

Deed
108

CUYAHOGA COUNTY RECORDER
PATRICK J. O'MALLEY
DECL 05/25/2004 11:31:44 AM
200405250330

FRANK RUSSO, COUNTY AUDITOR
APPROVED OWNERSHIP, ONLY, OF

PERM. PARCEL NO.

129-02-060

DECLARATION

By Louis J. Lepski
Deputy Auditor

This is the Declaration of Larchmere Lofts Condominium made and entered into on this 13th day of May, 2004, pursuant to the provisions of Chapter 5311 of the Revised Code of Ohio.

Recitals

A. Larchmere Lofts LLC, an Ohio limited liability company (hereinafter referred to as "Declarant") is the owner in fee simple of all of the real property described in Exhibit A attached hereto and made a part hereof and the improvements thereon and appurtenances thereto.

B. Declarant desires to create of this property a site of individually owned units, and commonly owned areas and facilities, and to these ends to submit this property to condominium ownership under the Condominium Act.

Definitions

The terms used in this document shall have these meanings, unless the context requires otherwise:

1. "Articles" and "Articles of Incorporation" mean the articles, to be filed with the Secretary of State of Ohio, incorporating Larchmere Lofts Condominium Association as a nonprofit corporation under the provisions of Chapter 1702 of the Revised Code of Ohio (the State of Ohio's enabling nonprofit corporation act).

2. "Association" and "Larchmere Lofts Condominium Association" mean the nonprofit corporation created by the filing of the Articles and is also one and the same as the association created for the Condominium under the Condominium Act.

3. "Board" and "Board of Trustees" mean those persons who, as a group, serve as the board of trustees of the Association and are also one and the same as the board of managers of the Condominium established for the Condominium under the Condominium Act.

4. "Bylaws" mean the bylaws of the Association, created under and pursuant to the Condominium Act for the Condominium, and which also serve as the code of regulations of the Association under and pursuant to the provisions of Chapter 1702. A true copy of the Bylaws is attached hereto as Exhibit B and made a part hereof.

5. "Common Areas" means all of the Condominium Property, except that portion described in this Declaration as constituting a Unit or Units, and is that portion of the Condominium Property constituting "common areas and facilities" of the Condominium under the Condominium Act.

CUYAHOGA COUNTY RECORDER
200405250330 PAGE 1 of 59

6:\C:\Documents and Settings\Ned\Desktop\ARCHMERE LOFTS\larchmere\larchmere Docs 4-17-03\Larchmere Declaration 5-13-04.doc

RECORDER NOTE!
FOR MAPS ACCOMPANYING THIS DECLARATION AND
BY-LAWS SEE VOL. 150 PAGES 52 TO 61
INCLUSIVE OF CONDOMINIUM MAP RECORDS

6. "Common Expenses" means all costs, expenses and charges which the Association may charge against a Unit or a Unit owner as assessments pursuant to this Declaration, the Bylaws or the Condominium Act.

7. "Common Profits" means the amount by which the total income received by the Association from assessments charged for special benefit to specific Units, rents received from rentals of equipment or space in *Common Areas*, and any other fee, charge, or income (other than common assessments) exceeds expenses allocable to such income.

8. "Condominium" and "Larchmere Lofts Condominium" mean the condominium regime for the Condominium Property created under and pursuant to the Condominium Act.

9. "Condominium Act" means Chapter 5311 of the Revised Code of Ohio, as the same may be amended or supplemented from time to time.

10. "Condominium instruments" means this Declaration, the Bylaws, the Drawings, and, as provided by the Condominium 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 a condominium property or unit."

11. "Condominium organizational documents" means the Articles, the Bylaws, the Drawings, and this Declaration.

12. "Condominium Property" means the tract of land hereinafter described as being submitted to the Condominium Act, all buildings, structures and improvements situated thereon, all easements, rights and appurtenances belonging thereto, and all personal property, if any, submitted hereunder to the Condominium Act.

13. "Declarant" means whoever is designated in the recitals of this Declaration as creating the Condominium, and Declarant's successors and assigns, provided the rights specifically reserved to Declarant under the Condominium organizational documents shall accrue only to such successors and assigns as are designated in writing by the Declarant as successors and assigns of such rights.

14. "Declaration" means this instrument and all of the Exhibits hereto, as originally executed, or, if amended, as so amended, by which the Condominium Property is hereby submitted to the Condominium Act.

15. "Drawings" means the drawings for the Condominium, and are the Drawings required pursuant to the Condominium Act. A set thereof is attached hereto, but the same may be detached and filed separately herefrom by the appropriate public authorities.

16. "Eligible mortgagees" means the holders of valid first mortgages on Units who have given written notice to the Association stating their names, addresses and Units subject to their mortgages.

17. "Limited Common Areas" means those Common Areas serving exclusively one Unit or more than one but less than all Units, the enjoyment, benefit or use of which are reserved to the lawful Occupants of that Unit or Units in this Declaration, and is that portion of the Condominium Property constituting "limited common areas and facilities" of the Condominium under the Condominium Act.

18. "Fiscal Year" means the fiscal year of the Association which shall begin the first day of January and end on the 31st day of December of every year, except that the first fiscal year of the Association shall begin on the date of incorporation of the Association and end on December 31st of such year.

19. "Occupant" means a person lawfully residing in a Unit, regardless of whether or not that person is the Unit owner.

20. "Person" means a natural individual, corporation, partnership, trustee, or other legal entity capable of holding title to real property.

21. "Right of Way and Easement" means the right of way and easement more particularly described in Article XIV, Section 10 below on, over, through and across a portion of the Condominium Property granted by the Declarant to the owners of certain properties adjacent to the Condominium for pedestrian and vehicular access, ingress and egress to and from such adjacent properties and Larchmere Boulevard.

22. "Rules" means such rules and regulations as the Association periodically may adopt and amend relative to the use of all or any part of the Condominium Property.

23. "Trustee" and "Trustees" mean that person or those persons serving, at the time pertinent, as a trustee or trustees of the Association, and mean that same person or those persons serving in the capacity of a member of the board of managers of the Association, as defined in the Condominium Act.

