

DECLARATION OF CONDOMINIUM OWNERSHIP
FOR
THE NIKOLAI,
A RESIDENTIAL CONDOMINIUM DEVELOPMENT,
CLEVELAND, OHIO
AND
BY-LAWS
OF
THE NIKOLAI CONDOMINIUM UNIT OWNERS' ASSOCIATION
DEVELOPED AND BUILT BY:

B.R. Knez Construction, Inc.
An Ohio Corporation
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Concord, Ohio 44077
(440) 710-0711

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**DECLARATION OF CONDOMINIUM OWNERSHIP
FOR
THE NIKOLAI CONDOMINIUM,
A Residential Condominium Development
CLEVELAND, OHIO**

This Declaration made at Cleveland, Ohio, by B.R. Knez Construction, Inc., an Ohio corporation, hereinafter referred to as "Declarant,"

WITNESSETH: THAT

WHEREAS, the Declarant is the owner of the real estate referred to herein as the "Condominium Property" described in **Exhibit "1"** attached hereto and made a part hereof (legal description of land parcel); and

WHEREAS, it is the desire and intention of the Declarant to enable the Condominium Property together with the buildings, structures, improvements, and fixtures of whatsoever kind thereon, and all rights and privileges belonging or in any way pertaining thereto, owned by Declarant and by each successor of the Declarant who stands in the same relation to the Condominium Property as the Declarant under that certain form of co-operative ownership commonly known as "CONDOMINIUM", and to submit the Condominium Property to the provisions of the "Condominium 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 Condominium Property, or any part thereof, which shall be known as "Nikolai Condominium," certain easements and rights in, over, and upon the Condominium 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 Condominium 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 Condominium Property and are established for the purpose of enhancing and protecting the value, desirability and attractiveness of the Condominium Property; and

WHEREAS, the Declarant hereby establishes by this Declaration a plan for the individual ownership of the Condominium 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 Condominium 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 Condominium 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 Condominium Property as Declarant and its/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. A person “controls” the Declarant if the person: (a) is a general partner, officer, director, member, manager, or employer of the Declarant; (b) directly, indirectly, 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. 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, indirectly, 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 Condominium Property that administers the Condominium Property, the Association being known as the Nikolai Condominium Unit Owners’ Association, Inc.

(D) “Board” means the Board of Managers of the Association as the same may be constituted from time to time.

(E) “Building” means each structure that contains the Units.

(F) “By-Laws” means the By-Laws of the Association attached hereto as **Exhibit “3”** and incorporated in this Declaration by reference as if fully rewritten herein.

(G) “City” means the City of Cleveland, Ohio, a municipal corporation.

(H) “Common Assessments” means assessments charged proportionately against all Units for common purposes. Common Assessments are sometimes referred to as “Assessments,” which means those expenses designated as such in the Act or designated as such in this Declaration.

(I) “Common Elements” includes, unless otherwise provided in the Declaration, the Condominium Property described in Article II (C) of this Declaration.

(J) “Common Expenses” means those expenses designated as such in the Act or in accordance with the provisions of this Declaration, or both.

(K) “Common Losses” means the amount by which the Common Expenses during any period of time exceeds Common Assessments and Common Profits during that period.

(L) “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.

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

(N) "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 Condominium Property.

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

(P) "Condominium Instruments" means this Declaration and accompanying Drawings, the By-Laws of the Association, the condominium disclosure statement described in Section 5311.26 of the Act, 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.

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

(R) "Condominium Property" means the Condominium Property defined in **Exhibit "1"** hereto, all Buildings, improvements, and structures on said Condominium Property, all easements, rights, and appurtenances belonging to said Condominium Property, and all articles of personal property submitted to the provisions of the Act.

(S) "Convertible Unit" means a Unit that may be converted into two or more Units and Common Elements, including Limited Common Elements. All Units are Convertible Units, which Declarant hereby reserves the right to convert into additional Units and/or Common Elements.

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

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

(V) "Eligible Mortgage Holders" means the holder, insurer, or guarantor of a first mortgage on a Unit of whose mortgage interest the Association has received written notice (such written notice shall include the name and address of such holder, insurer, or guarantor and the address of the 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, By-Laws, and Rules, and reasonable charges for damage to the Common Elements or other property.

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

(Y) “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.

(Z) “Occupant” means a person or persons, natural or artificial, in possession of a Unit.

(AA) “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.

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

(CC) “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 facilitating the sale of or the development of the remaining or unsold portion of the Condominium Property.

(DD) “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 create Units, Common Elements, and Limited Common Elements; (3) to maintain sales offices, management offices, customer services offices, signs advertising the Condominium Property, and models; (4) to use easements through the Common Elements for the purpose of making improvements, repairs, and replacements within the Condominium Property; and (5) 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 Managers.

(EE) “Undivided Interests” means the interest of the Unit in the Common Elements as set forth in **Exhibit “5”** of this Declaration.

(FF) “Unit” means the part of the Condominium 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. “Unit” is more fully defined in Article II(A) hereof.

(GG) “Unit Owner” means a person who owns a Condominium Ownership Interest in a Unit.

ARTICLE II

ESTABLISHMENT OF CONDOMINIUM OWNERSHIP

AND DIVISION OF CONDOMINIUM PROPERTY

Declarant, in order to establish a plan of condominium ownership for the Condominium Property, hereby submits the Condominium Property, hereinbefore described in the provisions of Chapter 5311 of the Ohio Revised Code. The Condominium Property, including the structures thereon, to contain an aggregate of six (6) separate Units, to be divided into six (6) separately designated and legally described

freehold estates, and one freehold estate hereinafter described and referred to as “Common Elements.”

Declarant reserves the right to combine Units at its discretion, with the approval of the governmental authorities having jurisdiction as it deems advisable, provided that no such change may be made if the same would adversely affect the boundaries or the beneficial use and enjoyment of any Unit then owned by persons other than Declarant without the written consent of such persons and shall be approved by the Board.

Declarant reserves the right from time to time to add additional property to the Property and to subject the same to the provisions of this Declaration, without the approval of the Owners. To add any additional property, the Declarant shall execute and record a Subsequent Amendment to this Declaration, which expressly provides that the land described therein, shall become a part of the Property and shall be subject to the Covenants and Restrictions set forth in this Declaration, except as the same may be modified by the Subsequent Amendment, without the approval of the Owners.

Declarant reserves the right from time to time, to delete lands from the Property (provided the lands so deleted have not been previously declared Common Elements) and thereby to free such lands from the provisions of this Declaration, without the approval of the Owners. Lands not owned by Declarant may be deleted from the Property only with the written consent of the title owner thereof. To delete such lands, the Declarant shall execute and record a Subsequent Amendment to this Declaration which expressly provides that the land described therein shall no longer be a part of the Property and shall no longer be subject to the Covenants and Restrictions set forth in this Declaration and Declarant may do so without the approval of the Owners.

Insofar as 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 “2,”** prepared and bearing the certified statements of Polaris Engineering and Surveying, 34600 Chardon Rd # 5, Willoughby Hills, OH 44094, Registered Surveyor, and Sixmo Architects | Engineers, 28045 Clemens Rd., Ste D, Westlake, OH 44145, Registered Architects as required by Section 5311.07, of the Ohio Revised Code. Such set of drawings are hereinafter referred to as the “Drawings.”

(A) Description of Space and Components of Units. Each of the six (6) 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 block), 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, all structural components of the Buildings located therein, including all structural 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 “2.”** Each Unit shall also include, without limitation:

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

(2) All drywall contiguous to the undecorated interior surfaces of the perimeter walls and ceilings of a Unit;

(3) The decorated surfaces of the walls, floors, and ceilings of a Unit, including, but not limited to, paint, polyurethane, wallpaper, floor tile, vinyl, other resilient floorings, wood flooring, carpet, 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;

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

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

(6) 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;

(7) All interior doors and hardware;

(8) All draperies, shades and blinds;

(9) All kitchen cabinetry, bathroom cabinetry, and other similarly attached cabinetry within a Unit;

(10) All kitchen and laundry appliances within a Unit;

(11) 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, plumbing fixtures, faucets, hose bibs, meters, water heaters, etc. serving only that Unit); all sanitary sewer lines, drains, grease traps, 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; and all faucets, sinks, toilets, tubs, shower heads, and other plumbing fixtures within a Unit;

(12) 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, outlets, switches, connections, equipment, fixtures, lights, etc. serving only that Unit) and all electrical outlets, switches, fixtures, lights, fans, etc. within a Unit serving only that Unit;

(13) The entirety of the heating, air conditioning, and ventilating system serving only that Unit, (including, for example, all wiring, thermostats, switch furnaces, condensing units, hoses, ductwork, fans, and flues serving only that Unit), including components such as air conditioning compressors which may be located outside the physical bounds of the Unit in the Common Elements; and

(14) 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;

but, excepting therefrom 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.

