may be advanced by the Association prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the recipient to repay such amounts unless it shall ultimately be determined that he is entitled to indemnification hereunder.

Section 3. Indemnification Not Exclusive; Insurance. The indemnification provided for in this Article VI shall not be exclusive, but shall be in addition to any other rights to which any person may be entitled under the Articles of Incorporation, Rules of the Association, any agreement, any insurance provided by the Association, the provisions of Section 1701.12(E) of the Ohio Revised Code, or otherwise. The Association may purchase and maintain insurance on behalf of any person who is or was a member of the Board, officer, agent or employee of the Association against any liability asserted against him or incurred by him in any such capacity or arising out of his status as such whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

Section 4. Indemnification by Unit Owners. The members of the Board and officers of the Association shall not be liable to the Unit Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Unit Owners shall indemnify and hold harmless each of the members of the Board and officers of the Association against all contractual liability to third parties arising out of contracts made on behalf of the Association except with respect to any such contracts made in bad faith or contrary to the provisions of the Declaration or these Bylaws. It is intended that the members of the Board and officers of the Association shall have no personal liability with respect to contracts entered into on behalf of the Association. Every agreement made by any members of the Board, officer, employee or agent of the Association or by a management company, if any, on behalf of the Association, shall provide that such members of the Board, officer, employee or agent of the Association, or the management company, as the case may be, is acting only as agent for the Association and shall have no personal liability thereunder (except as a Unit Owner), and that each Unit Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his Undivided Interest in the Common Elements bears to the total percentage interest of all Unit Owners in the Common Elements.

Section 5. Cost of Indemnification. Any sum paid or advanced by the Association under this Article VI shall constitute a Common Expense and the Association and the Board shall have the power to raise and the responsibility for raising, by special Assessment or otherwise, any sums required to discharge its obligations under this Article VI; provided, however, that the liability of any Unit Owner arising out of any contract made by or other acts of any member of the Board, officer, employee or agent of the Association, or out of the aforesaid indemnity in favor of such member of the Board, officer, employee or agent of the Association, shall be limited to such proportion of the total liability hereunder as said Unit Owner's Undivided Interest in the Common Elements bears to the total percentage interest of all the Unit Owners in the Common Elements.

ARTICLE VIII
GENERAL PROVISIONS

Section 1. Copies of Notice to Mortgage Lenders; Rights of First Mortgagees

(a) Upon written request to the Board of Directors by the holder of any duly recorded mortgage or trust deed against any Unit ownership, the Board of Directors shall give such mortgage holder a copy of any and all notices permitted or required by the Declaration or these Bylaws to be given to the Owner or Owners whose Unit ownership is subject to such mortgage or trust deed.

(b) A first mortgagee of a Unit shall be entitled to written notice from the Association of any default by its mortgagor Unit Owner which is not cured within sixty (60) days. Any first mortgagee may from time to time request in writing a written statement from the Board of Directors setting forth any and all unpaid Assessments due and owing from its mortgagor Unit Owner with respect to the Unit subject to the lien of its mortgage and such request shall be complied with within fifteen (15) days from receipt thereof. Any first mortgagee holding a mortgage on a Unit may pay any unpaid Common Expenses assessed with respect to such Unit and upon such payment, such first mortgagee shall have a lien on such Unit for the amounts so paid at the same rank as the lien of its mortgage.

Section 2. Service of Notices on the Board of Directors. Notices required to be given to the Board of Directors or to the Association may be delivered to any member of the Board of Directors or officer of the Association either personally or by mail addressed to such member or officer at his Unit.

Section 3. Service of Notices on Devisees and Personal Representatives. Notices required to be given any devisees or personal representatives of a deceased Owner may be delivered either personally or by mail to such party at his, her or its address appearing on the records of the court wherein the estate of such deceased Owner is being administered.

Section 4. Non-Waiver of Covenants. No covenants, restrictions, conditions, obligations or provisions contained in the Declaration or these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 5. Agreements Binding. All agreements and determinations lawfully made by the Association in accordance with the procedures established in the Declaration and these Bylaws shall be deemed to be binding on all Unit Owners, and their respective heirs, executors, administrators, successors and assigns.

Section 6. **Notices of Mortgages**. Any Owner who mortgages his Unit shall notify the Association, in such manner as the Association may direct, of the name and address of his mortgagee and thereafter shall notify the Association of the payment, cancellation or other alteration in the status of such mortgage. The Association shall maintain such information in a book entitled "Mortgagees of Units".

Section 7. **Severability**. The invalidity of any covenant, restriction, condition, limitation or any other provision of these Bylaws, or any part of the same, shall not impair or affect in any manner the validity, enforceability or effect the rest of this Declaration.

Section 8. **Perpetuities and Restraints on Alienation**. If any of the options, privileges, covenants or rights created by these Bylaws shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints or alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of George W. Bush, President of the United States of America, or Richard Cheney, Vice President of the United States of America.

Section 9. **Definitions**. The terms used in these Bylaws (except as herein otherwise expressly provided or unless the context otherwise required) for all purposes of these Bylaws and of any amendment hereto shall have the respective meanings specified in Article I of the Declaration.

Section 10. **Amendments**. Provisions of these Bylaws may be amended by the Unit Owners at a meeting held for such purpose by the affirmative vote of those entitled to exercise not less than seventy-five percent (75%) of the voting power, provided, however, that no amendment shall have any effect upon Declarant, the rights of Declarant under these Bylaws and the rights of bona fide mortgagees of Units until the written consent of Declarant and/or such mortgagees to such amendment has been secured.

Section 11. **Captions**. The captions used in these Bylaws are inserted solely as a matter of convenience and shall not be relied upon and/or used in construing the effect or meaning of any of the text hereof.

EXHIBIT "C"

TO DECLARATION OF CONDOMINIUM OWNERSHIP FOR ERIE BUILDING LOFTS CONDOMINIUM

A NARRATIVE DESCRIPTION OF THE BUILDING AND THE UNITS WITHIN THE BUILDING

The Condominium is a six-story mixed-use building, including a parking garage on the first floor, located in Cleveland's Historic Warehouse District at 1260 West Fourth Street and constructed on a .1647 acre (or 7,176 square feet) parcel situated off of West 4th Street (a dedicated public street) in the City of Cleveland, Cuyahoga County, Ohio.

The Building was built in approximately 1903. The building is constructed of masonry load bearing walls with wood framing having timber and wood joist interior construction and no existing interior partitions. Some interior partitions are masonry, while new interior partitions will be drywall over metal studs. There is no basement.

The Building contains one (1) elevator and two (2) stairwells connecting the first through sixth floors which are Common Elements of the Condominium. The Building also contains eleven (11) Units as described below. The roof is flat.

First Floor. The first floor contains one (1) Commercial Unit and is designated as Unit No. 101.

Unit 101. Unit 101 is a "Commercial Unit" and "Convertible Space" under the Declaration. Unit No. 101 includes the following:

(1) The parking garage space within two (2) sections of the first floor,

(2) All improvements constituting the façade of the building which will be or are restricted by the Façade Easement, including, but not limited to the entire structure of the exterior walls of the Building, all brick, stone, and other masonry therein (excluding any plaster, furring, and/or drywall attached to the interior of such walls), all windows and doors therein (including the sash, frames, hardware, and screens, if any), all wood siding and trim, and the building cornice;

(3) The roof decking and the roofing membrane of the Building; and

(4) The air space above the Property.

Common Elements: The first floor also contains a lobby, janitor's room, fire pump room, elevator machine room, two (2) stair towers which connect to the second floor, and corridors leading to the elevator, stairwell and lobby which are Common Elements of the Condominium.

Second Floor. Unit 201 is a "Commercial Unit" and "Convertible Space" under the Declaration. The second floor contains one (1) Unit:

> **Unit 201.** Unit 201 is all of the Live/Work space within the second floor of the Building, which space may, when completed, contain one (1) to three (3) rental apartments, and is a "Commercial Unit" under the Declaration. Unit 201 is also a "Convertible Unit", and the Owner of Unit 201 may elect to convert the Unit into up to three (3) separate Live/Work Units. If such Unit(s) are offered for sale, they will cease to be "Commercial Units" but become "Live/Work Units" as defined in the Declaration.
>
> **Common Elements**: The second floor also contains corridors which lead to the stairwells and elevator, an electrical room and trash chute room which are Common Elements of the Condominium.

Third Floor. The third floor contains one (1) Unit which is a Convertible Unit.:

> **Unit 301.** Unit 301 is all of the Live/Work space within the third floor of the Building. Unit 301 is a "Convertible Unit" which the Declarant will further subdivide into additional Live/Work Units and Common Elements as the boundaries of such Units are determined by buyer preferences.
>
> **Common Elements**: The third floor also contains corridors which lead to the stairwells and elevator, an electrical room and trash chute room which are Common Elements of the Condominium.

Fourth Floor. The fourth floor contains the following four (4) Units:

> Unit 401. Unit No. 401 is 1,698 square feet of unfinished Live/Work space. The buyer of Unit 401 may determine the interior layout and features the Unit.
>
> Unit 402. Unit No. 402 is 1,154 square feet of unfinished Live/Work space. The buyer of Unit 402 may determine the interior layout and features the Unit..
>
> Unit 403. Unit No. 403 is 1,414 square feet of unfinished Live/Work space. The buyer of Unit 403 may determine the interior layout and features the Unit..
>
> Unit 404. Unit No. 404 is 1,543 square feet of finished Live/Work space. Unit No. 404 contains two (2) bedrooms, two (2) full baths, laundry room/mechanical room, great room and kitchen.
>
> **Common Elements**: The fourth floor also contains corridors which lead to the stairwells and elevator, an electrical room and trash chute room which are Common Elements of the Condominium

Fifth Floor. The fifth floor contains one (1) Unit which is a Convertible Unit.:

Unit 501. Unit 501 is all of the Live/Work space within the fifth floor of the Building. Unit 501 is a "Convertible Unit" which the Declarant may further subdivide into additional Live/Work Units and Common Elements as the boundaries of such Units are determined by buyer preferences.

Common Elements: The fifth floor also contains corridors which lead to the stairwells and elevator, an electrical room and trash chute room which are Common Elements of the Condominium.

Sixth Floor. The sixth floor contains the following three (3) Units:

Unit 601. Unit No. 601 is 2,149 square feet of unfinished Live/Work space. The buyer of Unit 601 may determine the interior layout and features the Unit. Unit 601 also includes the 386 square foot penthouse providing access to the roof deck.

Unit 602. Unit No. 602 is 1,558 square feet of unfinished Live/Work space. The buyer of Unit 602 may determine the interior layout and features the Unit. Unit 602 also includes the 395 square foot penthouse providing access to the roof deck.