24. "Unit" and "Units" mean that portion or portions of the Condominium Property described as a unit or units in this Declaration, and is that portion of the Condominium constituting a "unit" or "units" of the Condominium under the Condominium Act.

25. "Unit owner" and "Unit owners" mean that person or those persons owning a fee simple estate or a ninety-nine (99) year leasehold estate renewable forever, in a Unit or Units together with an appurtenant undivided interest in the Common Areas and facilities, each of whom is also a "member" of the Association, as defined in Chapter 1702 of the Revised Code of Ohio.

The Plan

NOW, THEREFORE, Declarant hereby submits the Condominium Property to the provisions of the Condominium Act and makes and establishes the following plan for condominium ownership of the below described property under and pursuant to the provisions of the Condominium Act:

ARTICLE I

THE LAND

A legal description of the land constituting a part of the Condominium Property, located in the City of Cleveland, Cuyahoga County, Ohio, and consisting of one parcel containing approximately 11,090 square feet (0.2546 acres) of land, is attached hereto and marked Exhibit "A".

ARTICLE II

NAME; PURPOSES

The name by which the Condominium shall be known is "Larchmere Lofts Condominium". This Declaration is being made to establish separate individual parcels from the Condominium Property to which fee simple interests may be conveyed; to create restrictions, covenants and easements providing for, promoting, and preserving the values of Units and the Common Areas and the benefit, enjoyment and well being of Unit owners, Occupants, licensees and invitees and to provide for the establishment of a unit owners' association to administer the Condominium and the Condominium Property, to administer and enforce the covenants, easements, charges and restrictions hereinafter set forth; and to raise funds through assessments to accomplish these purposes.

ARTICLE III

RESTRICTIONS

The Condominium and the Condominium Property shall be benefited by and subject to the following restrictions:

Section 1. Unit Uses. Except as otherwise specifically provided in this Declaration, no Unit shall be used for any purpose other than that of a residence for individuals living together as a single housekeeping unit, and uses customarily incidental thereto, provided, however, that no Unit may be used as a group home, commercial foster home, fraternity or sorority house, or any similar type of lodging, care or treatment facility. Notwithstanding the foregoing: (a) an occupant maintaining a personal or professional library, keeping personal business or professional records or accounts, making professional telephone calls or corresponding, in or from a Unit, maintaining a portion of a Unit as an office (provided that such use does not (i) involve regular walk-in traffic to the Unit from the general public, (ii) interfere with the quiet enjoyment or comfort of any other Unit owner or Occupant, or (iii) result in the Unit becoming principally an office as distinct from a residence with a complementary business use, and provided further that in no event shall any part of a Unit be used as a school or music studio) shall be a permissible use and not in violation of these restrictions; (b) one or more Units or part thereof may be used by the Association in fulfilling its responsibilities; and (c) it shall be permissible for the Declarant to maintain, during the period of its sale or rental of Units, one or more Units as sales and rental models and offices, and for storage and maintenance purposes. Further, the use of a Unit for any

partial business office use as may be provided above, shall be subject to all governmental rules and regulations.

Section 2. Common Areas' Uses. The Common Areas (except the Limited Common Areas) shall be used in common by Unit owners and Occupants and their agents, servants, customers, invitees and licensees, in accordance with the purposes for which they are intended, reasonably suited and capable, and as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of Units. Unless expressly provided otherwise herein, no Common Areas shall be used for any purpose other than the health, safety, welfare, convenience, comfort, recreation or enjoyment of Unit Owners and Occupants.

Section 3. Limited Common Areas' Uses. Those portions of the Common Areas described herein and shown on the Drawings as Limited Common Areas shall be used and possessed exclusively by the Unit owners and Occupants of the Unit or Units served by the same, as specified in this Declaration, and shall be used only for the purposes intended. The balconies and terraces which are appurtenant Limited Common Areas to the respective Units shall not be enclosed, removed, altered, decorated, or adorned in any manner contrary to this Declaration or the Rules.

Section 4. Visible Areas. Nothing shall be caused or permitted to be hung or displayed on the outside or inside of windows of a Unit (except inoffensive drapes, curtains, or louvered blinds) or placed on the outside walls or otherwise outside of a Unit, or any part thereof, and no sign, awning, canopy, shutter or television or citizens' band or other radio antenna or transmitter, or any other device or ornament, shall be affixed to or placed upon the exterior walls or roof or any part thereof, or the exterior of any door or window, or in, on, or over a terrace or balcony, visible to the exterior, unless permitted by the Rules or otherwise authorized by the Board.

Section 5. Offensive Activities. No noxious or offensive activity shall be carried on in any Unit, or upon the Common Areas or Limited Common Areas, nor shall any be used in any way or for any purpose which may endanger the health of or unreasonably disturb any Occupant, which shall include, without limitation, transmission of any television or other communication signals that interfere with communication reception in any other Unit.

Section 6. Vehicles. The Board may promulgate rules and regulations restricting or prohibiting the parking of automobiles, inoperable vehicles, trucks, trailers, boats and recreational vehicles on the Common Areas, or parts thereof, and may enforce such regulations or restrictions by levying enforcement charges, having such vehicles towed away, or taking such other actions as it, in its sole discretion, deems appropriate.

Section 7. Renting or Leasing. No Unit or part thereof, unless the same is owned by the Association or the Declarant within the time periods referenced in Article III, Section 1(c) hereof, shall be rented or used for transient or hotel purposes, which is defined as: (a) rental for any period less than thirty (30) days; (b) rental under which occupants are provided customary hotel services such as room service for food and beverages, maid service, the furnishing of laundry and linen, busboy service, and similar services; or (c) rental to roomers or boarders, that is, rental to one or more persons of a portion of a Unit only. No Unit or part thereof shall be rented to any person under the age of twenty-one (21) years;

provided however, other occupants of the Unit may be under such age. No lease may be of less than an entire Unit. Any lease agreement shall be in writing, shall provide that the lease shall be subject in all respects to the provisions hereof, and to the rules and regulations promulgated from time to time by the Board, and shall provide that the failure by the tenant to comply with the terms of the Condominium organizational documents and lawful rules and regulations shall be a default under the lease. Prior to the commencement of the term of a lease the Unit owner shall notify the Board, in writing, the name or names of the tenant or tenants and the time during which the lease term shall be in effect.