(B) Reference to Drawings. The layout, location, designation, and dimensions of all Units are shown on the Drawings in **Exhibit “2”** incorporated herein by reference. Each Unit shall have 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 **Exhibit “4”** 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 as set forth in **Exhibit “4”** on one hand, and the Drawings on the other hand, shall be resolved in favor of the Drawings.

(C) Description of the Common Elements and Limited Common Elements.

(1) **Description of Common Elements.** The entire balance of the land and improvements thereto including but not limited to:

(a) The real estate described in **Exhibit “1”** to this Declaration until improved and declared as a Unit;

(b) The garage parking, uncovered parking spaces, and driveways within the Condominium Property, and the paving thereunder;

(c) The Entry Common Corridor, hallways, and stairwell in the Buildings, as shown on the Drawings.

(d) All Building areas and components defined as being “Limited Common Elements”.

(e) All areas, facilities, components, places, and structures within the Condominium Property that are not defined above as being a part of a Unit, including, but not limited to:

(i) The structural components of all walls, floors, and ceilings separating or delineating Units, excepting the drywall contiguous to such walls and ceilings;

(ii) All structural portions of the Buildings, 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 (exclusive of any roof decking designated as an Exclusive Use Area), and all other structural components, of the Building;

(iii) All windows and doors (including all frames, sash, glass, screens, and hardware), and skylights, if any, in the perimeter walls, floors, and ceilings of a Building, that have not been designated as a Limited Common Element, pursuant to Article II(C)(2) herein;

(iv) All exterior portions of the Building, including masonry, metal and/or composite panels, trim, siding, sheathing, roofing, flashing, metal railings, metal grills, and all trim of any kind;

(v) All vehicular driveways, ramps, parking areas, and pedestrian walkways within the Condominium Property, as shown on the Drawings;

(vi) The common yards, landscaping and plant materials, irrigation systems (if any), open space, signs, fencing (if any), and light poles;

(vii) All other common facilities and rooms (if any);

(viii) all electrical, telecommunications, plumbing (including water, sewer, and natural gas), HVAC wires, pipes, ductwork, lines, facilities, and equipment serving any part of the Common Elements, or more than one Unit;

(ix) Elevators and any components thereof;

(x) All general apparatus and installations existing for common use; and

(xi) All other parts of the Condominium 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, By-Laws 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) **Description of Limited Common Elements**. The following Common Elements to the extent the same serve only one individual Unit are hereby reserved as Limited Common Elements appurtenant to the individual Unit they serve (the “**Limited Common Elements**”). Each Owner of a Unit served by a Limited Common Element is hereby granted an exclusive and irrevocable license to use and occupy the Limited Common Elements appurtenant to their Unit, to the exclusion of all other Unit Owners. The Limited Common Elements shall consist of the following Building components (to the extent the same are not defined as being components of a Unit above):

(a) One-half of any wall separating one Unit from another;

(b) Deck areas appurtenant to only one Unit as such areas are identified on the Drawings;

(c) The mailbox exclusively serving each Unit;

(d) All doors and windows (including frames, sash, glass, screens, and hardware), skylights, if any, and sliding doors in the perimeter walls, floors, and ceilings of the Units. All other doors and windows shall be considered Common Elements; and

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

(3) **Exclusive Use Areas (Parking Spaces and Roof Decks)**. The Declarant shall initially assign the right to use exclusively an outdoor parking space, garage space, or spaces identified as an Exclusive Use Area to a Unit Owner (referred to collectively as “Parking Spaces”) based on a first-come, first assigned basis, or other basis that the Declarant may determine and

based on the following: (a) Unit 5 and Unit 6 receiving at least two garage spaces; (b) Unit 3 and Unit 4 receiving at least one garage space; and (c) Unit 1 and Unit 2 receiving at least one outdoor parking space. The Board may not reassign a garage space. The Board may, at its discretion, reassign parking spaces within the outdoor parking area, as the outdoor parking spaces may be striped and re-striped from time to time.

The exclusive right to use a Parking Space may be assigned by a Unit Owner to any Occupant or Tenant of the Property (all such parties being a "Parking Permittee"). Assignment of the right for Owners, or Occupants of any Unit to use an additional parking space shall only occur if each Unit is assigned the minimum parking space(s) per Unit as described herein. The Board may assess a Unit Owner a fee for the right to use any additional Parking Spaces not assigned to a Unit Owner, which fee shall be used to offset the Common Expense of operating and maintaining any parking areas.

The Association will identify each parking space as being reserved for the respective Unit Owner, but each Unit Owner and Parking Permittee agrees that neither Declarant nor the Association shall have any obligation, liability or responsibility to such Unit Owner should the Parking Space be occupied at any time or times by persons not authorized to do so. Each Unit Owner and Parking Permittee shall assume full responsibility for such party's automobile and the contents of such party's automobile, as well as any items left or stored within the garage or parking lot area.

Units 5 and 6 contain roof decks for the Unit Owner's exclusive use. These roof decks are considered Exclusive Use Areas and, as such, the maintenance of same is the responsibility of the Unit Owners.

(4) **Use of Common Elements.** Each Unit Owner shall own an undivided interest in the Common Elements as a tenants-in-common with all other Unit Owners, and, except as otherwise limited in this Declaration and in the By-Laws attached hereto as **Exhibit "3"** 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 or business, as the case may be, and such other incidental uses permitted by this Declaration and the By-Laws, 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.

(5) **Ownership of Common Elements.** The Undivided Interest in the Common Elements attributable to the Ownership Interest in each Unit, together with each Owner's 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 "5"** 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.

(6) **Partition.** There shall be no partition of the Common Elements through judicial proceedings or otherwise until this Declaration is terminated and the Condominium 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.

(D) Association's Regulation and Management of Common Elements

(1) **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. The Association shall manage the Condominium Property in accordance with all provisions of the Declaration, and shall take all actions required for the Association to comply with its duties and obligations under the Declaration.

(2) **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 three (3) 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 By-Laws 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.

(E) Management, Maintenance, Repairs, Alterations, and Improvements

(1) **The Association.** The Association shall manage the Common Elements, and the common walls, exterior balconies and terraces (excluding any roof decks) which are Limited 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(D)(2) hereof, the Association may delegate all or any portion of its authority to discharge such responsibility to a manager or Managing 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 and to assume the same responsibility with respect to the Limited Common Elements (including Roof Decks) and Exclusive Use Areas, (other than common walls) appurtenant to his or her Unit.

(b) Not to make any alterations in the Common Elements (including the Limited Common Elements) 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 Condominium Property not within the walls of the Unit, unless with the written consent of the Board is first obtained.

(d) Not to install any wood, tile, stone, or other hard flooring surfaces on a floor within a Unit, which is above another Unit, without first obtaining the written consent of the Board. The Board shall have the right to review specifications for the proposed installation, and the installation while in progress, in order to determine that the installation meets such maximum sound transmission requirements as may be reasonably adopted by the Board.

(e) 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.

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

(g) To maintain, repair, and replace at his or her expense all portions of the Condominium 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 nonpayment 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.

(h) To pay all costs for utility services (such as, without limitation, water, gas, electricity, water and sewage, 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, or as a special Assessment based on sub-metering the actual utility consumption of his or her Unit. Should any utility services be master metered and paid by the Association, the Association shall have the right to sub-meter such utility consumption by each Unit and charge to the Unit Owner for such Owners portion of such utility consumption, in which case all or any of such services so provided by the Association shall be paid for as a special Assessment. The Association shall have the right to require a utility deposit to be made by each affected Unit Owner, in an amount reasonably determined by the Board, as required to assure each such Unit Owner's payment of such sub-metered utility costs, which utility deposit shall not exceed the estimated amount of three (3) month's utility charges, as reasonably estimated by the Board. Such utility deposits shall be held by the Association to be applied in the event of a Unit Owner's non- payment of sub-metered utility bills. Each Unit Owner shall immediately repay the Association any payments the Association shall make out of such deposits, and, upon the conveyance of a Unit, any balance remaining on such utility deposits shall first be applied to any outstanding Assessments or other charges due to the Association by the depositing Unit Owner under this Declaration, and any remaining balance shall be returned to the Unit Owner.