Unit 603. Unit No. 603 is 3,695 square feet of unfinished Live/Work space. The buyer of Unit 603 may determine the interior layout and features the Unit. Unit 501 is all of the Live/Work space within the fifth floor of the Building. Unit 603 also includes the 663 square foot penthouse providing access to the roof deck. Unit 603 is a "Convertible Unit" which the Declarant may further subdivide into additional Live/Work Units and Common Elements as the boundaries of such Units are determined by buyer preferences.

Common Elements: The sixth floor also contains corridors which lead to the stairwells and elevator, an electrical room and trash chute room which are Common Elements of the Condominium.

Any inconsistencies between the narrative descriptions of Units and/or the Common Elements on the one hand and the "as built" Drawings on the other hand shall be resolved in favor of the "as built" Drawings.

EXHIBIT "D"

TO DECLARATION OF CONDOMINIUM OWNERSHIP FOR ERIE BUILDING LOFTS CONDOMINIUM

Unit No.	Floor	Square Footage	Undivided Interest in Common Elements and in Common Expenses, Common Assessments, Common Surplus, Common Profits and Common Losses	Commercial Unit	Convertible Unit
101	First	5,384	0.1492	X	X
201	Second	5,800	0.1607	X	X
301	Third	5,798	0.1607	X	X
401	Fourth	1,698	0.0470		
402	Fourth	1,154	0.0319		
403	Fourth	1,414	0.0392		
404	Fourth	1,543	0.0428		
501	Fifth	5,897	0.1634	X	X
601	Sixth	2,149	0.0595		
602	Sixth	1,558	0.0432		
603	Sixth	3,695	0.1024	X	X
	Totals:	**36,090**	**1.000**		

K0566096.xls

CUYAHOGA COUNTY RECORDER
PATRICK J. OMALLEY - 4
DECL 07/11/2006 12:50:59 PM
200607110802

FIRST AMENDMENT TO DECLARATION OF CONDOMINIUM OWNERSHIP

FOR

ERIE BUILDING LOFTS CONDOMINIUM

A Mixed-Use Condominium
CLEVELAND, OHIO

RECORDER NOTE:
FOR MAPS ACCOMPANYING THIS DECLARATION AND
BY-LAWS SEE VOL 158 PAGES 14 TO 15
INCLUSIVE OF CONDOMINIUM MAP RECORDS.

DEVELOPED BY:

ERIE BUILDING CONDOMINIUMS, LTD.
an Ohio limited partnership

2504 West 10th Street
P.O. Box 993243
Cleveland, Ohio 44101-3644
(216) 215-7129

SURETY TITLE AGENCY INC.
1010 Leader Building
526 Superior Avenue East
Cleveland, Ohio 44114-1401
216-589-8399 800-442-8399 Fax 216-589-4826
www.suretytitle.com e-mail: info@suretytitle.com

ST 18795 F

FRANK RUSSO, COUNTY AUDITOR
APPROVED OWNERSHIP, ONLY, OF

PERM. PARCEL NO.
101-09-031

By [signature]
Deputy Auditor

I hereby certify this to be a true copy of the original record on file in the office of an in custody of the County Auditor.
Frank Russo
County Auditor

Dated ______ By______________
Deputy Auditor

FIRST AMENDMENT TO DECLARATION OF CONDOMINIUM OWNERSHIP FOR ERIE BUILDING LOFTS CONDOMINIUM

a Mixed Use Condominium

CLEVELAND, OHIO

This First Amendment to Declaration made at Cleveland, Ohio, by **ERIE BUILDING CONDOMINIUMS, LTD**, an Ohio limited partnership organized and existing under Ohio law, hereinafter referred to as "**Declarant,**"

WHEREAS, the Declarant caused a Declaration of Condominium Ownership for Erie Building Lofts Condominium (the "Declaration") to be recorded as Instrument No. 200605170352 of Cuyahoga County Records.

WHEREAS, Article I, Section (S) of the Declaration makes Unit 301 a "Convertible Unit";

WHEREAS, Article I, Section (GG) of the Declaration permits Declarant "to convert Convertible Units to Common Elements and/or additional Units";

WHEREAS, the Declarant now elects to exercise its right under Article I, Section (GG) to convert Unit 301 into four (4) units;

Now, Therefore, Declarant hereby amends the Declaration as follows:

1. Unit 301 is hereby divided into Units 301, 302, 303 and 304 as shown graphically on the set of drawings incorporated herein by reference as **Exhibit "A"**, prepared and bearing the certified statements of Kenneth L. Bohning, Registered Surveyor, of Donald G. Bohning & Associates, Inc., 7979 Hub Parkway, Valley View, Ohio, 44125, and Jonathan Sandvick, Registered Architect, of Sandvick Architects, 1265 West 6th Street, Cleveland, Ohio 44113, as required by Section 5311.07, of the Ohio Revised Code. Such set of drawings is hereinafter referred to as the "Drawings" and the separate drawings comprising the set are hereinafter referred to by reference to the exhibit designations thereon.

2. Units 301, 302, 303 and 304 are made fully subject to the provisions contained in the Declaration.

3. **Exhibit "D"** entitled Designation of Unit Numbers, Unit Square Footages and Undivided Interests on the Declaration is hereby deleted in its entirety and **Exhibit "D"** attached hereto is hereby substituted.

4. Except as amended herein, the Declaration remains in full force and effect.

EXECUTED this 30th day of June, 2006.

ERIE BUILDING CONDOMINIUMS, LTD.
an Ohio limited partnership

By: **1260 West 4th Street, LLC**
an Ohio limited liability company
its General Partner

By: ______________________
David M. Perkowski,
its Managing Member

STATE OF OHIO)
) **SS:**
COUNTY OF CUYAHOGA)

Before me, a Notary Public in and for said County and State aforesaid, personally appeared **ERIE BUILDING CONDOMINIUMS, LTD.**, an Ohio limited partnership, by and through 1260 West 4th Street, LLC, an Ohio limited liability company, its general partner, by and through David M. Perkowski, its Managing Member, who acknowledged that he did sign the foregoing instrument and that the same was his free act and deed individually and as such officer, and the free act and deed of said limited liability company and said limited partnership.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Cleveland, Ohio this 30th day of June, 2006.

NOTARIAL SEAL
STATE OF OHIO

____
Notary Public

ROBERT M. GREGGO, Attorney
NOTARY PUBLIC – STATE OF OHIO
My Commission has no expiration date
Section 147.03 O.R.C.

This instrument prepared by:
Robert M. Greggo
Attorney at Law
3299 Glencairn Road
Shaker Heights, Ohio 44122

EXHIBIT "D"

TO DECLARATION OF CONDOMINIUM OWNERSHIP FOR ERIE BUILDING LOFTS CONDOMINIUM

Unit No.	Floor	Square Footage	Undivided Interest in Common Elements and in Common Expenses, Common Assessments, Common Surplus, Common Profits and Common Losses	Commercial Unit	Convertible Unit
101	First	5,384	0.1492	X	X
201	Second	5,800	0.1607	X	X
301	Third	1,691	0.0469		X
302	Third	1,154	0.0319		
303	Third	1,412	0.0392		
304	Third	1,540	0.0427		
401	Fourth	1,698	0.0470		
402	Fourth	1,154	0.0319		
403	Fourth	1,414	0.0392		
404	Fourth	1,543	0.0428		
501	Fifth	5,897	0.1634		X
601	Sixth	2,149	0.0595		
602	Sixth	1,558	0.0432		
603	Sixth	3,695	0.1024		X
	Totals:	36,090	1.000		

SECOND AMENDMENT TO DECLARATION OF CONDOMINIUM OWNERSHIP

FOR

ERIE BUILDING LOFTS CONDOMINIUM

A Mixed-Use Condominium
CLEVELAND, OHIO

CUYAHOGA COUNTY RECORDER
LILLIAN J GREENE - 6
DECL 8/1/2008 3:48:39 PM
200808010786

DEVELOPED BY:

ERIE BUILDING CONDOMINIUMS, LTD.
an Ohio limited partnership

2504 West 10th Street
P.O. Box 993243
Cleveland, Ohio 44101-3644
(216) 215-7129

SURETY TITLE AGENCY INC.

1010 Leader Building
526 Superior Avenue East
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216-589-8399 800-442-8399 Fax 216-589-4826
www.suretytitle.com email: info@suretytitle.com

Back Job ST18795F

RECORDER NOTE:
FOR MAPS ACCOMPANYING THIS DECLARATION AND
BY-LAWS SEE VOL. 163 PAGE 9 TO 11
INCLUSIVE OF CONDOMINIUM MAP RECORDS.

SECOND AMENDMENT TO DECLARATION OF CONDOMINIUM OWNERSHIP FOR ERIE BUILDING LOFTS CONDOMINIUM

a Mixed Use Condominium

CLEVELAND, OHIO

This Second Amendment to Declaration made at Cleveland, Ohio, by **ERIE BUILDING CONDOMINIUMS, LTD**, an Ohio limited partnership organized and existing under Ohio law, hereinafter referred to as "**Declarant,**"

WHEREAS, the Declarant caused a Declaration of Condominium Ownership for Erie Building Lofts Condominium (the "Declaration") to be recorded as Instrument No. 200605170352 of Cuyahoga County Records.

WHEREAS, the Declarant caused a First Amendment Declaration of Condominium Ownership for Erie Building Lofts Condominium (the "First Amendment") to be recorded as Instrument No. 200607110802 of Cuyahoga County Records

WHEREAS, Article I, Section (S) of the Declaration makes Unit 603 a "Convertible Unit";

WHEREAS, Article I, Section (GG) of the Declaration permits Declarant "to convert Convertible Units to Common Elements and/or additional Units";

WHEREAS, the Declarant now elects to exercise its right under Article I, Section (GG) to convert Unit 603 into two (2) units;

WHEREAS, Article X, Section (B) of the Declaration permits Declarant, without a vote of the unit owners to "(4) to correct clerical or typographical errors or obvious factual errors and inconsistencies in this Declaration or any Exhibit hereto or any supplement or amendment hereto, or (5) to correct obvious factual errors or inconsistencies between the Declaration and any exhibit thereto and other documents governing the Condominium, the correction of which would not materially impair the interest of any Unit Owner or mortgagee"; and

WHEREAS, the drawings incorporated in the Declaration as Exhibit "A" showed the stairway within Unit 602 incorrectly which resulted in a smaller square footage in the unit compared to the actual square footage; and

WHEREAS, the correction of the stairway in Unit 602 affects only the interior of the unit, has no impact on the boundary between units and will not materially impair the interest of any unit owner or mortgagee.