Section 8. Signs. No sign of any kind shall be displayed to the public view on the Condominium Property except: (a) on the Common Areas, signs regarding and regulating the use of the Common Areas, provided they are approved by the Board; (b) subject to all governmental rules and regulation, on the interior side of the window of a Unit, one professionally prepared sign not in excess of nine (9) square feet in size, advertising the Unit for sale or rent; and (c) on the Common Areas and model Units, signs advertising the sale and/or rental of Units by the Declarant during the time period referenced in Article III, Section 1(c) hereof.

Section 9. Replacement. Any building erected to replace the existing building containing Units shall be of new construction, be of comparable size, design and construction to that replaced, and shall contain a like number of Units of comparable size to the Units presently in the building.

Section 10. Structural Integrity. Nothing shall be done in any Unit, or in, on or to the Common or Limited Common Areas, which may impair the structural integrity of any improvements.

Section 11. Construction in Easements. No structure, planting or other material shall be placed or permitted to remain within the easements for the installation and maintenance of utilities and drainage facilities which may damage or interfere with the installation and maintenance of utility lines or which may change the direction of the flow of drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easement areas. The utility facilities within the easement areas shall be subject to the right of the Association to maintain the same, and its right to delegate that right to a public authority or utility.

Section 12. Animals. Except as hereinafter provided, no animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit or on the Common Areas. Notwithstanding the foregoing, household domestic pets, not bred or maintained for commercial purposes, may be maintained in a Unit, provided that (a) the maintaining of animals shall be subject to such rules and regulations as the Board may from time to time promulgate, including, without limitation, the right to place limitations on the size, number and type of such pets, and to levy enforcement charges against persons who do not clean up after their pets; and (b) the right of an Occupant to maintain an animal in a Unit shall be subject to termination if the Board, in its full and complete discretion, determines that maintenance of the animal constitutes a nuisance or creates a detrimental effect on the Condominium or other Units or their Occupants or invitees.

Section 13. Conveyances. Each Unit shall be conveyed or transferred (voluntarily or involuntarily) as a separately designated and legally described freehold estate subject to the terms, conditions and provisions hereof. The undivided interest of a Unit in the Common Areas shall be

deemed to be conveyed or encumbered with the Unit even though that interest is not expressly mentioned or described in the deed, mortgage or other instrument of conveyance or encumbrance. Any conveyance, encumbrance, judicial sale or other transfer (voluntary or involuntary) of an interest in the Common Area will be void unless the Unit to which that interest is allocated is also transferred to the same transferee. In any instrument of conveyance or creating an encumbrance, or in any other document legally describing a Unit, it shall be sufficient to lawfully describe a Unit and its interest in the Common Area by referring to the Condominium Property, the Unit designation of the Unit and the appropriate recording references of the initial page of this Declaration and the Drawings, and any amendments thereto. The right of a Unit owner to sell, transfer or otherwise convey that owner's Unit is not subject to any right of first refusal or similar restriction, and any Unit owner may transfer that owner's Unit free of any such limitation. To enable the Association to maintain accurate records of the names and addresses of Unit owners, each Unit owner agrees to notify the Association, in writing, within five (5) days after an interest in that Unit owner's Unit has been transferred to another person. In addition, each Unit owner agrees to provide to a purchaser of that owner's Unit a copy of the Condominium organizational documents and all effective rules and regulations.

Section 14. Discrimination; Handicapped Accommodation. No Unit owner (including the Declarant) nor the Association, or an employee, agent or representative, shall discriminate upon the basis of race, religion, color, sex, handicap, familial status or national origin in the sale, lease or rental of any Unit nor in the use of the Common Areas and Facilities. In addition, no action shall at any time be taken by the Association or its Board which in any manner would discriminate against any Unit owner in favor of another. In addition, except as specifically otherwise provided herein, the Association shall not adopt or enforce regulations or restrictions that discriminate in favor of or to the detriment of the owners, Occupants, licensees and invitees of the of the Units, nor shall any amendment be made to the Condominium organizational documents which would so discriminate or permit such discrimination without the express written consent of all Unit owners and unless in compliance with all governmental laws, rules and regulations. In addition, notwithstanding any provision hereof, or any rule or regulation, the Board shall make reasonable accommodation as required by law to afford a handicapped person equal opportunity to use and enjoy the Condominium Property, provided, that the cost of any such accommodation shall be born by the requesting party to the extent permissible by law and nothing contained herein shall be construed to mean or imply that any such accommodation be at the cost of the Association.

Section 15. Architectural Control. Except as constructed by Declarant during the time period referenced in Article III, Section 1(c), no building, addition, fence, wall, sign or other structure shall be constructed, erected or maintained upon the Condominium Property, or any part thereof, nor shall any addition to or change or alteration be made to the exterior of the building or to any structural element of the building, or to any Common Areas or Limited Common Areas until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing by the Board or its designated representative or representatives, in its or their sole and unfettered discretion.

Section 16. Rules and Regulations. In addition to adopting and enforcing rules and regulations in the instances specifically hereinbefore mentioned, the Board may, from time to time, adopt, amend and enforce such further reasonable rules and regulations concerning use of the Condominium Property,

or any part thereof, as it deems necessary or desirable to promote harmony, to serve the best interests of the Unit owners, as a whole, and to protect and preserve the nature of the Condominium and the Condominium Property. A copy of all rules and regulations and any amendments thereto shall be furnished by the Board to the owners of each Unit prior to the time when the same shall become effective.

Section 17. Disputes Between Owners. In the event of any dispute between Unit owners as to the application of the foregoing restrictions or any rule or regulation promulgated pursuant thereto, the party aggrieved shall submit a complaint in writing to the Board specifying the dispute. The Board shall set a time, date and place for a hearing thereon within sixty (60) days thereafter, and give written notice to each party thereof no less than three (3) days in advance. The Board shall thereupon hear such evidence on the dispute as the Board deems proper and render a written decision on the matter to each party within thirty (30) days thereafter. No action of any type may be instituted by either party to such a dispute unless the dispute has first been submitted to and determined by the Board, as aforesaid. The Board shall have the right to require the Unit owners involved in any such dispute to submit such dispute to arbitration or a court with appropriate jurisdiction.