(4) **Rights Against Third Parties.** The obligation of the Association and of Unit Owners to repair, maintain and replace the portions of the Condominium 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 Condominium 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 its, his, or her obligation 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 Condominium 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) **Driveway, Utility, Emergency and Service Easements, and Other Easements.** The right and easement to construct, install, repair, replace, relocate, operate and maintain driveways, sidewalks, water mains with service connections, storm and sanitary sewer lines, storm systems (including sump pump systems and underground storm detention systems), steam, electric, gas and telephone lines, conduits, and transmission and meter devices and other utilities, in, on, under and/or over the Condominium 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 and their vehicles for ingress and egress over driveways and other Common Elements within the Condominium 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 the Building or improvements constituting a part of the Condominium 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 Condominium Property any pipes, ducts or conduits serving a Unit encroach upon any other Unit or the Common Elements, 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 and telephone lines, and other utilities now or hereafter existing within the walls; easements for the use of television cable lines and other television reception devices; 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 Owners 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, to any Limited Common Elements designated for use in connection with his or her Unit, and to any Exclusive Use Area delegated by the Board for his or her exclusive use, 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 Elements.** 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 Condominium 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 by foot, automobile and otherwise, for utility and facility purposes and for model, sales and display purposes, over, through and under the Condominium 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 that 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 Condominium Property for driveway, access and utility purposes, including, but not limited to, the right to install, lay, maintain, repair and replace driveways, sidewalks, water mains and pipes, storm and sanitary sewer lines, gas mains, telephone wires and equipment, television and other telecommunications equipment, electrical 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, 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. Each Unit Owner and his or her respective mortgagee, by acceptance of a deed conveying a Unit or a mortgage encumbering such Unit, 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) Easement Rights. 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 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 Condominium 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 Condominium 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 Condominium Property. However, the rights of all assignees or grantees in the reserved easements shall remain in full force and effect.

(J) No Severance of Ownership. 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) **Easements Reserved by Declarant for Warranty Obligations.** 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) **Reservation of Rights to Ingress and Egress for Future Development.** The Declarant reserves the right to extend any of the roadways identified in the Drawings into and through any real property which the Declarant (or an affiliate of the Declarant) may now own and/or control or have an interest in, or may from time to time acquire and/or control or have an interest in. Such additional real property, at the election of the Declarant or such other entities, may be included as additional phases of the Property. To that end, the Declarant or such other entities reserves the right to grant to Owners and Occupants of subsequent phases of the Condominium Property, the unrestricted right to use the Common Elements in a manner consistent with this Declaration.

ARTICLE IV

THE NIKOLAI CONDOMINIUM UNIT OWNERS' ASSOCIATION

(A) **Membership.** Declarant has formed or shall cause to be formed an Ohio corporation not for profit to be called THE NIKOLAI CONDOMINIUM UNIT OWNERS' ASSOCIATION, INC. which shall administer the Condominium 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 Condominium 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 and officers of the Association elected as provided in the By-Laws of the Association attached hereto as **Exhibit "3"**, shall exercise the powers, discharge the duties and be vested with the rights conferred by operation of law, by the By-Laws 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, solely in his or her capacity as an officer or a member of the Board, 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 By-Laws attached hereto as **Exhibit "3"**. The number of members constituting the Board and the terms of such members are set forth in the By-Laws attached hereto as **Exhibit "3"**. If the number of members of the Board is not divisible by three (3), the terms of not less than one-fifth (1/5th) of the members of the Board shall expire annually.

(B) **Administration of Condominium Property.** The administration of the Condominium Property shall be in accordance with the provisions of this Declaration and the By-Laws of the Association which are attached hereto as **Exhibit "3"**, and each Unit Owner, tenant or occupant of a Unit shall comply with the provisions of this Declaration, the By-Laws, 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 person to receive service of process for the Association shall be as designated by the Board. This designation will be accomplished by filing with the Ohio Secretary of State the required statutory agent designation form. Until such time as a statutory agent is designated, service may be made upon B.R. Knez Construction, Inc., Attn: Gillian Hall, 7775 Fredle Drive, Suite 210, Concord, Ohio 44077. 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 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 By-Laws attached hereto as **Exhibit “3.”**

(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 Condominium Property is based upon the Undivided Interest in the Common Elements of such Units expressed in **Exhibit “5”** and Article II (C)(5) hereof. Per Section 5311.041 of the Act, the Declarant has further elected to divide certain permitted Common Expenses on an equal “per unit” basis, regardless of the Undivided Interests. 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 “5”** 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 the Declaration is filed for record and the proportionate share of profits and expenses of each Unit Owner shall be in accordance with said Undivided Interest set forth in **Exhibit “5”** hereof.

(C) **Non-Use of Facilities.** As further set forth in the By-Laws and Chapter 5311, the obligation to pay all Assessments is an independent covenant. No owner of a Unit may exempt himself or herself 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 an Owner’s estate or interest in any Unit and his or her Undivided 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 Recorder of Cuyahoga County, Ohio, pursuant to authorization given by the Board. 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 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 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 per annum, or Twenty-Five Dollars (\$25.00) per month, whichever is greater (“Charge”), in order to defray all costs of collection, and, in addition, the Association shall be entitled to levy against the delinquent Unit Owner court costs and reasonable 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. In the foreclosure action, the Association, or its agent, duly authorized by action of the Board, 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 his or her Unit may commence an action for the discharge of the lien in the Court of Common Pleas for Cuyahoga County, Ohio. 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 Assessments.** 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, as the case may be, collectible from the Owners of all of the Units chargeable with such Assessments, 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, upon written request delivered to the Association, shall be entitled to a statement from the Board 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 which become due prior to the date of the making of such request if the same are not set forth in such statement.

At the time of conveyance, Owner shall pay assessments on a prorated basis. The Management Company shall prorate assessments as of the Closing Date. The statement referred to herein may be included in the Certificate of Compliance with Restrictions referenced to in Section 7(U) of this Declaration. The Association may require the advance payment of a processing fee for the issuance of the Certificate of Compliance. A devise of an Unit or the distribution of said Unit pursuant to the Statute of Descent and Distribution shall be deemed to be a voluntary conveyance. An unpaid Assessment shall not be deemed a

charge or lien against the Unit until perfected as such pursuant to Article V(D).

(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 or the Common Expenses chargeable to the Unit during the foreclosure action chargeable to the Unit. 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 Section 5311.18(A)(2) of the Act, 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.

(L) **Denial of Voting Rights.** When a Unit Owner is delinquent in the payment of any Assessment for more than thirty (30) days, the Board may suspend the voting privileges of the owner and/or right of the occupant(s) to use the recreational facilities.

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

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

(1) **Property Insurance.** The Association shall carry casualty (hereinafter called "Property Insurance") insurance on the following: (i) all insurable improvements installed by the Declarant or the Association comprising the Common Elements, including the Limited Common Elements outside the bounds of the Building; (ii) the windows and doors located in the perimeter walls or roof of the Building; (iii) structural components of the Building located within the Unit; and (iv) all personal property owned by the Association or for which the Association is responsible. In general terms, the Association is responsible for having Property Insurance from the backside of the Building's perimeter drywall out, which excludes the drywall itself (the drywall is a component of each respective individual Unit). This is commonly known as a "bare walls" Property Insurance. The Association is not responsible for insuring improvements located within 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 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 Property Insurance shall be in an amount not less than one hundred, percent (100%) of the insurable replacement cost of the improvements insured under the Property Insurance, less the deductible, 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 Property Insurance shall include the following coverage:

(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 Building 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 Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the policy amount. The deductible amounts shall be treated as a Common Expense unless the casualty is the result of the negligence or willful act of a Unit Owner, his or her Occupants, tenants, or the guests or invitees of such parties, in which event the deductible amount shall be paid by the Unit Owner, and such amount shall be a Special Assessment against such Owner's Unit. The Property 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 Condominium 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 Property 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 mortgage endorsements to the holders of mortgages on the Units requiring such endorsements, if any; (ii) that the insurer waives its rights of subrogation against Unit Owners, Occupants of Units, and the Association; (iii) that the Property 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 Property 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 Property 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.

(d) The Association's Property Insurance may include a reasonable deductible as determined by the Board. In the absence of any negligence, the party who would be responsible for the loss or repair in the absence of insurance shall pay the deductible. In the event of multiple parties or combined claims covered by the Association's Property Insurance policy, the deductible shall be allocated in relation to the amount each party's claim bears to the total amount of the claim, with the party incurring the larger share of the loss responsible for the larger share of the deductible. The Association may assess the amount of any deductible attributable to any Unit(s) as provided for in this Article VI or the repair of any such Unit(s), to the Unit Owner(s) of such Unit(s).