Now, Therefore, Declarant hereby amends the Declaration as follows:

1. Unit 603 is hereby divided into Units 603 and 604 as shown graphically on the set of drawings incorporated herein by reference as **Exhibit "A"**, prepared and bearing the certified statements of Kenneth L. Bohning, Registered Surveyor, of Donald G. Bohning & Associates, Inc., 7979 Hub Parkway, Valley View, Ohio, 44125, and Jonathan Sandvick, Registered Architect, of Sandvick Architects, 1265 West 6th Street, Cleveland, Ohio 44113, as required by Section 5311.07, of the Ohio Revised Code. Such set of drawings is hereinafter referred to as the "Drawings" and the separate drawings comprising the set are hereinafter referred to by reference to the exhibit designations thereon.

2. Unit 603 and 604 as shown on Exhibit "A" are made fully subject to the provisions contained in the Declaration.

3. Unit 602 is now correctly shown on Exhibit "A" attached hereto.

5. **Exhibit "D"** entitled Designation of Unit Numbers, Unit Square Footages and Undivided Interests on the Declaration is hereby deleted in its entirety and **Exhibit "D"** attached hereto is hereby substituted.

6. Except as amended herein, the Declaration remains in full force and effect.

(signatures on next pages)

EXECUTED this 29th day of July, 2008.

ERIE BUILDING CONDOMINIUMS, LTD.
an Ohio limited partnership

By: **1260 West 4th Street, LLC**
an Ohio limited liability company
its General Partner

By: ______________________
David M. Perkowski,
its Managing Member

STATE OF OHIO)
) **SS:**
COUNTY OF CUYAHOGA)

Before me, a Notary Public in and for said County and State aforesaid, personally appeared **ERIE BUILDING CONDOMINIUMS, LTD.**, an Ohio limited partnership, by and through 1260 West 4th Street, LLC, an Ohio limited liability company, its general partner, by and through David M. Perkowski, its Managing Member, who acknowledged that he did sign the foregoing instrument and that the same was his free act and deed individually and as such officer, and the free act and deed of said limited liability company and said limited partnership.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Cleveland, Ohio this 29th day of July, 2008.

____
Notary Public

ROBERT M. GREGGO, Attorney
NOTARY PUBLIC - STATE OF OHIO
My Commission has no expiration date
Section 147.03 O.R.C.

CONSENT

The undersigned, 1260 WEST 4TH STREET, LLC, a limited liability company organized and existing under Ohio law, is the current owner of Unit 603 described in the Declaration of Condominium Ownership for Erie Building Lofts Condominium (the "Declaration") which was recorded as Instrument No. 200605170352 of Cuyahoga County Records as amended by First Amendment to Declaration of Condominium Ownership for Erie Building Lofts Condominium (the "Amendment") which was recorded as Instrument No. 200607110802 of Cuyahoga County Records.

The undersigned hereby consents to the execution and delivery of the foregoing Second Amendment to Declaration of Condominium Ownership for Erie Building Lofts Condominium with the exhibits thereto ("Second Amendment"), and to the filing thereof in the Office of the County Recorder of Cuyahoga County, Ohio, and further, subjects and subordinates its interest to the Second Amendment, and to the provisions of Chapter 5311 of the Ohio Revised Code.

EXECUTED this 25th day of July, 2008.

1260 West 4th Street, LLC
an Ohio limited liability company

By: [signature]
David M. Perkowski,
its Managing Member

STATE OF OHIO)
) **SS:**
COUNTY OF CUYAHOGA)

Before me, a Notary Public in and for said County and State aforesaid, personally appeared 1260 West 4th Street, LLC, an Ohio limited liability company, by and through David M. Perkowski, its Managing Member, who acknowledged that he did sign the foregoing instrument and that the same was his free act and deed individually and as such officer, and the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Cleveland, Ohio this 25th day of July, 2008.

NOTARIAL SEAL
STATE OF OHIO

[signature]
Notary Public

ROBERT M. GREGGO, Attorney
NOTARY PUBLIC – STATE OF OHIO
My Commission has no expiration date
Section 147.03 O.R.C.

EXHIBIT "D"

TO DECLARATION OF CONDOMINIUM OWNERSHIP FOR ERIE BUILDING LOFTS CONDOMINIUM

Unit No.	Floor	Square Footage	Undivided Interest in Common Elements and in Common Expenses, Common Assessments, Common Surplus, Common Profits and Common Losses	Commercial Unit	Convertible Unit
101	First	5,384	0.1492	x	x
201	Second	5,800	0.1607	x	x
301	Third	1,691	0.0469		
302	Third	1,154	0.0319		
303	Third	1,412	0.0392		
304	Third	1,540	0.0427		
401	Fourth	1,698	0.0470		
402	Fourth	1,154	0.0319		
403	Fourth	1,414	0.0392		
404	Fourth	1,543	0.0428		
501	Fifth	5,897	0.1634		x
601	Sixth	2,149	0.0595		
602	Sixth	1,609	0.0446		
603	Sixth	1,787	0.0495		
604	Sixth	1,874	0.0515		
	Totals:	36,106	1.000		

1

THIRD AMENDMENT TO DECLARATION OF CONDOMINIUM OWNERSHIP

FOR

ERIE BUILDING LOFTS CONDOMINIUM

A Mixed-Use Condominium
CLEVELAND, OHIO

CUYAHOGA COUNTY RECORDER
LILLIAN J GREENE - 6
DECL 1/13/2009 11:28:37 AM
200901130123

DEVELOPED BY:

ERIE BUILDING CONDOMINIUMS, LTD.
an Ohio limited partnership

2504 West 10th Street
P.O. Box 993243
Cleveland, Ohio 44101-3644
(216) 215-7129

SURETY TITLE AGENCY INC.

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526 Superior Avenue East
Cleveland, Ohio 44114-1401
216-589-8399 800-442-8399 Fax 216-589-4826
www.suretytitle.com email: info@suretytitle.com

ST 18795F

RECORDER NOTE:

FOR MAPS ACCOMPANYING THIS DECLARATION AND BY-LAWS SEE VOL. 163 PAGES 65 TO 66 INCLUSIVE OF CONDOMINIUM MAP RECORDS.

THIRD AMENDMENT TO DECLARATION OF CONDOMINIUM OWNERSHIP FOR ERIE BUILDING LOFTS CONDOMINIUM

a Mixed Use Condominium

CLEVELAND, OHIO

This Third Amendment to Declaration made at Cleveland, Ohio, by **ERIE BUILDING CONDOMINIUMS, LTD**, an Ohio limited partnership organized and existing under Ohio law, hereinafter referred to as "**Declarant,**"

WHEREAS, the Declarant caused a Declaration of Condominium Ownership for Erie Building Lofts Condominium (the "Declaration") to be recorded as Instrument No. 200605170352 of Cuyahoga County Records.

WHEREAS, the Declarant caused a First Amendment to Declaration of Condominium Ownership for Erie Building Lofts Condominium (the "First Amendment") to be recorded as Instrument No. 200607110802 of Cuyahoga County Records

WHEREAS, the Declarant caused a Second Amendment to Declaration of Condominium Ownership for Erie Building Lofts Condominium (the "Second Amendment") to be recorded as Instrument No. 200808010786 of Cuyahoga County Records

WHEREAS, Article I, Section (S) of the Declaration makes Unit 501 a "Convertible Unit";

WHEREAS, Article I, Section (GG) of the Declaration permits Declarant "to convert Convertible Units to Common Elements and/or additional Units";

WHEREAS, the Declarant now elects to exercise its right under Article I, Section (GG) to convert Unit 501 into three (3) units.

Now, Therefore, Declarant hereby amends the Declaration as follows:

1. Unit 501 is hereby divided into Units 501, 502 and 503 as shown graphically on the set of drawings incorporated herein by reference as **Exhibit "A"**, prepared and bearing the certified statements of Kenneth L. Bohning, Registered Surveyor, of Donald G. Bohning & Associates, Inc., 7979 Hub Parkway, Valley View, Ohio, 44125, and Todd M. Sciano, Registered Engineer, of Donald G. Bohning & Associates, Inc., 7979 Hub Parkway, Valley View, Ohio, 44125, as required by Section 5311.07, of the Ohio Revised Code. Such set of drawings is hereinafter referred to as the "Drawings" and the separate drawings comprising the set are hereinafter referred to by reference to the exhibit designations thereon.

2. Units 501, 502 and 503 as shown the Drawings are made fully subject to the provisions contained in the Declaration.

3. **<u>Exhibit "D"</u>** entitled Designation of Unit Numbers, Unit Square Footages and Undivided Interests on the Declaration is hereby deleted in its entirety and **<u>Exhibit "D"</u>** attached hereto is hereby substituted.

4. Except as amended herein, the Declaration remains in full force and effect.

(signature on next pages)

EXECUTED this 8th day of January, 2009.

ERIE BUILDING CONDOMINIUMS, LTD.
an Ohio limited partnership

By: **1260 West 4th Street, LLC**
an Ohio limited liability company
its General Partner

By: ______________________
David M. Perkowski,
its Managing Member

STATE OF OHIO)
) **SS:**
COUNTY OF CUYAHOGA)

Before me, a Notary Public in and for said County and State aforesaid, personally appeared **ERIE BUILDING CONDOMINIUMS, LTD.**, an Ohio limited partnership, by and through 1260 West 4th Street, LLC, an Ohio limited liability company, its general partner, by and through David M. Perkowski, its Managing Member, who acknowledged that he did sign the foregoing instrument and that the same was his free act and deed individually and as such officer, and the free act and deed of said limited liability company and said limited partnership.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Cleveland, Ohio this 8th day of January, 2009.

NOTARIAL SEAL
STATE OF OHIO

____
Notary Public

ROBERT M. GREGGO, Attorney
NOTARY PUBLIC – STATE OF OHIO
My Commission has no expiration date
Section 147.03 O.R.C.

This instrument prepared by:
Robert M. Greggo
Attorney at Law
3299 Glencairn Road
Shaker Heights, Ohio 44122

CONSENT

The undersigned, 1260 WEST 4TH STREET, LLC, a limited liability company organized and existing under Ohio law, is the current owner of Unit 501 described in the Declaration of Condominium Ownership for Erie Building Lofts Condominium (the "Declaration") which was recorded as Instrument No. 200605170352 of Cuyahoga County Records as amended by First Amendment to Declaration of Condominium Ownership for Erie Building Lofts Condominium (the "First Amendment") which was recorded as Instrument No. 200607110802 of Cuyahoga County Records, as further amended by Second Amendment to Declaration of Condominium Ownership for Erie Building Lofts Condominium (the "Second Amendment") to be recorded as Instrument No. 2008010786 of Cuyahoga County Records.