Section 18. Residential Development Restriction. No buildings, structures or other improvements other than residential fee simple homes or condominium housing units shall be developed on the land upon which the Condominium is situated for a period of forty (40) years, which period shall be deemed to commence as of October 4th, 2002.

ARTICLE IV

IMPROVEMENT DESCRIPTIONS

Section 1. General Description. The Condominium is located at the intersection of East 127th Street and Larchmere Blvd., Cleveland, Ohio, and consists of one (1) lot. There is one (1) building situated on the lot. Insofar as is possible, all of the particulars of the land, the building and other improvements, including, but not limited to, the layout, location, designation and dimensions of each Unit, the layout, location and dimensions of the Common Areas and Limited Common Areas, and the location and dimensions of all appurtenant easements are shown on the Drawings.

Section 2. The Land. The land constituting a part of the Condominium Property is described in Article I of this Declaration.

Section 3. The Building. The building is five (5) stories (with no basement) and contains sixteen (16) residential dwelling units. The building is of contemporary style architecture, with a flat asphalt (rubber) roof. The building is located as shown on the Drawings.

Section 4. Materials. The principal materials of which the building is constructed are concrete, steel, brick, glass, wood, precast stone and drywall.

Section 5. Other. The Condominium Property does not contain any recreational facilities. The Condominium contains limited green areas consisting of landscaping (tree lawns and a flower bed) as

depicted on the Drawings. The ground floor of the building includes a parking garage, a vestibule, and lobby. There is an additional parking area exterior parking area behind the building as depicted on the Drawings. There are two fire stairwells and one elevator in the building. There are two main entrances to the building; one off of Larchmere Boulevard, and the other through the parking garage.

ARTICLE V

UNITS

Section 1. Unit Designations. The Units are designated 2A, 2B, 2C, 2D, 3A, 3B, 3C, 3D, 4A, 4B, 4C, 4D, 5A, 5B, 5C and 5D and are so designated on the Drawings where that Unit is located. The location and designation of each Unit is also shown on the sketch plot plan attached hereto as Exhibit "C". Information concerning the Units, with a listing of proper Unit designations, is shown on the attached Exhibit "D", which is hereby made a part hereof.

Section 2. Composition of Units.

(a) Unit Composition. Each unit constitutes a single freehold estate and consists of the space in the building designated by that Unit's designation on the Drawings that is bounded by the undecorated interior surfaces of the perimeter walls, the unfinished surface of the floors, and the unfinished interior surface of the ceilings, all projected, if necessary by reason of structural divisions such as interior walls and partitions, to constitute complete enclosures of space, and all improvements within that space. Without limiting the generality of the foregoing, or, as appropriate, in addition, each Unit shall include:

(1) the decorated surfaces, including paint, lacquer, varnish, wall covering, tile and other finishing material applied to floors, ceilings, and interior and perimeter walls, carpeting, if any, and also the floors and ceilings themselves, and the drywall, paneling and other finishing wall material in that Unit;

(2) all windows, skylights, if any, screens and doors, including storm doors and windows, if any, and the frames, sashes and jambs, and the hardware therefor serving just that Unit;

(3) all fixtures and appliances installed for the exclusive use of that Unit, commencing at the point of disconnection from the structural body of the building and from utility pipes, lines or systems serving the entire building or more than one Unit thereof, including, without limiting the generality hereof, built-in cabinets, dishwashers, garbage disposal units, refrigerators, stoves and hoods, television antennas and cables, furnaces, hot water heaters, heat pumps, air-conditioning units (even though located outside the bounds of a Unit), and components of the foregoing, if any;

(4) all plumbing, electric, heating, cooling and other utility or service lines, pipes, wires, ducts, conduits and apparatus, wherever located, which serve only that Unit;

(5) all control knobs, switches, thermostats and electrical outlets and connections affixed to or projecting from the walls, floors and ceilings which service either that Unit alone, or the fixtures located therein, alone;

(6) all interior walls in that Unit that are not necessary for support of the structure, and all components thereof and all space encompassed thereby;

(7) the portion of fireplaces, if any, actually within the interior of a Unit;

excluding therefrom, however, all of the following items, whether or not located within the bounds of that Unit:

(1) any supporting element of the building contained in interior walls; and

(2) all plumbing, electric, heating, cooling and other utility or service lines, pipes and accessories thereto, wires, ducts and conduits which serve any other Unit.

(b) Unit Types, Sizes, Locations and Components. The type, composition and approximate size of each Unit are shown on Exhibit D. The location, dimensions and composition of each Unit are also shown on the Drawings. Any inconsistencies between the description of the Units as set forth in Exhibit D and the Drawings shall be resolved in favor of the Drawings. Each Unit has direct access to a Common Area leading directly to the Larchmere Boulevard, a public street. The size of Units is described in terms of "gross interior square feet" which means the area of space that constitutes a Unit, except that the space is measured from the outside surfaces of exterior walls inward, and includes space occupied by interior partitions. The measurement of the gross interior square feet of each Unit set forth on Exhibit D is an approximate measurement and Declarant disclaims any representation as to the exact accuracy thereof. Such approximate measurement shall be deemed final and conclusive for all purposes whether or not accurate.

ARTICLE VI

COMMON AND LIMITED COMMON AREAS

Section 1. Common Areas - Description. All of the Condominium Property, including all of the land and all improvements thereon and appurtenances thereto, except those portions labeled or described herein or on the Drawings as a part of a Unit, are Common Areas.

Section 2. Limited Common Areas-Description.