(e) The Board shall have the sole right and authority to file, or authorize the filing of and adjust any and all claims for damage or destruction that are or may be covered by the Association's Property Insurance policy regardless of the person(s), including mortgagees who may be named as an additional insured or beneficiary of such policy, as the Board determines is consistent with the intent of the Declaration and in the Association's best interests; provided, however, that a mortgagee having an interest in such losses may participate in the settlement negotiations, if any, related thereto. The failure or refusal of the Association to process or file any claim for damage or destruction to any part of the Condominium Property under the Association's Property Insurance shall not give rise to any claim against the Association or the Board.

(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 Two Million Dollars (\$2,000,000) in respect to personal injury, disease, illness or death suffered by any one person, and to the limit of not less than Two Million Dollars (\$2,000,000) in respect to any one occurrence, and to the limit of not less than Two Million Dollars (\$2,000,000) 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.** The Association shall maintain 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 cancelled 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 Property Insurance Policy under Section (A)(l) of this Article VI, from and including the Unit’s drywall (attached to the perimeter or interior walls and ceilings of the Unit) in, including:

- (a) the contents of his or her Unit and all floor and wall coverings, furniture, fixtures and other betterments installed by the Unit Owner (or a prior owner of the Owner’s Unit);
- (b) any finishing materials applied to the floors;
- (c) all interior Unit doors, including the frames;
- (d) all appliances, including built-in appliances located within and serving only the Unit;
- (e) all utility lines and components located within the Unit and serving only the Unit;
- (f) all sinks, faucets, toilets, tubs, showers, and other fixtures located within the Unit and serving only the Unit
- (g) all kitchen and bathroom cabinets;
- (h) all heating, air conditioning, and ventilating fixtures and components, including the furnace and air conditioner compressor or unit, serving only the Unit wherever located;
- (i) any personal property which a Unit Owner stores elsewhere on the Condominium Property, but such Property Insurance shall provide that it shall be without contribution as against the Property Insurance purchased by the Association and shall contain the same waiver of subrogation as that referred to in subsection (A)(l)(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 \$100,000.00, 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 (\$1,000,000,000.00) (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 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 Condominium Property shall be damaged by perils covered by the Property 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 Condominium Property untenable, 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 Condominium 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 Condominium 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 Property Insurance.

(C) Procedure for Reconstruction or Repair.

(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 Property 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 Property 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 Condominium Property that is covered by the Association's Property 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 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, or the excess shall be retained as reserves, as determined by the Board, in its sole discretion. 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 Property Insurance policies referred to in Subsection (1) of Section (A) of this Article VI.

(D) **Negligence of Unit Owner.** Each Unit Owner shall be liable for the expenses of any maintenance, repair, replacement, and insurance deductible 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.

ARTICLE VII
COVENANTS AND RESTRICTIONS
AS TO USE AND OCCUPANCY

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

(A) **Unit Use Restrictions.** Units shall be used in accordance with the covenants and restrictions pursuant to further Rules as may be adopted by the Board from time to time. Nothing in this Section shall preclude the right of the Declarant to maintain a brokerage or sales office for sales of Units within the Condominium Property; or the right of the Declarant to utilize a Unit for model and/or for office purposes.

(B) **Permitted Uses.** Except as otherwise provided in this Declaration, no Unit shall be used for any purposes except as a residence for a single family or a family-sized group. To the extent permitted by law, an Unit Owner may use a portion of a Unit for his or her office or studio (other than a music studio) as long as those activities do not interfere with the quiet enjoyment or comfort of any other Unit Owner or Occupant, and as long as those activities do not increase the normal flow of traffic or individuals in and out of the Property or in and out of that Owner's Unit. Except as expressly permitted in this Declaration, no industry, business, trade, occupation or profession of any kind, whether commercial, religious, educational or otherwise designated for profit, altruism, exploration or otherwise, shall be conducted, maintained or permitted on any part of the Property. The Board may adopt Rules that intensify, relax, or amend the prohibitions of this Section. Nothing in this Section shall preclude the leasing of a Unit by the Developer or a Unit Owner pursuant to the terms of Section XV herein; the right of the Developer to maintain offices for new sales of Units within the Condominium Property and for resale of Units; and the right of the Developer to utilize a Unit for model home and/or for sales or construction office purposes.

(C) **Obstruction of Common Elements.** 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. Common lobbies, walkways, and stairways shall not be used for any purpose other than normal passage through such areas, and shall not be obstructed.

(D) **Maintain Unit.** Each owner shall be obligated to maintain and keep in good order and repair his or her own Unit as provided herein.

(E) **Insurance.** Except as expressly permitted, herein and 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 that 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.

(F) **Waste.** No waste shall be committed in the Common Elements.

(G) **Hanging or Displaying Items.** Except as expressly permitted herein and 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, television dish, or antenna shall be affixed to or placed upon the exterior walls or roof or any part thereof, or exposed from any window, without the prior consent of the Board.

(H) **Curtains, Drapes, Shades, or Blinds.** 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.

(I) **Flagpole Placement and Display of the United States Flag**. Pursuant to Section 5311.191(A) of the Act, the placement of a flagpole that is to be used for the purpose of displaying the flag of the United States shall be permitted within the Limited Common Elements of a Unit, and it shall also be permitted to display the flag of the United States on the immediately adjacent exterior of the Building, in accordance with the following:

(1) The patriotic customs set forth in 4 U.S.C.A. 5-10, as amended, governing the display and use of the flag of the United States;

(2) The consent of the Unit Owner to which such Limited Common Elements are appurtenant;

(3) The recommended flagpole standards set forth in "Our Flag," published pursuant to S.C.R. 61 of the 105th Congress, 1st Session (1998);

(4) Any federal law, proclamation of the President of the United States or the Governor of the State of Ohio, a section of the Ohio Revised Code, or a local ordinance or resolution;

(5) The size of the flag shall not exceed 3 feet by 5 feet;

(6) The display of a flag on a flagpole shall only be permitted within the Limited Common Element of the Unit Owner displaying the flag, or on the side of the Building (a Common Element) immediately adjacent to the Unit of the Unit Owner. The Board shall have the right to designate the precise location on the Building from which the flag may be displayed. If displayed on the exterior of the Building, connections shall be made as directed by the Board. The Unit Owner shall be responsible for the repair of any damage caused to the exterior of the Building by such installation; and

(7) No exterior lighting of the flag shall be permitted.

(J) **Pets**. The maintenance, keeping, boarding or raising of animals, livestock or poultry of any kind, regardless of number, is prohibited in any Unit, except that this shall not prohibit the keeping of dogs (excluding, however, any Vicious Dog as further described below), cats, caged birds, aquarium fish, or other household or domestic pets provided they are not kept, bred, or maintained for commercial purposes, and provided they are kept according to the Rules and Regulations of the Association, and not more than a total of two dogs, two cats, or a combination thereof shall be permitted in any Unit. Any pet causing or creating a nuisance or unreasonable disturbance or that is kept in violation of this Declaration or the Rules and Regulations promulgated by the Board shall be permanently removed from the Condominium Property upon seven days written notice from the Board. Dogs shall at all times whenever they are outside a Unit be confined on a leash held by a responsible person as defined by the Board. Each Owner shall immediately clean up after his/her dog. No device or apparatus to which a line, wire or rope is connected for the restraint of animals or pets shall be constructed or permitted upon any part of the Common Elements. The Board shall have absolute power to prohibit a pet from being kept on the Condominium Property or within a Unit if the Board finds a violation of this Section.

The term "household pet" does not include "exotic" animals as defined by the Board from time to time, including, but not limited to any snakes, other reptiles, exotic breeds, or wild hybrids. If an animal is considered "exotic" as determined by the Board, the Owner must obtain and maintain liability insurance of at least \$500,000.00 per occurrence and provide proof of such insurance to the Association within thirty (30) days of any written request from the Board.

A "Vicious Dog" means a dog that: (1) caused injury, including death, to any person or (2) has killed another dog. Upon the Board's determination that a given dog is a vicious dog, such dog is prohibited

from being kept, harbored, or permitted to remain on any part of the Condominium Property for any length of time.

(K) **Nuisances**. 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.

(L) **Fires**. No fires, including within barbecue grills, shall be permitted within the Condominium Property.

(M) **Structural Changes to the Building**. 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.

(N) **Hanging of Clothes, Sheets, Blankets, and/or Other Articles**. 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 and Limited Common Elements shall be kept free and clear of rubbish, debris, and other unsightly materials. No doormats, overshoes, boots, umbrellas, or articles shall be placed in the common hallways or stairways. Nothing shall be hung from or over the railings of the balconies or terraces. Balconies and terraces shall not be used for fires, barbeques, or grilling, and there shall be no installation of plants, fences, structures, or lattices therein without the prior written consent of the Board and the Design Review Committee of the Association.