The undersigned hereby consents to the execution and delivery of the foregoing Third Amendment to Declaration of Condominium Ownership for Erie Building Lofts Condominium with the exhibits thereto ("Third Amendment"), and to the filing thereof in the Office of the County Recorder of Cuyahoga County, Ohio, and further, subjects and subordinates its interest to the Second Amendment, and to the provisions of Chapter 5311 of the Ohio Revised Code.

EXECUTED this 8th day of January, 2009.

1260 West 4th Street, LLC
an Ohio limited liability company

By: _______________________
David M. Perkowski,
its Managing Member

STATE OF OHIO)
) **SS:**
COUNTY OF CUYAHOGA)

Before me, a Notary Public in and for said County and State aforesaid, personally appeared 1260 West 4th Street, LLC, an Ohio limited liability company, by and through David M. Perkowski, its Managing Member, who acknowledged that he did sign the foregoing instrument and that the same was his free act and deed individually and as such officer, and the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Cleveland, Ohio this 8th day of January, 2009.

NOTARIAL SEAL
STATE OF OHIO

____
Notary Public
ROBERT M. GREGGO, Attorney
NOTARY PUBLIC – STATE OF OHIO
My Commission has no expiration date
Section 147.03 O.R.C.

EXHIBIT "D"

TO DECLARATION OF CONDOMINIUM OWNERSHIP
FOR
ERIE BUILDING LOFTS CONDOMINIUM

Unit No.	Floor	Square Footage	Undivided Interest in Common Elements and in Common Expenses, Common Assessments, Common Surplus, Common Profits and Common Losses	Commercial Unit	Convertible Unit
101	First	5,384	0.1492	x	x
201	Second	5,800	0.1607	x	x
301	Third	1,691	0.0469		
302	Third	1,154	0.0319		
303	Third	1,412	0.0392		
304	Third	1,540	0.0427		
401	Fourth	1,698	0.0470		
402	Fourth	1,154	0.0319		
403	Fourth	1,414	0.0392		
404	Fourth	1,543	0.0428		
501	Fifth	1,729	0.0482		
502		1,180	0.0331		
503		2,942	0.0821		x
601	Sixth	2,149	0.0595		
602	Sixth	1,609	0.0446		
603	Sixth	1,787	0.0495		
604	Sixth	1,874	0.0515		
	Totals:	36,060	1.000		

DISCLOSURE STATEMENT FOR

ERIE BUILDING LOFTS CONDOMINIUM

CLEVELAND, OHIO,

A MIXED-USE CONDOMINIUM DEVELOPMENT

April, 2006

DEVELOPED AND BUILT BY:

ERIE BUILDING CONDOMINIUMS, LTD.
an Ohio limited partnership
2504 West 10th Street
P.O. Box 93243
Cleveland, Ohio 44101-3644

THIS DISCLOSURE STATEMENT CONTAINS MATERIAL INFORMATION CONCERNING THE ERIE BUILDING LOFTS CONDOMINIUM WHICH SHOULD BE CAREFULLY REVIEWED AND CONSIDERED BY PURCHASERS OF UNITS IN ERIE BUILDING LOFTS CONDOMINIUM

ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. REFERENCE SHOULD BE MADE TO THE CONDOMINIUM INSTRUMENTS, THIS DISCLOSURE STATEMENT AND ITS EXHIBITS.

April 5, 2006

PREFACE

This Disclosure Statement is offered in compliance with Section 5311.26 of the Ohio Revised Code which relates to the disclosure of all material circumstances or features affecting the purchase of a Condominium Ownership Interest in Erie Building Lofts Condominium, Cleveland, Ohio (the "**Condominium Development**"). This Disclosure Statement is in outline format with lettering and numbering that directly corresponds with the lettering and numbering of the sections and subsections of Section 5311.26 of the Ohio Revised Code [the provisions of the Ohio Condominium Act requiring this disclosure] to which the text applies.

Except as otherwise set forth herein, all words and terms used herein shall have the same respective meanings as specified in the Declaration of Condominium Ownership for the Erie Building Lofts Condominium (the "**Declaration**"), a copy of which Declaration is attached hereto as **Exhibit "B"** (Document No. 3), together with a copy of the Bylaws of the Erie Building Lofts Condominium Association, Inc. ("**Bylaws**"), a copy of which Bylaws is attached hereto as **Exhibit "C"** (Document No. 4), and a copy of the Drawings has been made available for each Purchaser's review.

INTRODUCTION

(all capitalized terms used in this Disclosure Statement without definition shall have the meanings ascribed to them in the Declaration)

ERIE BUILDING CONDOMINIUMS, LTD., an Ohio limited partnership (the "**Developer**"), has caused this Disclosure Statement to be prepared in accordance with Section 5311.26 of the Ohio Revised Code. It is intended to provide all prospective Purchasers of condominium Units in the Erie Building Lofts Condominium, Cleveland, Ohio with important information about the Erie Building Lofts Condominium to assist them in reaching an informed decision about purchasing a condominium Unit.

Condominium ownership is a relatively new property right, which, in effect, combines two older forms of property ownership. The condominium Unit Owner (a) is the sole owner of a portion of a building which comprises his or her living quarters (i.e. the "**Unit**") and (b) is, in conjunction with the other Unit Owners in the Condominium, one of many mutual owners of "**Common Elements**" which serve both his or her Unit and the other Unit Owner's living quarters (in legal terms, "tenants in common") which the Unit Owner may use and enjoy along with other Unit Owners. Each individual Unit Owner has an "**Undivided Interest**" in the Common Elements, which means that *all* Unit Owners have a proportionate share in the ownership of all Common Elements. In the Erie Building Lofts Condominium each Unit Owner's Undivided Interest is determined based on the relative square footage of a Unit versus the square footage of all Units. An Undivided Interest gives the Unit Owner the right to share in the control of the Common Elements, but he or she must also pay his or her proportionate share of the expenses of operating and maintaining the Common Elements. It is this ownership of an Undivided Interest in the Common Elements which sets condominium ownership apart from other forms of property ownership.

A Unit Owner may also have the exclusive right to use a certain limited portion of the Common Elements. Such area is referred to as a "**Limited Common Elements**" and is perpetually reserved for the sole use of one or more Units to the exclusion of all other remaining Units. The Limited Common Elements for the Condominium are set forth in the Declaration and Allotted Drawings.

"**Exclusive Use Areas**" are also portions of the Common Elements, and are areas reserved for the use of one or more Units to the exclusion of the remaining Units. The difference between Exclusive Use Areas and Limited Common Elements is: (1) Limited Common Elements are originally designated to a specific Unit in the Declaration by the Developer and cannot later be unilaterally changed by the Board, but (2) Exclusive Use Areas are only defined as a general area by the Developer in the Declaration, the Board then has the power to assign (and un-assign) portions of such areas to specific Units.

A Unit Owner owns their Unit in many similar respects to the manner in which the owner of a traditional private single-family residence owns their home. The Unit Owner owns a *fee simple* estate in the Unit, is entitled to the exclusive possession thereof, and may obtain a mortgage loan and use their Unit as security for such loan if they choose to do so.

All real property taxes and assessments for the Erie Building Lofts Condominium will ultimately be levied separately against individual condominium Units. Each Unit Owner will receive an individual tax bill and will be responsible for the payment of the taxes on their own Unit (unless the Unit Owner's lender [if any] requires an escrow of tax payments with the monthly mortgage payment). Each Unit Owner's separate tax bill, when finally issued by the Cuyahoga County Treasurer, will include the taxes payable for the Unit and the Undivided Interest in the Common Elements appurtenant to such Unit. The assessed value of each condominium Unit will be unknown if the Declaration, Bylaws and Drawings creating such Unit ("**Condominium Documents**") have not yet been filed with the Cuyahoga County Recorder ("**County Recorder**") and/or if the value of the Unit is not shown on the tax duplicate of the Cuyahoga County Auditor. Once the Condominium Documents are filed, the Cuyahoga County Auditor will be in a position to assess the real estate taxes for the Condominium on a Unit by Unit basis, although it may take some time after the Condominium Documents have been filed for the Cuyahoga County Auditor to issue a separate tax bill for each Unit. In addition, special tax abatement provisions have been enacted by the City of Cleveland. See **Exhibit "A"** (Document No. 2) hereof for information regarding the tax abatement.

Under present federal income tax laws a Unit Owner who itemizes his or her deductions may, in a manner like that of an owner of a single family residence, deduct from his or her income, for federal income tax purposes, the real estate taxes paid on his Unit and the interest paid on his or her mortgage loan (if any).

(A) NAME AND ADDRESS OF THE CONDOMINIUM DEVELOPMENT AND NAME, ADDRESS AND TELEPHONE NUMBER OF THE DEVELOPER, SALES AGENT AND MANAGEMENT COMPANY

The name of the condominium development is the "Erie Building Lofts Condominium" situated in Cleveland, Ohio (herein called "**Condominium Development**" or "**Development**").

The name of the developer is **ERIE BUILDING CONDOMINIUMS, LTD.**, an Ohio limited partnership, 2504 West 10th Street, P.O. Box 93243, Cleveland, Ohio 44101 (herein called the "**Developer**"). The Developer's telephone number is (216) 215-7129.

The name and address of the Developer's sales representative is David Perkowski, a principal of Developer. The sales representative's telephone number is (216) 215-7129.

The Developer presently intends to self-manage the Condominium, however the Developer retains the right to retain an outside management company to manage the Condominium at any time. If and when a management company is engaged, the name and address of the management company will be provided, and a copy of any contract with the management company will be attached hereto as **Exhibit "E"** (Document No. 6).

(B) <u>GENERAL NARRATIVE DESCRIPTION OF CONDOMINIUM DEVELOPMENT</u>

<u>Mixed Use Condominium / Façade Easement</u>

(a) **General.** The Developer of the Erie Building Lofts Condominium intends that a façade easement and "loss of development rights" easement will be granted with respect to the façade and air rights of the Building (the "**Façade Easement**", a copy of which will be attached hereto as **<u>Exhibit "N"</u>** [Document 15] when the same is available). The façade and air rights of the Building are presently part of Unit 101, which also includes the parking garage area on the first floor of the Building. This Façade Easement will either be granted by the Developer or by the owner of Unit 101, and in either case will initially restrict only Unit 101. It is predicted that the Façade Easement will be granted to a qualified non-profit entity, presumably the Historic Warehouse District Development Corporation (HWDDC), and will place two significant and permanent restrictions on the use of Unit 101: (i) the exterior appearance and façade of the Building may not be altered unless consistent with the historic and architectural integrity of the Building, as determined by HWDDC (or other grantee of such Façade Easement), and (ii) no further development may take place within the "air rights" portion of Condominium Property. The granting of the Façade Easement imparts certain tax benefits to the owner of Unit 101, but as a requirement, the Developer (or a related entity) is required by the tax code to own the portion of the Property encumbered by the Façade Easement as a commercial investment property for a minimum of five (5) years from the date the Façade Easement is granted. As a result, the Developer intends to hold two Units within the Condominium as investment property (as opposed to selling such units to Live/Work owners) for a period of at least five (5) years. These Units are Unit 101 and Unit 201, as described below. The Developer anticipates conveying these two units to a related entity.