(a) Description. Those portions of the Common Areas that are labeled or designated "limited common areas" on the Drawings, are Limited Common Areas. Each such Limited Common Area is reserved for the exclusive use of the owners, Occupants and licensees of the Unit to which it is appurtenant or designed or designated to serve, which use is subject to the restrictions set forth in this

Section and in Article III, Section 3 hereof. In the case of each Unit these Limited Common Areas consist of the following:

(i) Balconies and Terraces. Each Unit has a balcony or terrace reserved for the exclusive use of such Unit having sole and direct and immediate access to it and for which it was designated to serve as shown on the Drawings; and

(ii) Parking Spaces. Each Unit has one or more automobile parking space(s) in the ground floor garage level of the building and/or the exterior parking area adjacent to the building. Each of these parking spaces is identified on the Drawings by the letter "P" and an identifying number and depicted on the site plan for the Condominium included herein as Attachment 2. The parking space(s) appurtenant to and a Limited Common Area of each Unit are set forth on Exhibit D.

(b) Assignment Permanent and Irrevocable. Each assignment of parking spaces, as set forth on Exhibit D, is a permanent and irrevocable assignment to the Unit to which assigned, and shall entitle the Unit owners and Occupants, from time to time, of the Unit to which assigned, to the exclusive use of such space, subject to such rules and regulations as the Board may adopt from time to time, and subject to the other provisions hereof.

(c) Parking Space Uses. Parking spaces may be used solely for purposes of the parking of personal motor vehicles, and no other purposes, unless specifically authorized by the Board, in its sole discretion. Notwithstanding the foregoing, the Unit owner or owners of a Unit to which a parking space has been assigned shall have the right to install a parking lift or storage shelving in such assigned parking space, provided that any such lift or shelving (including, without limitation, the installation and use thereof) shall conform with the Rules. A Unit owner shall maintain insurance for any parking lift installed in the parking space assigned to such Unit (or in the parking space rented by such Unit owner from any other Unit owner pursuant to Section 2(d) of this Article) in accordance with Article XI, Section 7.

(d) Rental of Parking Spaces. The Unit owner or owners of a Unit to which a parking space has been assigned shall have the right from time to time to rent the use of the same, but only to an Occupant, and for not less than a period of one (1) year unless otherwise approved by the Board; provided, further, that before the commencement of any such rental period the renting Unit owner or owners shall first advise the Board, in writing, the name of and Unit occupied by that Occupant, and the terms of the rental.

Section 3. Undivided Interest. The undivided interest in the Common Areas of each Unit is shown on the attached Exhibit D, and, in each case, is based on the size of the Units (in terms of gross interior square feet) relative to the aggregate size of all Units in the Condominium. Undivided interests have been adjusted at hundredths of a percent, in Declarant's discretion, so that the total of undivided interests equals exactly 100.00%. The Common Areas shall be owned by the Unit owners as tenants in common, and ownership thereof shall remain undivided. No Unit owner may waive or release any rights in the Common Areas. Further, the undivided interest in the Common Areas of a Unit shall not be separated from the Unit to which it appertains.

ARTICLE VII

UNIT OWNERS' ASSOCIATION

Section 1. Establishment of Association. The Association has been formed to be and to serve as the Unit owners' association for the administration of the Condominium. The Declarant is presently the sole member of the Association.

Section 2. Membership. Membership in the Unit Owners' Association shall be limited to the Unit owners, and every person or entity who is or becomes a record owner of a fee or undivided fee simple interest in a Unit is a Unit owner and shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Unit, and transfer of a Unit shall automatically transfer membership to the transferee.

Section 3. Voting Rights. Each Unit may exercise that percentage of the total voting powers of all Unit owners on any question for which the vote of Unit owners is permitted or required that is equivalent to the percentage of the undivided interest in the Common Areas appurtenant to such Unit, provided, that unless timely challenged by an owner of a fee simple interest in a Unit, any owner of a fee simple interest in that Unit may cast the entire vote with respect to that Unit.

Section 4. Board of Trustees. The Board initially shall be those three (3) persons named as the initial Trustees pursuant to the provisions of the Articles, or such other person or persons as may from time to time be substituted by Declarant. No later than the time that Units to which 25% of the undivided interests in the Common Areas appertain have been sold and conveyed by the Declarant, the Unit owners shall meet, and the Unit owners other than the Declarant shall elect one Trustee at such meeting to replace whichever Trustee Declarant designates.

Within thirty (30) days after the earlier of (a) three (3) years from the date of the establishment of the Association, or (b) the sale and conveyance, to purchasers in good faith and for value, of Units to which 75% of the undivided interests in the Common Areas appertain, the Association shall meet and all Unit owners, including the Declarant, shall elect three (3) Trustees to replace all of those Trustees earlier elected or designated by the Unit owners or Declarant, respectively, and all other officers of the Association. Earlier elected or designated Trustees shall be eligible for election. The terms of the three (3) Trustees shall be staggered so that the term of one-third of the Trustees (one) will expire and a successor will be elected at each annual meeting of the Association. Thereafter, at such annual meetings, a successor to the Trustee whose term then expires shall be elected to serve a three (3) year term. Notwithstanding the foregoing, the members, by the vote of members exercising not less than a majority of the voting power of members, may, from time to time, change the number and terms of Trustees, provided, that in any such event the terms of not less than one-third (1/3) of the Trustees shall expire annually.

Notwithstanding the foregoing, Declarant shall have the right at any time to waive its right to select one (1) or more Trustees or to vote in an election of Trustees.

Section 5. Authority. The Board shall have all authority to manage, maintain, repair, replace, alter and improve the Common Areas and assess and collect funds for the payment thereof, and do all things, and exercise all rights provided by the Condominium organizational documents, or the Condominium Act, that are not specifically reserved to Unit owners.

Section 6. Delegation of Authority; Professional Management. The Board may delegate all or any portion of its authority to discharge its responsibilities to a managing agent. This delegation of authority and responsibility to a managing agent may be evidenced by one (1) or more management contracts which may provide for the payment of reasonable compensation to such managing agent as a common expense, provided, however, that any agreement for professional management shall be terminable by the Association for cause on thirty (30) days' written notice; shall be terminable by either party, without penalty, on ninety (90) days' written notice; shall not exceed one (1) year unless renewed by agreement of the parties and upon the affirmative vote of the Unit owners for successive one (1) year periods; and shall be bona fide and commercially reasonable at the time entered into under the circumstances then prevailing. Subject to the foregoing, nothing contained herein shall preclude Declarant, or any other entity designated by Declarant, from being employed as managing agent. The managing agent, or the Board, if there is no managing agent, shall have the authority to enter into contracts with Declarant or an affiliate of Declarant, as defined by an institutional first mortgagee or an agency or organization which purchases or insures first mortgages, for goods, services, or for any other thing, including, without limiting the generality of the foregoing, contracts for the providing of management, maintenance, and repair services, provided the same are bona fide and commercially reasonable to the Unit owners at the time entered into under the circumstances then prevailing, do not exceed a one (1) year period, and are terminable by the Association, without cause and without penalty, on ninety (90) days' written notice.