(O) **Storage of Personal Property**. 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 spaces; and that Limited Common Elements and Exclusive Use Areas, if any, must be used for their intended purposes. Parking spaces shall be used for the storage of motor vehicles only, no personal property may be stored in such parking spaces, no bicycles, trailers, boats, recreational or commercial vehicles shall be parked in a parking space. All vehicles must have current license plates, be registered with the Board, and be in operating condition. No automobile repairs or oil changes are to be made or performed in the parking spaces. No items such as tires, oil or gas cans, or auto parts shall be stored in a parking space.

(P) **Parking, Loading and Unloading, and Use of Walkways and Driveways**. The Board shall have the right to adopt reasonable Rules regarding parking, loading and unloading, and use of walkways and driveways within the Condominium Property.

(Q) **Signs**. No "For Sale" or "For Rent" signs or other window displays or advertising be maintained or permitted on any part of the Condominium Property or in any Unit therein, except as otherwise set forth in this Declaration. 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.

(R) **Alteration/Removal from Common Elements**. Nothing shall be altered or constructed in or removed from the Common Elements except upon the prior written consent of the Board.

(S) **No Sale or Lease to, or Occupancy by, Sexually Oriented Offender**. No Owner shall Lease, convey, or transfer a Unit to any person who is required pursuant to the provisions of §2950.04 of the Ohio Revised Code (or other similar statute from any other jurisdiction), to register as a sexually oriented offender, nor

shall any Owner permit a Unit to be occupied by any such sexually oriented offender. Neither the Declarant nor the Association shall be liable to any Owner, Occupant, or their guests, as a result of the Declarant's or the Association's alleged failure, whether negligent, intentional or otherwise, to enforce the provisions of this restriction. Any violation of this restriction, shall subject the Unit Owner and any resident or Occupant of the Unit Owner's Unit to any and all remedies provided for by law as well as this Declaration.

(T) **Temperature of Unit.** All Owners shall maintain the temperature within all portions of their Units at a minimum of 32°F at all times to preclude freezing of pipes.

(U) **Certificate of Compliance with Restrictions in Connection with Resales of Units.** Upon an Owner's conveyance of his/her/their Unit or an interest therein, such Owner (i.e. Seller) shall request the Association to issue a Certificate of Compliance stating that the Association has no record of violation of this Article VII and stating the unpaid Assessments and amount of Assessments attributable to such Unit. A Certificate of Compliance may be relied upon by all persons for all purposes. Neither the Board, nor such officer or agent shall have any liability to the seller, buyer, or mortgagee of a Unit or to others if the Certificate of Compliance issued hereunder is not correct. The Board may require the advance payment of a processing fee not to exceed Fifty Dollars (\$50.00) for the issuance of the Certificate of Compliance. The Certificate shall be substantially in the form of **Exhibit "8"** attached hereto.

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 Condominium 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 affect such sale. If the Condominium 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 or by any guest of such Owner or Occupant) shall violate any restriction or condition or Rule adopted by the Board, or the breach of any covenant or provision contained in this Declaration, the By-Laws, or Rules, 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 Property 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, the By-Laws, or the Rules, and the Declarant, its successors

or assigns, 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 Condominium 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 Condominium Property sold subject to this Declaration.

(C) **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 other charge, which is governed by Article V of this Declaration) of any of the provisions of this Declaration, the By-Laws 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 Section (D) 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.

(D) **Enforcement Assessments.**

(1) Prior to imposing a charge for damages or an Enforcement Assessment pursuant to this Article and pursuant to the provisions of the By-Laws, 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, By-Laws, 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 (D)(2) of this Section;

- (e) If applicable 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 no later than the tenth (10th) 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 (D).

- (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 (D)(2) of this Section.

(4) The Unit Owners, through the Board, may allow a reasonable time to cure a violation described in the By-Laws 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 Enforcement 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 (D)(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.

(E) **Responsibility of Unit Owner for Occupants**. Each Unit Owner shall be responsible for the acts and omissions, whether negligent or willful, of any occupant of his or her Unit, and for all employees, agents and invitees of the Unit Owner or any such occupant, and in the event the acts or omissions of any of the foregoing shall result in any damage to the Condominium 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 By-Laws, or any Rule promulgated by the Board or the Master Board, by any occupant of any Unit, or any employees, agents or invitees of a Unit Owner or any occupant 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 By-Laws, 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 By-Laws, 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 X NOT USED

ARTICLE XI **AMENDMENT OF DECLARATION**

(A) **In General**.

(1) Except where otherwise provided in this Article XI 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 Eligible Mortgage Holders of Units and that Unit Owners having at least seventy-five percent (75%) of the voting power of the Association affirmatively approved the amendment.

(2) No Amendment shall be made: (i) to the Undivided Interests of each Unit in the Common Elements as set forth in **Exhibit "5"** of this Declaration except as unanimously approved by all Unit Owners affected; (ii) to the boundaries of any Unit; or (iii) permitting the construction

of an addition to or an expansion of a Unit into Limited Common Elements or Common Elements, except as unanimously approved by all Unit Owners.

(3) 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 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 requirements of the City of Cleveland, 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 Property, 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 Property Insurance, liability insurance, title insurance and other insurance coverage for the Condominium 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 Property) 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 of, make, and record Special Amendments.

(C) **Declaratory Judgment Action Under (B) of this Article XI**. 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 Condominium Property is situated within one (1) year after the date of the recording of the Special Amendment.

ARTICLE XII
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 (30) 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 Association shall prepare, at the expense of the Owners of the affected Units, an amendment to the Declaration that identifies the affected Units and specifies the reallocated rights to the affected Limited Common Elements.

(2) The Association shall submit the amendment to the Owners of the affected Units, who shall execute the amendment, accompanied by the written consents 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 XIII **CONDEMNATION**

(A) Whenever any authority having the power of condemnation or eminent domain takes or proposes to take all or any part of the Condominium Property, each Unit Owner shall be entitled to notice thereof. Each Unit Owner hereby designates and appoints the Association by and through its Board, as his or her exclusive agent to handle, negotiate, settle, and conduct all matters, proceedings, and litigation incident to such taking or proposed to be taken; and the Association shall have the power and authority to do so. Any award made for such taking shall be payable to the Association. Unless otherwise provided by law at the time of such taking, any award made therefor shall be disbursed by the Association as hereinafter provided in this Article XIII.

(B) If the entire Condominium Property is taken by eminent domain or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Condominium and this Declaration 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.

(C) If less than the entire Condominium Property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Condominium Property and this Declaration shall not terminate. As determined by the Board, in its sole discretion, the condemnation award shall be retained as reserves, or the condemnation award shall be apportioned among the Unit Owners in accordance with their respective Undivided Interests in the Common-Elements. 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 Eligible Mortgage Holders.

(D) 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.

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

(F) Each Unit Owner and his or her respective Eligible Mortgage Holders, 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, by and through its Board, as 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 XIII.

(G) 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 Property or the Unit securing its mortgage.

ARTICLE XIV **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.** Upon written request to the Association, an Eligible Mortgage Holder shall be provided notice of a default by its respective Unit Owner if said 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 By-Laws and/or the Rules. An Eligible Mortgage Holder so notified may, within sixty (60) days after receiving such notice from the Association, cure said default, but is not obligated to do so. If, however, the default is not curable within the sixty (60) day period by reason of delay(s) beyond the reasonable control of the Eligible Mortgage Holder then, providing the Eligible Mortgage Holder has commenced to cure the default within the sixty (60) day period and has continued thereafter with due diligence to complete the curing of the default, the time within which the Eligible Mortgage Holder shall be permitted to cure the default shall be extended for a period co-extensive with the 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, an Eligible Mortgage Holder 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 Property or the Unit securing its mortgage; and (3) any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders.

(E) **Other Notices to Eligible Mortgage Holders.** 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; or
 - (c) The voting rights appertaining to any Unit.
- (2) Any proposed termination of the Condominium.

(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 except as provided in Article XII;
- (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 XII;

(i) Expansion or contraction of the Condominium Property, or addition, annexation or withdrawal of the Condominium Property;

(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, 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 Property (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 Property 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 Property Insurance policies or secure new Property 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 XV
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 Units.** A Unit Owner shall not be permitted to lease his or her Unit without prior written consent of a majority of the Association's Board of Managers.

(C) **Association Making Available Condominium Documents and Financial Information.** The Association shall make available to Unit Owners, lenders, holders, and insurers of first mortgages on any Unit, current copies of this Declaration, the By-Laws, 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 and By-Laws, 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 XVI
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 Managers:

(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 Owners 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 Managers, in writing, of the change. When the Board of Managers requests, a Unit Owner shall verify or update the information.