(b) **Unit 101:** The Developer intends to convey ownership of Unit 101 to a related entity that will retain ownership of Unit 101 for at least five (5) years. Unit 101 is a "Commercial Unit" under the Declaration. Unit 101 is unique in its composition in that it includes: (i) the parking garage space within the two sections of the first floor of the building, (ii) the entire façade structure of the Building, including all brick, stone, masonry, wood, trim, doors, windows, cornice, and roofing membrane, and (iii) the entirety of the air space above the Building. Unit 101 is a "Convertible Unit" allowing the Owner thereof to elect to further convert the Unit into a combination of Common Elements and Unit, and after the five (5) year period the Owner of Unit 101 may elect to convert the façade and the air space to a Common Element of the Condominium. The Owner of Unit 101 may keep the parking garage as a commercial Unit, or may elect to sell Unit 101 to another investor, including, potentially, the Condominium Association. If any portion of Unit 101 burdened by the Façade Easement is converted into Common Elements, the Association will then succeed to the rights and responsibilities of the grantor of the Façade Easement, as described above.

(c) **Unit 201:** The Developer also intends to convey ownership of Unit 201 to a related entity that will retain ownership of Unit 201 for at least five (5) years. Unit 201 is all of the Live/Work space within the second floor of the Building, which space may contain one (1) to three (3) rental apartments, and thus is a "Commercial Unit" under the Declaration. Unit 201 is also a "Convertible Unit", and after the five (5) year period the Owner of Unit 201 may elect to convert the Unit into up to separate Live/Work Units and offer the same for sale. If such Unit(s) are offered for sale, they will cease to be "Commercial Units" but become "Live/Work Units" as defined in the Declaration.

(d) **Units 301, 501, and 603:** Units 301 and 501 are "Convertible Units" which the Developer will further subdivide into additional Live/Work Units as the boundaries of such units are determined by buyer preferences.

(e) **Live/Work Provisions**: All units may be used for any use permitted within a "Live-Work Overlay District" by Part 3, Title VII, Chapter 346 of the City of Cleveland Codified Ordinances, as the same may be amended from time-to-time, however no business activity within a Unit shall involve door-to-door solicitation of Occupants of the Condominium Property; and such business activity shall not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Condominium Property, as may be determined in the sole discretion of the Board. The interior of Unit 101 may also be used for commercial or private parking garage purposes only.

<u>**Total Number of Units:**</u> The initial Condominium Development consists of eleven (11) Condominium constructed in a single Building. If the Convertible Unit 201 is converted into three (3) Units, Units 301 and 501 are both converted into four (4) Units, and Unit 603 is converted into two (2) Units, there will be a total of twenty (20) Units in the Condominium.

<u>**General Description of Building and Units.**</u> Erie Building Lofts Condominium is a six-story mixed-use building, including a parking garage on the first floor.

The main building is constructed of a brick masonry load bearing walls with wood framing. Some interior partitions are masonry, while new interior partitions will be drywall over metal studs. There is no basement.

The first floor contains the Unit 101 parking areas, and certain Common Elements such as the building pass through, elevator, stairs, and trash rooms.

The units on the second through sixth floors all have unique floor plans. Units on floors 3 and 5 have not been designed yet, and will be designed in accordance with buyer preferences, and will be "carved out" of the Unit that presently encompasses the entire floor.

See floor plans for specific details of individual units. Any inconsistencies between the narrative descriptions of Units and/or the Common Elements on the one hand and the "as built" Drawings on the other hand shall be resolved in favor of the "as built" Drawings.

Parking: The Developer will offer indoor parking spaces within the first floor parking garage, which will remain owned by the Developer or a related entity for at least five (5) years. Such spaces are available for $125 per month.

Ownership Interest Acquired. The Condominium Ownership Interest being offered for each Unit shall be a fee simple estate in the Unit (subject to easements, restrictions, conditions, reservations and other items of record, as well as zoning and building codes, taxes and assessments not yet due and payable, and the terms, conditions and covenants of the Declaration of Condominium Ownership, Drawings and Bylaws for the Condominium Development and amendments thereto and the rights of tenants, if any, in possession of a Unit), together with an appurtenant undivided interest as a tenant in common in the Common Elements.

(C) STATUS OF CONSTRUCTION, ZONING, SITE PLAN APPROVAL, ETC., SCHEDULED DATES FOR COMPLETION OF BUILDING AND OTHER COMMON ELEMENTS

Governmental Approvals. All necessary construction, zoning, site plan and other approvals required by the governmental authorities having jurisdiction of the same for the Condominium Development will be obtained prior to constructing the building.

Statutory & Regulatory Compliance. To the best of the Developer's knowledge, information and belief, it has complied with all federal, state and local statutes or regulations affecting the Development.

Completion Dates. All improvements within the Common Elements serving any Unit will be complete prior to the conveyance of such Unit. Unit improvements will be completed as provided in the purchase agreement for each individual Unit, and the first units can be delivered at the time of substantial completion of the Building. The completion of the Building by the Developer is further subject to availability of improvements, materials and labor and is further subject to the pace of sales, work stoppages due to strikes, acts of God, acts of national emergency, delays caused by purchasers of Units and other acts which are beyond the reasonable control of the Developer. **AS CONSTRUCTION WITHIN INDIVIDUAL UNITS WILL BE COMPLETED AS THE UNITS ARE SOLD, CONSTRUCTION ACTIVITIES MAY BE ONGOING WITHIN THE BUILDING FOR SOME TIME. THE INITIAL UNIT OWNERS TO OCCUPY THE BUILDING MAY BE SUBJECT TO CERTAIN INCONVENIENCE ASSOCIATED WITH SUCH ONGOING CONSTRUCTION**

ACTIVITIES, INCLUDING ANTICIPATED INCREASED LEVELS OF NOISE, DUST, AND ACTIVITY WITHIN THE BUILDING DURING NORMAL WORKING HOURS. DEVELOPER WILL MAKE EFFORTS TO MINIMIZE THE ADVERSE EFFECTS OF ONGOING CONSTRUCTION, HOWEVER THE ADVERSE EFFECTS MAY NOT BE ELIMINATED. THE DEVELOPER WILL, AT ITS SOLE COST AND EXPENSE, CLEAN THE COMMON AREAS OF FLOORS ON WHICH CONSTRUCTION ACTIVITIES ARE OCCURRING AND COMMON AREAS WHICH ARE SOILED BECAUSE OF SUCH CONSTRUCTION. THE DEVELOPER WILL REPAIR ANY DAMAGE TO THE COMMON ELEMENTS WHICH MAY BE INCURRED DUE TO SUCH ONGOING CONSTRUCTION ACTIVITIES.

No Recreation Facilities. The Condominium does not contain recreation facilities.

(D) FINANCING

The Purchasers of Units are free to obtain their mortgage financing for the purchase of Units from any bank, savings and loan association or other lending institution. If and when financing is offered by or through the developer to the purchasers of Condominium Units, the significant terms of such financing, including the name of any bank, savings and loan association or other lending institution involved in the financing, the minimum down payment and the annual interest rate for such financing will be added to this Disclosure Statement as an exhibit.

(E) DESCRIPTION OF WARRANTIES

SOLELY AND ONLY TO THE EXTENT SUCH WARRANTIES ARE OR MAY BE REQUIRED BY SECTION 5311.25(E) OF THE OHIO REVISED CODE:

Limited Warranty on Common Elements. The Developer shall furnish a two-year warranty covering the full cost of labor and materials for any repair or replacement of roof and structural components, and mechanical, electrical, plumbing and common service elements serving the Condominium Development as a whole occasioned or necessitated by a defect in material or workmanship. The two-year warranty period hereunder shall commence on the date the deed is filed for record following the sale by the Developer to a good faith Purchaser for value of the first Condominium Unit.

Limited Warranty on Unit. The Developer is also furnishing a one-year warranty covering the full cost of labor and materials for the repair or replacement of structural, mechanical and other elements pertaining to each Unit occasioned or necessitated by a defect in material or workmanship. The one-year warranty period with respect to each Unit shall commence on the date the deed is filed for record for the conveyance to the Purchaser of such Unit.

Manufacturer's Warranties. With respect to any ranges, refrigerators, washing machines, clothes dryers, hot water heaters or similar appliances that are furnished as part of a Unit and are under manufacturers' warranty, the Developer shall assign to each Purchaser the express and implied warranties of the manufacturers' of such appliances in satisfaction of the Developer's warranty of such appliances, except the Developer's warranty of each Unit includes the warranty that the appliances will be properly installed. If there are no manufacturers' warranties on such items, or if the manufacturers' warranty has less than one year to run, the Developer shall provide each such Purchaser with a one-year warranty on the appliances on commencing on the date of conveyance of the Unit with respect to the appliances that have no manufacturers' warranty, and commencing on the date of expiration of the manufacturers' warranty for the balance of the one-year warranty period for appliances that have less than a one year warranty.

All warranties made to the Developer that exceed the time periods specified above with respect to any part of the Units will be assigned to the Purchasers of Units and with respect to any part of the Common Elements will be assigned to the Association.

Form of Warranty. The Developer is providing the Purchasers of Units with a Limited Home Warranty ("**Limited Home Warranty**"). A form of the Limited Warranty is attached hereto as **Exhibit "G"** (Document No. 8).

(F) PROJECTION OF ANNUAL AND MONTHLY EXPENDITURES TO OPERATE AND MAINTAIN THE COMMON ELEMENTS

Attached hereto and made a part hereof as **Exhibit "A"** (Document No. 2) is a two-year projection of annual expenditures necessary to operate and maintain the Common Elements of the Condominium, prepared by the Developer, specifically stating the assumptions and bases of the projection, and a complete statement of the estimated monthly cost per Unit for such two-year period including:

(1) Each Unit's share of the Common Expenses, based upon the proportion that the square footage of each Unit bears to the aggregate square footages of all Units;

(2) The cost of insurance and a description of insurance coverages;

(3) The dollar amount of operating and maintenance expenses;

(4) The monthly cost of utilities serving the Common Elements;

(5) The amount of reserves for replacements and contingencies; and

(6) Any other costs, fees and assessments reasonably ascertainable by the Developer.