ARTICLE VIII

AGENT FOR SERVICE

The name of the person to receive service of process for the Association, and that person's residence or place of business, which is in Cuyahoga County, Ohio, where the Condominium is situated, is:

Timothy M. Perotti
Larchmere Lofts LLC
12862 Cedar Road
Cleveland, OH 44118

In the event this individual for any reason ceases to be registered with the Secretary of State of Ohio as Statutory Agent for the Association, the person so registered shall be the person to receive service of process for the Association.

ARTICLE IX

MAINTENANCE AND REPAIR

Section 1. Association Responsibility. The Association, to the extent funds are available for the same and to the extent and at such times as the Board, in its exercise of business judgment, determines to allocate funds therefor, shall maintain, repair and replace all improvements constituting a part of the Common Areas, including but not limited to utility facilities serving more than one Unit, utility lines in the Common Areas, landscaping, walkways, drives, parking areas, the elevator, and the structural portions and exterior portions of the building and improvements which are a part of the Common Areas and that do not constitute part of a Unit, and shall repair and replace the structural components of improvements constituting a part of the Limited Common Areas; provided that the Association shall not be responsible for (a) the repair and replacement of (i) any improvements installed in the balconies or terraces comprising Limited Common Areas pertaining to each respective Unit as depicted on the Drawings or (ii) parking lifts or storage shelving, if any, installed in the parking spaces comprising Limited Common Areas pertaining to each respective Unit as depicted on the Drawings; provided that nothing in this Section shall be construed to give any Unit owner permission to install or place any item or improvement outside the bounds of the Unit including, without limitation, any balcony or terrace enclosure, without the Board's prior written consent or as otherwise provided in this Declaration or the Rules, or (b) the cleaning, housekeeping and routine maintenance of Limited Common Areas or components thereof; provided that the Association shall cause the painting of the balconies and terraces comprising Limited Common Areas pertaining to each respective Unit. The Association shall maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements a part of the Common Areas which the Association is required to maintain. Except to the extent, if any, that a loss is covered by insurance maintained by the Association, the Association shall not have responsibility to repair or maintain any Unit, or component thereof, or personal property within a Unit.

Section 2. Individual Responsibility. Each Unit owner shall repair and maintain (including cleaning and housekeeping) the Unit or Units, and all components thereof, owned by that Unit owner, perform cleaning, housekeeping, and routine maintenance with respect to Limited Common Areas appurtenant to that owner's Unit, repair and maintain any improvements installed by any Unit owner in the Limited Common Areas, including without limitation, any improvements installed by any Unit owner in terraces or balconies comprising Limited Common Areas pertaining to the respective Units and any parking lifts or storage shelving, if any, installed in the parking spaces comprising Limited Common Areas pertaining to each respective Unit; provided that nothing in this Section shall be construed to give any Unit owner permission to install or place any item or improvement outside the bounds of the Unit without the Board's prior written consent or as otherwise provided in this Declaration or the Rules. Without limiting the generality of the foregoing, this repair and maintenance responsibility of a Unit owner shall include repair, maintenance and replacement of all floors, ceilings, windows, screens and doors, including the frames, sashes and jambs, and the hardware therefore and the air conditioning unit and furnace installed for the exclusive use of that Unit. In the event that the necessity to make a particular repair is attributable to the use or uses or actions of the owner or owners or licensees or invitees of a particular Unit or Units, the owners or owners of that Unit or those Units shall be solely responsible to make and pay for that repair. In the event a Unit owner shall fail to make a repair or perform maintenance required of that Unit owner, or in the event the need for maintenance or repair of

any part of the Common Areas or Limited Common Areas is caused by the negligent or intentional act of any Unit owner or Occupant, or is a result of the failure of any Unit owner or his, her, or its predecessors in title to timely pursue to conclusion a claim under any warranty, express, implied, or imposed by law, the Association may perform the same, and if the cost of such repair or maintenance is not covered by insurance, whether because of a deductible or otherwise, the cost thereof shall constitute a special individual Unit assessment, as hereinafter defined, on the Unit owned by such Unit owner and on that Unit owner. The determination that such maintenance or repair is necessary, or has been so caused, shall be made by the Board.

ARTICLE X

UTILITY SERVICES

Each Unit owner by acceptance of a deed to a Unit agrees to pay for utility services separately metered or separately charged by the utility company to that Unit, and to reimburse the Association for that owner's Unit's share of any utility cost that the Board reasonably determines is attributable to use by that owner's Unit. All other utility costs including, without limitation, water and sewer charges for service to the Common Areas and the Units (if such water and sewer charges are not separately metered to the Units), shall be Common Expenses and paid by the Association.

ARTICLE XI

INSURANCE; LOSSES; BONDS

Section 1. Fire and Extended Coverage Insurance. The Board shall have the authority to and shall obtain insurance for all buildings, structures, fixtures and equipment, and common personal property and supplies now or at any time hereafter constituting a part of the Common Areas, the Limited Common Areas, or common property of the Association, against loss or damage by fire, lightning, and such other perils as are ordinarily insured against by standard extended coverage endorsements, and all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available, issued in the locale of the Condominium Property, in amounts at all times sufficient to prevent the Unit owners from becoming co-insurers under the terms of any applicable coinsurance clause or provision and not less than one hundred percent (100%) of the current replacement cost of such items (exclusive of land, foundations, footings, excavations, and other items normally excluded from coverage), as determined from time to time by the insurer. This insurance also:

(a) shall provide coverage for built-in or installed improvements, fixtures and equipment that (are originally installed as are) part of a Unit, including without limitation, plumbing and cabinetry, and shall provide for coverage of interior walls, windows and doors and frames, sashes, jambs and hardware therefor, even though these improvements may be parts of Units;