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 XIII 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 Condominium Property from the provisions of the Act and this Declaration. 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 Condominium Property, shall be paid, released, modified, or discharged, and a certificate

setting forth that such election was made shall be recorded in the real property records of Cuyahoga County. 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 Condominium 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 Condominium Property is owned in common by the Unit Owners. The Undivided Interest in the Condominium Property owned by each Unit Owner is the Undivided Interest in the Common Elements appurtenant to the Unit in the Condominium 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 Condominium 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 Condominium 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 Condominium 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, or judicial sale of all Units in a Condominium 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 By-Laws 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 Managers; 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 Managers 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) **Interest on Deposits.** Any down payment or deposit made in connection with the sale of a Unit will be held in trust or escrow until delivered at settlement or until returned to or otherwise credited to the Purchaser, or forfeited to Declarant. If any down payment or deposit of \$2,000.00 or more is held for more than ninety (90) days, interest at a rate of at least four percent (4%) per annum for any period in excess of ninety (90) days shall be credited to Purchaser at settlement or upon return or other credit made to Purchaser, or added to any forfeiture to Declarant

(B) **Non-Retention of Property Interest in Common Areas by Declarant.** Notwithstanding any in this Declaration to the contrary, the Declarant shall not retain a property interest in any of the Common Areas after control of the Condominium Development is assumed by the Association except in the Declarant's capacity as a Unit Owner of unsold Units, or except as permitted by Section 5311.25(B) of the Act.

(C) **Warranties.** Solely, and only to the extent such warranties are or may be required by the provisions of Section 5311.25(E) of the Act, and solely in connection with the sale of a Unit by Declarant:

- (1) The Declarant shall furnish a two (2) 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 Property as a whole occasioned or necessitated by a defect in material of workmanship and shall furnish a one (1) year warranty covering the full cost of labor and materials for any repair or replacement of structural, mechanical and other elements pertaining to each Unit situated on the Condominium Property occasioned or necessitated by a defect in material or workmanship.
- (2) The two (2) year warranty shall commence: (a) for property submitted by the original Declaration on the date the deed or other evidence of ownership is filed for record following the sale of the first Unit on Parcel No. 1 to a Purchaser in good faith for value; and (b) for Additional Property submitted by amendment to the Declaration pursuant to Article XI, on the date the deed or other evidence of ownership is filed for record following the sale of the first Unit in such phase for the Additional Property to a Purchaser in good faith for value.
- (3) The one (1) year warranty shall commence on the date the deed or other evidence of ownership is filed for record following the first sale of a Unit to a Purchaser in good faith for value.
- (4) With respect to appliances installed and furnished as a part of a Unit by Declarant, Declarant shall assign to each Purchaser of a Unit the express and implied warranties of the manufacturers of such appliances. Such assignment shall satisfy the Declarant's warranty obligation for the appliances, except that Declarant shall continue to warrant installation.
- (5) All warranties made to the Declarant that exceed the time periods specified above with respect to any part of the Units or Common Areas shall be assigned to the Purchasers of Units. Declarant reserves the right to grant warranties in excess of the warranties set forth above.
- (6) None of the foregoing warranties shall cover repairs or replacements necessitated or occasioned by ordinary wear and tear, the negligence of a Unit Owner, or any reason whatsoever except defects in materials and workmanship.

(D) **Declarant's Obligation with Respect to Unsold Units.** The Declarant will assume the rights and obligations of a Unit Owner in its capacity as owner of unsold Units, including, but not limited to,

(E) **Right of Declarant to act as Board of Managers.** 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.

(F) **Record of Mortgagees or Units.** Any Unit Owner who mortgages 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."

(G) **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.

(H) **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.

(I) **Notices.** All notices required or permitted hereunder, and under the By-Laws and the Act, to the Declarant, the Association, the Board 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 Managers or its delegates at the address of the Condominium 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 regular U.S. mail, return receipt requested to: B.R. Knez Construction, Inc., 7555 Fredle Drive, Suite 210, Concord, Ohio 44077 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 Managers. 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, placed in his or her mailbox, or placed under the door to such Occupant's Unit.

(J) **Title to Units Subject to Declaration.** Each grantee of the Declarant, 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 Condominium 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.

(K) **Non-Liability of Declarant.** Except as otherwise provided in the 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 By-Laws in Declarant's (or its representative's) capacity as owner, manager or seller of the Condominium 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 Condominium 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 Condominium Property, or by reason of the failure to function or disrepair of any utility services (heat, air-conditioning, electricity, gas, telephone, water or sewage).

(L) **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 Association.

(M) **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.

(N) **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.

(O) **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 Donald J. Trump, President of the United States of America, and Michael R. Pence, Vice President of the United States of America.

(P) **Headings**. The heading of each Article and of each such paragraph in this Declaration and in the By-Laws 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 By-Laws, nor in any way affects this Declaration or the By-Laws.

(Q) **Gender**. The use of the masculine gender herein or in the By-Laws 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.

(R) **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.

(S) **Successors and Assigns**. The provisions of this Declaration shall be binding upon and shall inure to the benefit of the Declarant and its successors and assigns.

(T) **Signature Requirements**. Pursuant to the Board's decision, any requirement for a signature under the Declaration or By-Laws may be satisfied by a digital signature meeting the requirements of Ohio and Federal law.

(U) **Use of New Technology**. Due to the ongoing development of new technologies and corresponding changes in business practices, to the extent permitted by Ohio and Federal law, as well as by the Board, now or in the future: (1) any notice required to be sent or received; (2) any signature, vote, consent or approval required to be obtained or (3) any payment required to be made, under the Declaration or By-Laws may be accomplished under the most advanced technology available at that time provided such use is generally accepted business practice.

[SIGNATURE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Declarant has caused its name to be signed to these presents as of this _____ day of _____, 2020.

B.R. KNEZ CONSTRUCTION, INC.
an Ohio Corporation

By: Bojan R. Knez, President

STATE OF OHIO)
) SS:
COUNTY OF LAKE)

Before me, a Notary Public in and of said County and State aforesaid, personally appeared B.R. Knez Construction, Inc., an Ohio corporation, by Bojan R. Knez, its President, who acknowledged that he did sign the foregoing instrument and that the same was his free act and deed individually and an authorized act of said limited liability company.

NOTARY PUBLIC

THIS INSTRUMENT PREPARED BY:
Michael J. David, Esq.
7555 Fredle Drive, Suite 210
Concord, Ohio 44077
(440) 710-0711

Exhibit "1"

Legal Description of Condominium Property

Exhibit "2"
Reference to Drawings

Exhibit "3"

By-Laws of the Nikolai Condominium Unit Owners' Association, Inc.

BYLAWS

OF

THE NIKOLAI CONDOMINIUM UNIT OWNERS' ASSOCIATION, INC.

An Ohio Non-Profit Corporation

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BYLAWS OF THE NIKOLAI CONDOMINIUM UNIT OWNERS' ASSOCIATION, INC.

The within Bylaws are executed and incorporated in the Declaration of Condominium Ownership for The Nikolai 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 here 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 The Nikolai Condominium Unit Owners' 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 "Class B" 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, there shall be one voting member for each of the Units. The total number of votes of all voting members shall be equal to the number of Units and the Owner or Owners of each Unit shall be entitled to exercise one (1) vote for each such Unit. If more than one Person shall own a Unit, they shall be entitled collectively to cast only one vote exercising the voting power of such Unit inasmuch as such voting power may not be divided among plural Unit Owners. 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. When any fiduciary or other legal representative of a Unit Owner has furnished to the Association proof, satisfactory to it, of his or her authority, he or she may vote as though he or she 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.

Section 4. Majority. 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.

Section 5. Proxies. Unit Owners may vote, execute consent, waiver, release, or otherwise 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, her, or their behalf shall be made in writing and signed by such member(s) or appointed in any other manner permitted by Ohio, shall be submitted to the Association at or before the meeting and shall be revocable at any time by actual notice to 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.

Section 6. Establishment of Unit Owners' Association and First Meeting of Members.

(a) Establishment of Association. 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 Condominium Property. Until the 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 of Members (prior-to Turnover of Control). A meeting of the members of the Association for the election of members of the Board of Managers, 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 7:00 o'clock P.M., or at such other time as may be designated by the Board and specified in the notice of the meeting. This first meeting of the members of the Association (prior to turnover of control by the Declarant) 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 Managers, 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 Managers 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) nor 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 7:00 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 proceeding 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 Board may adopt Rules for the conduct of all Association meetings and the order of business at all annual 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 Managers.
- (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 MANAGERS

Section 1. Qualifications. Except as otherwise provided herein, all members of the Board of Managers (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 nor 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 or her term, or is delinquent in the payment of any Assessment for more than thirty (30) days, he or she shall thereupon cease to be a member of the Board and his or her 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 Managers consisting of three (3) members, in accordance with Section 4 of this Article II.