(G) APPLICATION OF CONDOMINIUM CONVERSION STATUTE

(H) As the Live/Work Units have ***not*** been occupied as a residential Units immediately prior to the recording of the Declaration, Subsection 5311.26(G) of the Ohio Revised Code is ***not*** applicable to the Condominium.

(I) MANAGEMENT OF THE CONDOMINIUM (CONDITIONS FOR FORMATION OF A UNIT OWNERS' ASSOCIATION)

Conditions for the Formation of the Association. The Erie Building Lofts Condominium Association, Inc. (the "**Association**") shall manage the Condominium Development and the affairs of the Condominium Development with the right, however, to delegate its authority to the Management Company as provided in Paragraph (e) of Section 10 of Article II of the Bylaws. The Association shall be established not later than the date the deed or other evidence of ownership is filed for record following the first sale of a Condominium Ownership Interest in the Development. Until the Association is established, the Developer shall act in all instances where action of the Association or its officers is authorized or required by law or in the Declaration. The first meeting of the Association shall be held not later than the time that Condominium Ownership Interests to which twenty-five percent (25%) of the undivided interests in the Common Elements appertain have been sold and conveyed by the Developer. At such first meeting, the Unit Owners, other than the Developer, shall elect not less than one-third (1/3rd) of the members of the Board of Directors. Except as aforementioned in this Paragraph, the Developer or the person or persons designated by the Developer are authorized to appoint and remove members of the Board of Directors and the officers of the Association and to exercise the powers and responsibilities otherwise assigned by law or by the Declaration to the Association, the Board or other officers. Such authorization shall extend from the date of establishment of the Association until the earlier of: (a) three (3) years from said date; or (b) sixty (60) days after the sale and conveyance of Condominium Ownership Interests to which appertain seventy-five percent (75%) of the undivided interests in the Common Elements to Purchasers in good faith for value. Within said sixty (60) day period, the Association shall meet and elect all members of the Board of Directors. Persons so elected shall take office upon election.

Apportionment of Voting Rights. On any question on which the vote of Unit Owners is permitted or required, the Owner or Owners of each Unit shall be entitled to exercise one vote for each such Unit, and each such vote shall be weighted in proportion to the Undivided Interest appurtenant to the Unit casting such vote.

Contractual Rights and Responsibilities of the Association.

(a) **Management.** The Association shall manage the Condominium Development and the affairs of the Condominium Development with the right, however, to delegate its authority as herein provided.

(b) **Common Elements.** Except as otherwise expressly provided in the Declaration and Bylaws, the Association shall maintain and keep the

Common Elements and exterior balconies in a state of good working order, condition and repair, in a clean, neat, safe and sanitary condition, and in conformity with all laws, ordinances and regulations applicable to the Common Elements, by promptly, properly and in a good and workmanlike manner making all repairs, replacements, alterations and other improvements necessary to comply with the foregoing.

(c) **Units.** The Association shall, except for such items as are designated in the Declaration as being part of a Unit, and except for such items designated as being a Limited Common Elements designated for use of such Unit (including rooftop decks), maintain, repair, replace, alter and improve all conduits, ducts, plumbing, wiring, equipment and other facilities for the furnishing of utility services which are used by or for, or are common with, two or more Units, even though such facilities are located within the boundaries of a Unit. Except as provided in the preceding sentence, a Unit Owner is responsible for the maintenance and repair of his or her Unit and rooftop decks appurtenant to such Unit. If a Unit or Limited Common Elements appurtenant to a Unit become impaired, in a neglected state or otherwise in need of repair or restoration, and if the Unit Owner thereof fails after notice from the Association to repair, restore or otherwise correct the condition, the Association may, but shall not be obligated to, repair, restore or otherwise correct the condition. The Association shall charge and assess the cost and expense thereof to the Unit Owner or Owners who should have performed the work.

(d) **General Duties.** The Association shall do any and all other things necessary and appropriate to carry out the duties and obligations reasonably intended to be required of it under the Declaration, Bylaws and Chapter 5311 of the Ohio Revised Code.

(e) **Delegation of Authority.** The Association may delegate such portion of its authority and responsibilities to a manager, managing agent or management company. Any such delegation shall be evidenced by a management agreement which shall provide for the duties to be performed by the managing agent and for the payment to the managing agent of reasonable compensation as a Common Expense. See Paragraph (I) hereof.

Binding Effect of Condominium Instruments.

The Condominium Instruments are binding legal documents that are defined in Paragraph (J) of this Disclosure Statement and may be altered or amended as follows:

(a) **Amendment of Declaration by Association.** Except with respect to an amendment of undivided interests in the Common Elements, the Declaration may be amended upon the filing for record with the County

Recorder of an instrument in writing setting forth specifically the item or items to be amended, which instrument shall have been duly authorized by Unit Owners entitled to exercise at least seventy-five percent (75%) of the voting power of the Association. Such amendment must be executed by two officers of the Association with the same formalities as the Declaration, must refer to the volume and page in which the Declaration and its attached exhibits are recorded; must contain an affidavit by an officer of the Association that a copy of the amendment has been mailed to first mortgagees having liens of record against Units. The Undivided Interest of each Unit in the Common Elements as expressed in the Declaration shall not be altered except by an amendment to the Declaration unanimously approved by all Unit Owners affected. No amendment shall have any effect, however, upon the Developer, the rights of the Developer under the Declaration and other Condominium Instruments and upon the rights of bona fide mortgagees until the written consent of the Developer and/or such mortgagees to such amendment has been secured. Such consent shall be retained by the Secretary of the Association and his or her certification in the instrument of amendment as to the consent or non-consent of the Developer and the names of the consenting and non-consenting mortgagees of various Units may be relied upon by all persons for all purposes. Any such amendment shall be effective upon recordation of the amendment with the County Recorder; provided, however, that no provision in the Declaration may be amended so as to conflict with the obligatory provisions of the "Ohio Condominium Act."

(b) **Amendment of Bylaws by the Association.** Provisions of the Bylaws may be amended by the Unit Owners at a meeting held for such purpose by the affirmative vote of those entitled to exercise at least seventy-five percent (75%) of the voting power of the Association; provided, however, no such amendment shall conflict with the provisions of the Declaration or of the obligatory provisions of the "Ohio Condominium Act."

In addition, the Board has the right to file a "Special Amendment" to the Declaration pursuant to Article X(B) of the Declaration to comply with the requirements of originators and guarantors of mortgages; to bring the Declaration into compliance with the Act; to correct clerical or typographical errors; to correct obvious factual errors (so long as the interests of Unit Owners or mortgagees are not impaired); to comply with the requirements of insurance underwriters; to bring any provision in compliance with the provisions of any applicable governmental statute, ordinance, rule or regulation; to enable a title insurance company to issue title insurance with respect to the Condominium Development or any portion thereof; and to designate a successor to the person named to receive service of process for the Association. The Developer also has the right to amend the Declaration to comply with the requirements of any Façade Easement. Pursuant to Article X(C) of the Declaration, any Unit Owner who is aggrieved by a Special Amendment to the Declaration may bring a declaratory judgment action to have the Special Amendment declared invalid.

(J) FACSIMILE OF MANAGEMENT AGREEMENT AND OTHER CONTRACTS AFFECTING THE CONDOMINIUM DEVELOPMENT

The Developer presently intends to self-manage the Condominium, however the Developer retains the right to retain an outside management company to manage the Condominium at any time. If and when a management company is engaged, the name and address of the management company will be provided, and a copy of any contract with the management company will be attached hereto as **Exhibit "E"** (Document No. 6). Any Management Agreement shall be for a term of two (2) years. The initial term may commence on the date of filing for record of a deed following the first sale of a Condominium Ownership Interest (defined in the Declaration and Ohio Revised Code Section 5311.01 to be a fee simple estate in a Unit together with an appurtenant undivided interest in the Common Elements) in the Condominium Development. Notwithstanding the foregoing, the Association shall not be obligated under the provisions of a Management Agreement for a period which exceeds more than ninety (90) days from and after the date of the meeting of Unit Owners at which they assume control of the Association following the earlier of either three (3) years of the date of the establishment of the Association or sixty (60) days after the sale and conveyance of Condominium Ownership Interests to Purchasers in good faith for value to which appertain seventy-five percent (75%) of the undivided interests in the Common Elements ("**Control Date**"), except that either party may terminate a Management Agreement, with or without cause and without payment of a termination fee, upon ninety (90) days' written notice to the other party. A Management Agreement may thereafter be renewed with the approval of Unit Owners entitled to exercise the majority of the voting power of the Association in accordance with Section 5311.25(D) of the Act.

A Management Agreement generally provides that the Management company will provide the following services**, however no Management Agreement has been entered into at this time**:

Physical Management

(a) **Building Maintenance.** The Management Company shall assume control of the Common Elements, including buildings, equipment and improvements, and shall be responsible for supervising their upkeep and maintenance. The Management Company shall direct, supervise and order to be done those things requested by the Association or which are, in the Management Company's judgment, necessary to preserve and protect the Common Elements.

(b) **Contracted Services.** The Management Company is authorized, on behalf of the Association, to hire, discharge and supervise employees and/or independent contractors required by the operation and maintenance of the Common Elements, including, but not limited to, trash removal, snow removal and landscaping, and to make all payments for the same from the maintenance fund of the Association. Unless otherwise specified in writing, an employee so hired shall be deemed to be the employee of the Association. Compensation for such employee shall be paid by the Association.

(c) **Inspections.** The Management Company shall make regular inspections of the Common Elements and render reports and make recommendations concerning same.

Administrative Management

(a) **Meetings of Association.** The Management Company shall organize the initial meeting of the Association, including the preparation and delivery of notices of the meeting, and the preparation of proxy forms. The Management Company shall prepare the agenda for the initial meeting, conduct the meeting and oversee the election of the initial Board of Directors of the Association.

(b) **Meeting Notices, Agenda and Minutes.** After the initial meeting of the Association, the Management Company, at the direction of the Board of Directors of the Association, shall send notices of Association meetings, shall prepare the agenda therefor, shall circulate minutes of any such meetings as prepared by the secretary of the Association, and shall effect instructions as directed by the Board of Directors of the Association.

(c) **Association Records.** The Management Company shall keep a file of all records of the affairs of the Association furnished to it by the Association, including, but not limited to, minutes of meetings, correspondence, modifications of the Declaration, Bylaws, rules and regulations, etc.