(b) shall have (i) an agreed amount and inflation guard endorsement, when that can be reasonably obtained, (ii) building ordinance, law or construction code endorsements, if any

building, zoning, land-use or construction law, code provision that requires changes to undamaged portions of buildings even when only part of the Condominium Property is destroyed by an insured hazard, such as demolition cost, contingent liability from operation of building laws and increased cost of construction endorsements, and, (iii) when applicable, a steam boiler and machinery coverage endorsement, which provides that the insurer's minimum liability per accident at least equals the lesser of two million dollars (\$2,000,000.00) or the insurable value of the building or buildings housing the boiler or machinery (or a separate stand-alone boiler and machinery coverage policy);

(c) shall provide that no assessment may be made against a first mortgage lender, or its insurer or guarantor, and that any assessment under such policy made against others may not become a lien on a Unit and its appurtenant interests superior to a first mortgage;

(d) shall be written in the name of the Association for the use and benefit of the Unit owners, or its authorized representative, including any insurance trustee with whom the Association has entered into an insurance trust agreement, or any successor to such trustee, for the use and benefit of the individual Unit owners;

(e) shall contain or have attached the standard mortgage clause commonly accepted by institutional first mortgage holders, insurers, and guarantors, which (i) must provide that the carrier shall notify the named insured and each first mortgagee named in the mortgage clause at least ten (10) days in advance of the effective date of any reduction in, cancellation of, or substantial change in the policy, and (ii) must be endorsed to provide that any loss shall be paid to the Association (or its insurance trustee), as a trustee for each Unit owner and each such Unit owner's mortgagee, and, unless otherwise prohibited by a nationally recognized institutional first mortgage holder, insurer, or guarantor, to the holders of first mortgages on Units;

(f) shall have a deductible amount no greater than the lesser of ten thousand dollars (\$10,000.00) or one percent (1%) of the policy face amount;

(g) shall be paid for by the Association, as a Common Expense;

(h) shall contain a waiver of subrogation of rights by the carrier as to the Association, its officers and Trustees, and all Unit owners;

(i) shall provide that the insurance shall not be prejudiced by any acts or omissions of individual Unit owners who are not under the control of the Association; and

(j) shall be primary, even if a Unit owner has other insurance that covers the same loss.

Section 2. Liability Insurance. The Association shall obtain and maintain, at Association cost and as a Common Expense, a commercial policy of general liability insurance covering all of the Common Areas, public ways and any other areas under the Association's supervision, and Units, if any, owned by the Association, even if leased to others, insuring the Association, the Trustees, and the Unit

owners and Occupants, with such limits as the Board may determine, but no less than the greater of (a) the amounts generally required by institutional first mortgage holders, insurers and guarantors for projects similar in construction, location and use, and (b) one million dollars (\$1,000,000.00) for bodily injury, including deaths of persons, and property damage, arising out of a single occurrence. This insurance shall contain a "severability of interest" provision, or, if it does not, an endorsement which shall preclude the insurer from denying the claim of a Unit owner because of negligent acts of the Association, the Board, or other Unit owners, and shall include, without limitation, coverage for legal liability of the insureds for property damage, bodily injuries and deaths of persons resulting from the operation, maintenance or use of the Common Areas, and legal liability arising out of lawsuits related to employment contracts in which the Association is a party. Each such policy must provide that it may not be cancelled or substantially modified, by any party, without at least ten (10) days' prior written notice to the Association and to each holder of a first mortgage on a Unit. The cost of such insurance shall likewise be a Common Expense.

Section 3. Fidelity Bond. The Board may obtain and maintain, at the Association's cost and as a Common Expense, a fidelity bond providing coverage for the Association against dishonest acts on the part of directors, managers, trustees, employees, agents, and volunteers responsible for or handling funds belonging to or administered by the Association. The fidelity bond must name the Association as the named obligee or insured and shall be written in an amount sufficient to provide protection, which is in no event less than the greater of (a) an amount equal to the Association's reserve funds plus an amount equal to three (3) months' assessments on all Units, and (b) the maximum amount that will be in the custody of the Association or its managing agent at any time while the bond is in force. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. The bond or policy shall provide that it shall not be cancelled or substantially modified (including cancellation for non-payment of the premium) without at least ten (10) days' prior written notice to the Association, and any insurance trustee, and any servicer on behalf of any holder, guarantor or insurer of any mortgage on a Unit who requires such rights.

Any management agent who handles funds of the Association shall, at the discretion of the Board, maintain a fidelity bond providing coverage no less than that required of the Association, which bond names the Association as an additional obligee.

Section 4. Hazard Insurance Carrier. Each policy of hazard insurance obtained pursuant hereto shall be obtained from an insurance company authorized to write such insurance in the State of Ohio which has a current rating of B+/VII, or better, or A/V or better, as determined by the then latest edition of Best's Insurance Reports, or its successor guide, or the insurer is reinsured by a company rated B+/VII or better and the insurer and reinsurer execute an assumption of liability agreement or a similar endorsement providing for one hundred percent (100%) reinsurance of the insurer's policy and requiring the reinsurer to give the Unit owner, the first mortgage lender, and the insurer ninety (90) days' written notice before canceling or otherwise terminating the reinsurance, or the coverage is underwritten by Lloyd's of London or by a Fair Access Insurance Requirements (FAIR), or breach and windstorm plan.

Section 5. Other Association Insurance. In addition, the Board may purchase and maintain, at the Association's cost and as a Common Expense, contractual liability insurance, trustees' and officers' liability insurance, and such other insurance as the Board may determine.

Section 6. Insurance Representative; Power of Attorney. There may be named, under any policy obtained by the Association, as an insured on behalf of the Association, its authorized representative, including any trustee with whom the Association may enter into any insurance trust agreement, or any successor to such trustee, who shall have exclusive authority to negotiate losses under any such policy. Each Unit owner, by acceptance of a deed to a Unit, irrevocably appoints the Association or such designated representative, or such successor, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or such designated representative, or such successor, shall receive, hold or otherwise properly dispose of any proceeds of insurance, in trust, for Unit owners and their first mortgage holders, as their interests may appear. This power is for the benefit of each and every Unit owner, and their respective first mortgage holders, and the Association, and the Condominium, runs with the land, and is coupled with an interest.