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 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 Declarant, the Association shall meet and the Unit Owners, other than the Declarant, shall elect one (1) Board Member who shall replace one (1) of the Board Members previously elected or designated by the Declarant. The Declarant shall have the sole right to designate the one (1) Board Member who will be replaced.

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 three (3) 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 upon such election 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 by the Unit Owners prior to the First Annual Meeting shall hold office for a term not to exceed one (1) year after his or her election or designation. Commencing with the First Annual Meeting, the Board Members elected by the Unit Owners shall be elected for such terms so that the terms of office of not less than one-third of the Board Members shall expire each year. Accordingly, at the First Annual Meeting of the Association, one (1) Board Member shall be elected for a term of three (3) years, one (1) Board Member shall be elected for a term of two (2) years and one (1) Board Member shall be elected for a term of one (1) 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 a term 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 or her term and until his or her successor is elected, or until his or her 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 or her 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 Managers and those Managers 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 Managers may be held at such times and places as shall be determined by a majority of the Managers, but at least four (4) such meetings shall be held during each fiscal year.

Section 8. Special Meetings/Notice. Special meetings of the Board of Managers may be held at any time upon call by the President or any two Managers. 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 Manager 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 Managers shall consist of a majority of the Managers then in office; provided that a majority of the Managers 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 Managers 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, 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, 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.

(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, and 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 the amount required to be fully funded, or ten percent (10%) of the budget for that year, whichever is greater, 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 and Limited Common Expenses from Unit Owners.

(i) Hire and fire managing agents, attorneys, accountants, other independent

contractors, and employees that the Board determines are necessary or desirable in the management of the Condominium Property and the Association and to perform such services as the Board may authorize.

(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 or 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, or otherwise acquire, lease as lessee, use, lease as lessor, sell, exchange, transfer, hold title to, operate, manage, and dispose of 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 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 (m) and (n) 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 and impose returned check charges.

(t) Pursuant to Article IX(D) of the Declaration, impose reasonable Enforcement Assessments for violations to the Declaration, these Bylaws, and the Rules of the Association, and reasonable charges for damages to the Common Elements or other property.

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

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

(w) 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 or safety of the Occupants of that Unit or another Unit.

(x) 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.

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

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

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

(bb) Exercise all powers that are:

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

(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, if he or she is physically incapacitated, adjudicated bankrupt, fails to attend three consecutive meetings of the Board, or is delinquent in the payment of any Assessment for more than thirty (30) days. 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 the expiration of the term such vacancies shall be held.

Section 13. Fidelity Bonds. The Board of Managers 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 Managers 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 Managers shall elect a President, a Vice President, a Secretary, and a Treasurer, each of whom shall be a member of the Board of Managers. The Board of Managers 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 Managers 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 Managers and until their successors are elected, except in case of resignation, removal from office, or death. The Board of Managers 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 Managers.

Section 3. President. The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Board of Managers. Subject to directions of the Board of Managers, the President shall have general executive supervision over the business and affairs of the Association. The President 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 Managers 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 or she 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 Managers.

Section 5. Secretary. The Secretary shall keep the minutes of meetings of the members of the Association and of the Board of Managers, shall give notices of meetings of the members of the Association and of the Board of Managers 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 Managers.

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 Managers. The Treasurer shall keep accurate financial accounts and hold the same open for the

inspection and examination of the Directors, shall have such authority, and shall perform such other duties as may be determined by the Board of Managers.

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

Section 8. Delegation of Authority and Duties. The Board of Managers is authorized to delegate the authority and duties of any officer to any other officer, attorney, manager, accountant, or other professional 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 or her services as such.

ARTICLE IV

GENERAL POWERS OF THE ASSOCIATION

Section 1. Payments from Operating Funds. The Association, for the benefit of all the Owners, shall acquire, and shall pay for out of the Operating 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 sewers, sanitary sewers, water lines, and other utilities situated on the Condominium Property or servicing the same;
- (b) Property Insurance. A policy or policies of Property 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, the operation of recreational facilities, if any, 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. In addition to the provisions and requirements contained in the Declaration, the Association shall pay, from the Operating Fund, the cost of the maintenance, repair, or replacement of any Unit, item of Unit Owner responsibility, or Limited Common Elements for which the Unit Owner is responsible as defined in the Declaration, if such maintenance, repair, or replacement is necessary, in the Board's sole discretion, for safety, aesthetics, uniformity, or to protect the Common Elements, or any other portion of a building or any other Unit, and the Unit Owner of such Unit or Limited Common Element having the exclusive right to use such has failed or refused to perform such maintenance, repair, or replacement within a reasonable amount of time, as determined by the Board, after written notice of the necessity thereof has been delivered or mailed to such Unit Owner; provided that the Board shall levy a Special Assessment against such Unit Owner for the cost of such maintenance, repair, or replacement;

(j) Association's Right to Enter Units. The Association, through its duly authorized agent(s), may enter any Unit, any Limited Common Elements, or Exclusive Use Areas, when necessary, in connection with any construction, maintenance, repair, or replacement for which the Association is responsible or for inspection of the same. The Association or its agent(s) may likewise enter any terrace or balcony for the purposes of construction, maintenance, repair, or painting. Except in the event of an emergency, the Association shall, to the extent reasonably possible, provide the Unit Owner with prior written notice of any intended entry into the Unit, including the reason(s) therefor. If prior notice is not possible in any given situation, whether due to an emergency or other circumstance(s), the Association shall either send by U.S. regular mail or post on the Unit door, a notice to the Unit Owner to advise of the date, time, and purpose for which entry was made. Any damage to the Unit Owner's personal property or the Unit as it existed at the time the Condominium Property was originally established that arises during the Association's entry into the Unit or during the performance of the needed maintenance, repair, and replacement work shall be repaired by the Association to the extent of its depreciated value and the cost thereof paid

from the Association's insurance proceeds or charged as a Common Expense from the Operating Fund unless the Unit Owner has failed or refused to provide a pass key upon request from the Association. In no event shall the Association be responsible for any damage to, or the cost to remove or relocate any betterments or improvements to any Unit or Limited Common Elements, including, without limitation, any safety or night latches or other security devices, made to the Unit by any current or past Unit Owner;

(k) Limitation on Capital Additions and Improvements. Notwithstanding anything in these Bylaws or in the Declaration that authorizes expenditures, no single expenditure shall be made by the Board for any additions, alterations, improvements (as distinguished from maintenance, repair, or replacement) of the Common Elements, or for the purchase or lease of any Unit by the Association, exceeding in total cost ten percent (10%) of that fiscal year's annual budget, nor shall annual expenditures aggregating in excess of thirty percent (30%) of that year's annual budget be made, in any twelve (12) month period without, in each case, having the prior approval of the Unit Owners entitled to exercise at least a majority of the Association's total voting power. If such approval is obtained, the Board shall proceed with such additions, alterations, or improvements and may assess all Unit Owners for the cost thereof as a Common Expense. The limitations on expenditures by the Association contained in this Article IV(1)(k) shall, in no event, apply to rehabilitation and renewal of obsolete property, repair or replacement of the Condominium Property due to casualty loss, to emergency repairs immediately necessary for the preservation and safety of the Condominium Property, to maintain compliance with any applicable local, state, or federal codes, ordinances, laws, rules, or regulations, or to avoid suspension of any necessary services for the safety of persons. Any single capital addition, alteration, or improvement costing ten percent (10%) or less of that fiscal year's annual budget or aggregating thirty percent (30%) or less of that year's annual budget may be made by the Board without approval of the Unit Owners, and the cost thereof shall constitute a part of the Common Expenses;

(1) Certain Utility Services to Units. The Association may pay from the Operating 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 or her share of such expenses as shall be determined by the Board of Managers 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 Managers or by such Owner of any Utility service, the expense of which is charged to the Operating Fund. The Association reserves the right to install individual submeters for each Unit as provided in the Declaration;

(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 Managers, 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 Managers and may be charged directly to participating Owners, or paid from the Operating 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 Managers 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 Managers 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 Managers as being sufficient to cover the initial working capital requirements for the Association and if such monthly Assessments shall be less than required to meet current Common Expenses and Limited 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 Expenses as are assessed against such Owner's Unit on a pro rata basis in accordance with: (i) their respective Undivided Interest in the Common Elements as set forth in the Declaration (as to Common Expenses), and (ii) their proportionate ratio in the Undivided Interests in the Common Elements that each Unit bears to the total Undivided Interests in the Common Elements of all Units (as to Limited Common Expenses). All such Assessments and payments shall be deposited into the "Operating Fund" of the Association.