(d) **Insurance.** The Management Company shall supervise condominium insurance policies for fire and liability, including the initiation and the following-up of claims, make recommendations as to the adequacy or inadequacy of coverage, prepare insurance specifications for bid proposals and secure bids under the direction of the Board of Directors, place insurance coverages in accordance with the Declaration and approval of the Board of Directors, and establish and maintain ticklers for the timely renewals of insurance policies.

Fiscal Management

(a) **Assessments.** The Management Company shall collect all assessments as prescribed by the Association, set up a checking, savings or other account or accounts with any federally insured institution or institutions as is customary with other condominium associations, as the Management Company in its discretion or at the written direction of the Board of

Directors deems necessary. The Management Company shall keep accounting records to reflect the status of Association's interest in any such account or accounts.

(b) **Delinquent Accounts.** The Management Company shall mail notices of any delinquency to the delinquent Unit Owner. The Management Company shall use every effort to collect delinquent accounts, including the sending of notices and letters, the making of telephone calls, and effecting personal contact when possible. In the event such efforts fail, however, the Management Company shall refer the account to the Board of Directors for disposition.

(c) **Disbursement Authorization.** The Management Company shall make all disbursements from assessments collected for normal recurring expenses as provided in a budget, which shall be approved in advance annually by the Association. The Management Company is granted authority to make any non-budget expenditures up to One Thousand Dollars ($1,000) at its own discretion. In addition, the Management Company shall have the authority to make expenditures in excess of said amount with the approval of the president of the Association. In cases of emergency requiring prompt action to avoid further loss, the Management Company shall have discretion to expend whatever is necessary.

(d) **Governmental Reports.** The Management Company shall compute and pay from the funds it collects on behalf of the Association payroll taxes and the Management Company shall file necessary government returns and reports when due with respect to such taxes. Individual Unit Owners or the Association, as the case may be, are responsible for the preparation of any and all other governmental returns and reports when due.

(e) **Financial Statement.** The Management Company shall furnish copies to the Association of a quarterly financial statement, prepared on a cash basis, of all receipts and disbursements, showing assessments and other cash receipts, the grouping by category of all disbursements, net cash gain or loss, cash on hand and reserve accounts.

(f) **Annual Budget.** On or about the first day of December of each year during the term of the Agreement, the Management Company shall prepare and submit to the Association for approval an annual budget to be used for the determination of assessments for the ensuing year.

Miscellaneous

(a) The Management Company shall perform all duties incidental and reasonably necessary or desirable for the accomplishment of the above listed duties.

(b) The Management Company is authorized to take such action as may be necessary to comply promptly with any and all orders or requirements affecting the Common Elements placed thereon by any federal, state, county or municipal authority having jurisdiction thereover, subject to the same limitation contained in Subparagraph (3)(c) hereof in connection with the making of repairs and alterations. The Management Company, however, shall not take any action under this paragraph so long as the Association is contesting or has affirmed its intention to contest any such order or requirement. The Management Company shall promptly and in no event later than seventy-two (72) hours from the time of their receipt, notify the Board of Directors of the Association in writing of all such orders and notices of requirements.

As compensation for its services in managing the Common Elements the Management Company shall be paid each month during the term of the agreement, and is authorized to pay to itself from the funds collected and held on behalf of the Association.

At the present time there are no contracts or agreements affecting the operation, use or maintenance of or access to all or any part of the Condominium Development. When, as and if such contracts or agreements are entered into, this Disclosure Statement shall be amended to set forth the same, and copies of such agreements will be provided as **Exhibit "L"** (Document 13).

(K) PURCHASER'S RIGHT TO REVIEW CONDOMINIUM INSTRUMENTS, TO VOID THE PURCHASE AGREEMENT, CONDITIONS FOR THE RETURN OF DEPOSIT, AND RIGHTS OF PURCHASER UNDER SECTION 5311.27 OF THE OHIO REVISED CODE.

1. PURCHASER'S RIGHT TO REVIEW CONDOMINIUM INSTRUMENTS. THE PURCHASER SHALL HAVE THE RIGHT TO REVIEW THE CONDOMINIUM INSTRUMENTS. THE CONDOMINIUM INSTRUMENTS CONSIST OF THE DECLARATION AND ACCOMPANYING DRAWINGS AND PLANS, THE BY-LAWS OF THE ASSOCIATION, THE DISCLOSURE STATEMENT, ANY CONTRACTS, PERTAINING TO THE MANAGEMENT OF THE CONDOMINIUM PROPERTY, AND ALL OTHER DOCUMENTS, CONTRACTS, OR INSTRUMENTS ESTABLISHING OWNERSHIP OF OR EXERTING CONTROL OVER THE CONDOMINIUM PROPERTY OR A UNIT.

2. <u>PURCHASER'S RIGHT TO VOID THE PURCHASE AGREEMENT</u>. SECTION 5311.27 OF THE OHIO REVISED CODE PROVIDES AS FOLLOWS:

"(A)

(1) IN ADDITION TO ANY OTHER REMEDY AVAILABLE, A CONTRACT OR AGREEMENT FOR THE SALE OF A CONDOMINIUM OWNERSHIP INTEREST THAT IS EXECUTED IN VIOLATION OF SECTION 5311.25 OR 5311.26 OF THE REVISED CODE SHALL BE VOIDABLE BY THE PURCHASER UNTIL THE LATER OF FIFTEEN DAYS AFTER THE CONTRACT IS ENTERED INTO FOR SALE OF THE CONDOMINIUM OWNERSHIP INTEREST OR FIFTEEN DAYS AFTER THE PURCHASER EXECUTES A DOCUMENT EVIDENCING RECEIPT OF THE INFORMATION REQUIRED BY SECTION 5311.26 OF THE REVISED CODE, EXCEPT THAT IN NO CASE IS THE CONTRACT OR AGREEMENT VOIDABLE AFTER THE TITLE TO THE CONDOMINIUM OWNERSHIP INTEREST IS CONVEYED TO THE PURCHASER.

(2) UPON EXERCISE OF THE RIGHT TO VOID THE CONTRACT OR AGREEMENT, THE DEVELOPER OR AN AGENT SHALL REFUND FULLY AND PROMPTLY TO THE PURCHASER ANY DEPOSIT OR OTHER PREPAID FEE OR ITEM AND ANY AMOUNT PAID ON THE PURCHASE PRICE AND SHALL PAY ALL CLOSING COSTS PAID BY THE PURCHASER OR FOR WHICH THE PURCHASER IS LIABLE IN CONNECTION WITH THE VOID SALE."

3. PURCHASER'S RIGHT TO RETURN OF DEPOSIT. THE PURCHASER'S DEPOSIT, TOGETHER WITH INTEREST AS PROVIDED IN THE PURCHASE AGREEMENT, SHALL BE RETURNED BY THE DEVELOPER TO THE PURCHASER IN THE EVENT OF THE OCCURRENCE OF ANY CONDITION OF SALE SET FORTH IN THE PURCHASE AGREEMENT WHICH EXCUSES THE PURCHASER FROM PURCHASING THE UNIT, PROVIDED

THE PURCHASER HAS NOT BREACHED ANY OF THE TERMS OF THE PURCHASE AGREEMENT.

4. PURCHASER'S RIGHTS UNDER SECTION 5311.27 OF THE OHIO REVISED CODE. THE PURCHASER'S OTHER RIGHTS UNDER SECTION 5311.27 OF THE REVISED CODE ARE SET FORTH IN SUBSECTIONS (B) AND (C) OF SAID SECTION AS FOLLOWS:

"(B)

(1) ANY DEVELOPER OR AGENT WHO SELLS A CONDOMINIUM OWNERSHIP INTEREST IN VIOLATION OF SECTION 5311.25 OR 5311.26 OF THE REVISED CODE SHALL BE LIABLE TO THE PURCHASER IN AN AMOUNT EQUAL TO THE DIFFERENCE BETWEEN THE AMOUNT PAID FOR THE INTEREST AND THE LEAST OF THE FOLLOWING AMOUNTS:

(a) THE FAIR MARKET VALUE OF THE INTEREST AS OF THE TIME THE SUIT IS BROUGHT;

(b) THE PRICE AT WHICH THE INTEREST IS DISPOSED OF IN A BONA FIDE MARKET TRANSACTION BEFORE SUIT IS BROUGHT;

(c) THE PRICE AT WHICH THE UNIT IS DISPOSED OF IN A BONA FIDE MARKET TRANSACTION AFTER SUIT IS BROUGHT BUT BEFORE JUDGMENT IS ENTERED.

(2)

(a) IN NO CASE SHALL THE AMOUNT RECOVERABLE UNDER THIS SECTION BE LESS THAN FIVE HUNDRED DOLLARS FOR EACH VIOLATION AGAINST EACH PURCHASER BRINGING AN ACTION UNDER THIS SECTION, TOGETHER WITH COURT COSTS AND REASONABLE ATTORNEY'S FEES.

(b) IF THE PURCHASER COMPLAINING OF THE VIOLATION OF SECTION 5311.25 OR 5311.26 OF THE REVISED CODE BRINGS OR MAINTAINS AN ACTION THAT THE PURCHASER KNOWS TO BE GROUNDLESS OR IN BAD FAITH AND IF THE DEVELOPER OR AGENT PREVAILS, THE COURT SHALL AWARD REASONABLE ATTORNEY'S FEES TO THE DEVELOPER OR AGENT.

(C)

(1) IF THE ATTORNEY GENERAL HAS REASON TO BELIEVE THAT SUBSTANTIAL NUMBERS OF PERSONS ARE AFFECTED AND SUBSTANTIAL HARM IS OCCURRING OR IS ABOUT TO OCCUR TO THOSE PERSONS OR THAT THE CASE IS OTHERWISE OF SUBSTANTIAL PUBLIC INTEREST, THE ATTORNEY GENERAL MAY DO EITHER OF THE FOLLOWING:

(a) BRING AN ACTION TO OBTAIN A DECLARATORY JUDGMENT THAT AN ACT OR PRACTICE OF A DEVELOPER VIOLATES SECTION 5311.25 OR 5311.26 OF THE REVISED CODE OR THE CONDOMINIUM INSTRUMENTS, OR TO ENJOIN A DEVELOPER WHO IS VIOLATING OR THREATENING TO VIOLATE THOSE SECTIONS OR INSTRUMENTS;

(b) BRING A CLASS ACTION FOR DAMAGES ON BEHALF OF PERSONS INJURED BY A DEVELOPER'S VIOLATION OF SECTION 5311.25 OR 5311.26 OF THE REVISED CODE OR OF THE CONDOMINIUM INSTRUMENTS.