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's Operating Fund 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 required to create an Operating Fund. 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 Managers in the manner herein provided.

Section 2. Preparation of Estimated Budget. Each year on or before December 1st, the Board of Managers 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: (i) according to each Owner's percentage of ownership in the Common Elements (as to surplus Common Expenses), or (ii) according to their proportionate ratio in the Undivided Interests in the Common Elements that each Unit bears to the total Undivided Interests in the Common Elements of all Units (as to surplus Limited Common Expenses) to the next monthly installment of such Assessments due from Owners under the current year's estimate, until exhausted, or applied to the Reserve Fund, and any net shortage shall be added: (i) according to each Owner's percentage of Ownership in the Common Elements (as to a shortage in Common Expenses), or (ii) according to their proportionate ratio in the Undivided Interests in the Common Elements that each Unit bears to the total Undivided Interests in the Common Elements of all Units (as to a shortage in Limited Common Expenses) to the installments of such Assessments due in the succeeding six months after rendering of the accounting.

Section 3. Reserve for Contingencies and Replacements. In addition to the Operating Fund, the Association shall be obligated to build up and maintain a reasonable reserve fund to finance the cost of repair or replacement of the components of the Common Elements that the Association is charged with repairing and replacing (the "Reserve Fund"). Such 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. 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 to be paid out of the Operating Fund, and which may be necessary for the year, may be charged first against the Reserve Fund. If said "estimated cash requirement" funding the Operating Fund 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 to fund the Operating Fund, or necessary for the balance of the year, which additional amount of cash requirements shall be assessed to the Owners: (i) according to each Owner's Undivided Interest in the Common Elements (as to expenditures for Common Elements), and (ii) according to their proportionate ratio in the Undivided Interests in the Common Elements that each Unit bears to the total Undivided Interests in the Common Elements of all Units (as to expenditures for Limited Common Elements). The Association shall serve notice of such further Assessment on all Owners responsible therefor 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 assessed Owners shall be obligated to pay the adjusted monthly amount. The Declarant shall not use the 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 from Purchasers to reimburse itself for funds it paid to the Association for each unsold Unit's share of the Reserve Fund.

After the First Annual Meeting, any checks drawn on the Reserve Fund account shall require the signature of two (2) Board members (the signature of only one [1] Board member is required prior to the First Annual Meeting). After the First Annual Meeting, the amount set aside annually for reserves shall not be less than the amount required to be fully funded 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 or Limited Common Surplus at the end of any fiscal year, the Board may determine that such amount(s) will be applied towards and deposited in the Reserve Fund pursuant to Section 5311.21 of the Act.

Section 4. Budget for First Year. When the first Board of Managers elected hereunder takes office, the Board of Managers of the Association shall determine the "estimated cash requirement" to fund the Operating Fund 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 Managers 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:

- (i) Their respective Undivided Interest in the Common Elements as set forth in the Declaration (as to Common Assessments); or
- (ii) Their proportionate ratio in the Undivided Interests in the Common Elements that each Unit bears to the total Undivided Interests in the Common Elements of all Units (as to Limited Common Assessments).

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 Managers and such review shall be completed prior to each annual meeting. If requested by a majority of the members of the Board of Managers, 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 a majority of the members of the Board, the Board shall cause a certified audit to be made, and the costs of such certified audit shall be a Common Expense of the Association.

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 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 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 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 setting forth the unpaid common Expenses with respect to the Unit covered by his, her, 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 or her 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, Limited Common Profits, Limited Common Losses, and Limited Common Expenses, among and from the Unit Owners;
- (c) Minutes of the meetings of the Association and the Board of Managers; 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 Managers:

- (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; and
- (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 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 or her 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 shall not permit examining and/or copying of any of the following from books, records, or minutes unless expressly approved by the Board:

- (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 or her in connection with the defense of any pending or threatened action, suit, or proceeding, criminal or civil, to which he or she 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 or her duty to the Association;

(b) That such member of the Board acted in good faith in what he or she 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 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 or she is entitled to indemnification hereunder.

Section 3. Indemnification Not Exclusive; Insurance. The indemnification provided for in this Article VII 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 1702.12(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 her or incurred by him or her in any such capacity or arising out of his or her status as such whether or not the Association would have the power to indemnify him or her 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 or her 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 VII 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 VII; 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 Managers by the holder of any duly recorded mortgage or trust deed against any Unit ownership, the Board of Managers 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 that 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 Managers 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 or Limited 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 Managers. Notices required to be given to the Board of Managers or to the Association may be delivered to any member of the Board of Managers or officer of the Association either personally or by mail addressed to such member or officer at his or her Unit.

Section 3. Service of Notices on Devises 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 or her address, or at the address of such representative as it appears 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 or her Unit 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 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 Barack H. Obama, President of the United States of America, or Joseph Biden, Vice President of the United States of America.

Section 9. Definitions. The terms used in these Bylaws except as otherwise expressly provided herein 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.

IN TESTIMONY WHEREOF, the undersigned, the sole member of the Association, has caused these Bylaws to be duly adopted on or as of _____, 2020.

B.R. KNEZ CONSTRUCTION, INC.
an Ohio Corporation

By: Bojan R. Knez, President

STATE OF OHIO)
) SS:
COUNTY OF LAKE)

Before me, a Notary Public in and of said County and State aforesaid, personally appeared B.R. Knez Construction, Inc., an Ohio corporation, by Bojan R. Knez, its President, who acknowledged that he did sign the foregoing instrument and that the same was his free act and deed individually and an authorized act of said limited liability company.

NOTARY PUBLIC

THIS INSTRUMENT PREPARED BY:
Michael J. David, Esq.
7555 Fredle Drive, Suite 210
Concord, Ohio 44077
(440) 710-0711

Exhibit "4"

Narrative Description of Units

a. First Floor Units - One story loft located on the 1st floor, approximately 810 square feet (Unit 1) and 700 square feet (Unit 2) with one (1) bedroom and one (1) full bath and one (1) assigned outdoor parking space.

b. Second Floor Units - One story loft located on the 2nd floor, approximately 1,373 square feet (Unit 3) and 1,363 square feet (Unit 4) with two (2) bedrooms and two (2) full baths, a balcony and a one (1) car attached garage.

c. Third Floor Units - two story plan on the 3rd and 4th floors, approximately 2,141 square feet (Unit 5) and 2,149 square feet (Unit 6) with two (2) bedrooms and two and a half (2.5) baths, a balcony, a roof deck and a two (2) car attached garage.

Exhibit "5"

Designation of Unit Types, Unit Numbers, Square Footages, and Undivided Interests

A. Percentage Interest of Units with only Phase I and II completed.

<u>Unit #</u>	<u>Sq. Footage</u>	<u>% Interest</u>
1	810	9.489
2	700	8.200
Flat 3	1,373	16.084
Flat 4	1,363	15.967
Penthouse 5	2,141	25.082
Penthouse 6	2,149	25.175
	8,536	100%

Exhibit "6"

Consent of Mortgage

Exhibit "7"

Community Reinvestment Area Program
Residential Tax Abatement

Exhibit "8"
A Form Certificate of Compliance

CERTIFICATE OF COMPLIANCE AND STATUS OF ASSESSMENTS
WITH RESPECT TO THE RESALE OF UNITS
IN THE NIKOLAI CONDOMINIUM, CLEVELAND, OHIO

The Nikolai Condominium Unit Owners' Association, Inc., a non-profit Ohio corporation (the "Association") for The Nikolai Condominium, City of Cleveland, Ohio ("The Nikolai") and to supervise and enforce the Declaration of Covenants, Conditions, Easements, and Restrictions for The Nikolai Condominium (the "Declaration") hereby certifies as follows:

1. The Association has received notice of a proposed sale of Unit No. _____, located at _____, City of Cleveland, Ohio.

2. The proposed purchaser(s) of the Unit is(are) _____.

3. The owner(s) of the of the Unit is(are) _____.

4. The Association has no record of a violation of the Covenants and Restrictions contained in the Declaration except _____ (if none, write "None").

5. The current annual assessment attributable to the Unit is \$_____.

6. The assessments are payable at the rate of \$_____ per _____; said assessments being payable through _____, 20 .

7. A reasonable fee is payable to the Association upon the issuance of this Certificate in accordance with the terms of the Declaration.

This Certificate of Compliance is being issued pursuant to Section 7(U) of the Declaration.

THE NIKOLAI CONDOMINIUM UNIT
OWNERS' ASSOCIATION, INC.

By: _____

Date _____