(2)

(a) ON MOTION OF THE ATTORNEY GENERAL AND WITHOUT BOND, IN AN ATTORNEY GENERAL'S ACTION UNDER THIS SECTION, THE COURT MAY MAKE APPROPRIATE ORDERS, INCLUDING, BUT

NOT LIMITED TO, ORDERS FOR APPOINTMENT OF A MASTER OR A RECEIVER, FOR SEQUESTRATION OF ASSETS, TO REIMBURSE PERSONS FOUND TO HAVE BEEN DAMAGED, OR TO GRANT OTHER APPROPRIATE RELIEF. THE COURT MAY ASSESS THE EXPENSES OF A MASTER OR RECEIVER AGAINST THE DEVELOPER.

(b) ANY MONEYS OR PROPERTY RECOVERED BY THE ATTORNEY GENERAL IN AN ACTION UNDER THIS SECTION THAT, WITH DUE DILIGENCE WITHIN FIVE YEARS, CANNOT BE RESTORED TO PERSONS ENTITLED TO THEM SHALL BE UNCLAIMED FUNDS REPORTABLE UNDER CHAPTER 169 OF THE REVISED CODE.

(c) NO ACTION MAY BE BROUGHT BY THE ATTORNEY GENERAL UNDER THIS SECTION TO RECOVER FOR A TRANSACTION MORE THAN TWO YEARS AFTER THE OCCURRENCE OF A VIOLATION.

(d) IF A COURT DETERMINES THAT PROVISION HAS BEEN MADE FOR REIMBURSEMENT OR OTHER APPROPRIATE CORRECTIVE ACTION, INSOFAR AS PRACTICABLE, WITH RESPECT TO ALL PERSONS DAMAGED BY A VIOLATION, OR IN ANY OTHER APPROPRIATE CASE, THE ATTORNEY GENERAL, WITH COURT APPROVAL, MAY TERMINATE ENFORCEMENT PROCEEDINGS BROUGHT BY THE ATTORNEY GENERAL UPON ACCEPTANCE OF AN ASSURANCE FROM THE DEVELOPER OF VOLUNTARY COMPLIANCE WITH SECTIONS 5311.25 AND 5311.26 OF THE REVISED CODE OR WITH THE CONDOMINIUM INSTRUMENTS, WITH RESPECT TO THE ALLEGED VIOLATION. THE ASSURANCE SHALL BE FILED WITH THE COURT AND ENTERED AS A CONSENT JUDGMENT. A CONSENT JUDGMENT IS NOT EVIDENCE OF PRIOR VIOLATION OF THOSE SECTIONS. DISREGARD OF

THE TERMS OF A CONSENT JUDGMENT ENTERED UPON AN ASSURANCE SHALL BE TREATED AS A VIOLATION OF AN INJUNCTION ISSUED UNDER THIS SECTION."

(D) NONMATERIAL ERRORS AND OMISSIONS IN THE DISCLOSURE STATEMENTS REQUIRED BY SECTIONS 5311.25 AND 5311.26 OF THE REVISED CODE SHALL NOT BE ACTIONABLE IN A CIVIL ACTION OTHERWISE AUTHORIZED BY THIS SECTION IF THE DEVELOPER OR AGENT HAS ATTEMPTED IN GOOD FAITH TO COMPLY WITH THE DISCLOSURE REQUIREMENTS AND IF THE DEVELOPER OR AGENT HAS SUBSTANTIALLY COMPLIED WITH THOSE REQUIREMENTS.

(L) ESTABLISHMENT OF RESERVE FUND FOR REPAIR OR REPLACEMENT OF COMPONENTS OF COMMON ELEMENTS

Article II, Section 10.(g) and Article V, Section 3 of the Bylaws entitled "Reserve for Contingencies and Replacements." provides that the Association shall be obligated to build up and maintain a reasonable reserve to finance the cost of repair or replacement of the components of the Common Elements. Unless otherwise approved by the vote of Unit Owners holding a majority of the voting power of the Association, the amount set aside for reserves each year shall be not less than ten percent (10%) of the amount of that year 's annual budget.

(M) SIGNIFICANT TERMS OF ENCUMBRANCES, EASEMENTS, LIENS AND OTHER MATTERS AFFECTING TITLE; FORM OF WARRANTY DEED

Attached hereto and made a part hereof as **Exhibit "G"** (Document No. 8) is a form of the Warranty Deed in Condominium to be used by the Developer for the conveyance of Units and **Exhibit "F"** (Document No. 7) is a list of all encumbrances, easements, liens and other matters of title affecting the Condominium Development. If a Purchaser designates title to be taken by a survivorship deed, or other type of deed, the Warranty Deed will be modified to conform with such designation. Included among matters affecting title to the Condominium Development are "covenants and restrictions" set forth in Article VII of the Declaration as to use and occupancy of the Units and the Common Elements. The restrictions include use of Units for Live/Work purposes as permitted by the Declaration or Board; restrictions on satellite dishes and antennae; and restrictions on pets.

(N) REQUIREMENT FOR ESCROW OF DEPOSITS AND CONVERSION PROVISIONS AND CONTINGENCIES

Escrow of Deposits

(a) Pursuant to the Ohio Condominium Act, any deposit or down payment made in connection with the sale of a condominium unit shall be held in trust or escrow until delivered at settlement, returned to or otherwise credited to the Purchaser or forfeited to the Developer. If a deposit or down payment of more than $2,000 is held for more than ninety (90) days and is not withdrawn pursuant to subparagraph (b) below, interest shall be payable on the amount of the deposit or downpayment that exceeds $2,000 at a rate equal to the prevailing rate payable by federally insured financial institutions in the county of the Condominium Property on daily interest accounts for any period exceeding ninety (90) days, such interest to be credited to the Purchaser at settlement or upon return or other credit made to the Purchaser, or added to any forfeiture to the Developer.

(b) Notwithstanding subparagraph (a) above, the Ohio Condominium Act provides that if a contract for the sale of a condominium unit contains the following legend, conspicuously printed or stamped in boldface type on the contract's first page and immediately above the signature of the Purchaser (as found on all Purchase Agreements for the purchase of Condominium Units in Erie Building Lofts Condominium):

"Purchaser acknowledges that, pursuant to this contract, the Developer may withdraw and then use for construction and development of the Condominium Property any deposit or down payment that the Purchaser makes prior to closing";

the Developer may withdraw a deposit or down payment from trust or escrow upon the commencement of construction of the structure of the Condominium Property in which the Purchaser's Unit will be located and use the monies in the actual construction and development of the Condominium Property. The Developer shall not use the monies for advertising purposes or for the salaries, commissions or expenses of agents.

(c) Pursuant to Ohio Revised Code Section 5311.25(A)(3) deposits and down payments held in trust or escrow in accordance with subparagraph (a) above are not subject to attachment, garnishment or other legal process by creditors of the Developer, Agents or Purchaser of the Condominium Unit.

(O) RESTRAINTS ON THE FREE ALIENABILITY OF ALL OR ANY PART OF THE CONDOMINIUM DEVELOPMENT

There are no restraints on the free alienability of all or any part of the Condominium Development, including the sale, leasing or other alienation of Units, except that no Unit shall be leased or subleased for transient or hotel purposes. Any lease or sublease of a Unit for a period of less than six (6) months shall be deemed to be a lease or sublease for transient or hotel purposes. Any lease or sublease of a Unit shall be in writing and shall provide:

Leases Subject to Condominium Instruments. That the lease or sublease shall be subject to the terms of the Declaration, the Bylaws and Rules of the Association and that any failure of a lessee or sublessee to comply with the Declaration, Bylaws and Rules shall be a default under the lease or sublease; and

Security Deposits. That the lessee or sublessee shall deposit with the Association such amount as the Association shall consider appropriate as security to provide funds for the repairs and to assure compliance with the Declaration, Bylaws and Rules.

Association's Rights with Respect to Leased Units. A tenant shall comply with all covenants, conditions and restrictions set forth in the Declaration, the Bylaws and the Rules of the Association, as lawfully amended. Violations of those covenants, conditions or restrictions shall be grounds for the Association or any Unit Owner to commence a civil action for damages, injunctive relief, or both, and an award of court costs and reasonable attorneys' fees in both types of action. The Association has the following rights under Section 5311.19(B) of the Act in order to implement the provisions of the Declaration:

(a) The Association may initiate eviction proceedings pursuant to Chapters 5321 and 1923 of the Ohio Revised Code to evict a tenant for a violation of (3) above. The action shall be brought by the Association, as the Unit Owner's agent, in the name of the Unit Owner.

(b) In addition to any procedures required by Chapters 5321 and 1923 of the Revised Code, the Association shall give the Unit Owner at least ten (10) days' written notice of the intended eviction action.

(c) The costs of any such eviction action, including reasonable attorneys' fees, shall be charged to the Unit Owner and shall be the subject of a special assessment against the offending Unit and made a lien against that Unit. The above remedies of the Association are in addition to the remedies accorded the Association in other provisions of the Declaration.

Furthermore, there are prohibitions against Unit Owners other than the Developer, placing "for sale" or "for rent" signs on the Condominium Property.

(P) NO LITIGATION AFFECTING THE DEVELOPMENT

There is not any present litigation concerning the Condominium Development.

GENERAL INFORMATION

This Disclosure Statement and the Exhibits which are incorporated herein, provide a detailed description of the Condominium Development and the rights and obligations of a Unit Owner. Please consider the Disclosure Statement and the Exhibits carefully and discuss your questions with your own legal counsel and other advisors.

Any information, data or representation not referred to in this Disclosure Statement and not contained in the various Exhibits must not be relied upon. No person has been authorized by the Developer to make any representation which is not expressly contained herein or in any of the other Condominium instruments. This presentation may not be changed or modified orally, but only in a writing signed by the Developer.

The Developer reserves the right to change the terms of this Disclosure Statement as they affect potential Purchasers not then under contract provided that any such change does not materially affect the substance of this Disclosure Statement with respect to prior Purchasers or Purchasers under contract, or their Undivided Interest in the Common Elements in the Condominium Development.

Additional Exhibits to Disclosure Statement

The following exhibits that are attached hereto and made a part hereof are additional exhibits to the Disclosure Statement:

Exhibit "H" Articles of Incorporation for The Erie Building Lofts Condominium Association, Inc. (Document No. 9)

2. Exhibit "I" Form of Purchase Agreement. (Document No. 10)

3. Exhibit "J" Form of Acceptance Letter. (Document No. 11)

4. Exhibit "M" Rules and Regulations of The Erie Building Lofts Condominium. (Document No. 14)

April 5, 2006