Section 7. Unit Owners' Insurance. Any Unit owner or Occupant may carry such insurance in addition to that provided by the Association pursuant hereto as that Unit owner or Occupant may determine, subject to the provisions hereof, and provided that no Unit owner or Occupant may at any time purchase individual policies of insurance against loss by fire or other casualty covered by the insurance carried pursuant hereto by the Association. In the event any Unit owner or Occupant violates this provision, any diminution in insurance proceeds resulting from the existence of such other insurance shall be chargeable to the Unit owner who acquired or whose occupant acquired such other insurance, who shall be liable to the Association to the extent of any diminution and/or loss of proceeds. Without limiting the foregoing, a Unit owner or Occupant may obtain insurance against liability for events occurring within a Unit, losses with respect to personal property and furnishings, and losses to improvements owned by the Unit owner or Occupant, provided that if the Association obtains insurance for permanent improvements and built-in fixtures and equipment, then the insurance obtained by the Unit owner with respect to improvements within the Unit shall be limited to the type and nature of coverage commonly referred to as "tenants' improvements and betterment". A Unit owner shall maintain hazard insurance and liability insurance for any parking lift installed in the parking space assigned to such Unit (or in the parking space rented by such Unit Owner from any other Unit Owner pursuant to Section 2(d) of Article IV) and the insurance maintained by the Association shall not provide any coverage for any such parking lifts. All such insurance separately carried by a Unit owner (including, without limitation, the insurance to be maintained for parking lifts) shall contain a waiver of subrogation rights by the carrier as to the Association, its officers and Trustees, and all other Unit owners and Occupants.

Section 8. Sufficient Insurance. In the event the improvements forming a part of the Common Areas or any portion thereof shall suffer damage or destruction from any cause or peril insured against and the proceeds of any policy or policies insuring against such loss or damage and payable by reason thereof shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken by the Association and the insurance proceeds shall be

used in payment thereof; provided, however, that in the event that within sixty (60) days after such damage or destruction the Unit owners and eligible mortgagees, if they are entitled to do so pursuant to the provisions of this Declaration, shall elect to terminate the Condominium, then such repair, restoration or reconstruction shall not be undertaken.

Section 9. Insufficient Insurance. In the event the improvements forming a part of the Common Areas or any portion thereof shall suffer damage or destruction from any cause or peril which is not insured against, or, if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction, then, unless the Unit owners and eligible mortgagees if they are entitled to do so pursuant to the provisions of this Declaration, shall elect within sixty (60) days after such damage or destruction not to make such repair, restoration or reconstruction, the Association shall make repairs, restoration or reconstruction of the Common Areas so damaged or destroyed at the expense (to the extent not covered by insurance) of all Unit owners in proportion to their respective undivided interests in the Common Areas. Should any Unit owner refuse or fail after reasonable notice to pay that Unit owner's share of such cost in excess of available insurance proceeds, the amount so advanced by the Association shall be assessed against the Unit of such Unit owner and that assessment shall have the same force and effect, and, if not paid, may be enforced in the same manner as herein provided for the nonpayment of assessments.

Section 10. Lender Requirements. Notwithstanding the foregoing provisions of this Article, the Association shall at all times maintain hazard insurance, liability insurance, and fidelity bond coverage conforming with the requirements then governing the making of a first mortgage loan or the purchase, guaranty, or insurance of first mortgages by national institutional lenders, guarantors or insurers of first mortgage loans on condominium units.

ARTICLE XII

DAMAGE; RESTORATION; REHABILITATION AND RENEWAL

Section 1. Restoration of Substantial Damage or Destruction. In the event of damage to or destruction of all Units, or the taking of one or more Units in any condemnation or eminent domain proceedings, the Association shall promptly restore or replace the same, unless an election is made not to do so, as hereinafter provided.

Section 2. Election Not to Restore. The Association may, with the consent of Unit owners entitled to exercise not less than eighty percent (80%) of the voting power of Unit owners, determine not to repair or restore such damage or destruction, or reconstruct such Unit or Units. In such event, all of the Condominium Property shall be sold as upon partition. In the event of such an election not to repair or restore substantial damage or destruction or reconstruct such Unit or Units, the net proceeds of insurance paid by reason of such damage or destruction, or the net amount of any award or proceeds of settlement arising from such proceedings together with the proceeds received from the sale as upon partition, or in the case of an election otherwise to terminate the Condominium, the net proceeds from the partition sale, shall be added to the proceeds received from the sale as upon partition, and the total amount distributed among the Unit owners and the holders of their respective first mortgage liens, as their interests may appear, in proportion to their respective percentage interests in the Common Areas. 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.

Section 3. Rehabilitation and Renewal. The Association, with the consent of the Unit owners entitled to exercise not less than eighty percent (80%) of the voting power of Unit owners, may determine that the Condominium is obsolete in whole or in part and elect to have the same renewed and rehabilitated. The Board shall thereupon proceed with such renewal and rehabilitation and the cost thereof shall be a common expense.

ARTICLE XIII

CONDEMNATION

Section 1. Standing. Except as hereinafter provided, the Association, or its designated representative, or authorized successor as trustee, shall represent the Unit owners in any condemnation or eminent domain proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of all or any part of the Condominium Property, and shall have the sole and exclusive right to settle losses with the condemning authority and to receive the award or proceeds of settlement, for the use and benefit of the Unit owners and their mortgagees as their interest may appear. Notwithstanding the foregoing, in the event that a Unit owner may lawfully separately pursue and realize upon a claim for incidental and consequential losses or damage to that Unit owner resulting from a taking under the power of eminent domain, such as for relocation and moving expenses, loss of favorable mortgage terms, and other such individual incidental or consequential losses, that Unit owner may, at his, her or its election, separately pursue such claim, provided, that the pursuing of the same, or

the realization of an award thereof, neither jeopardizes, in any way, an action by the Association to recoup the losses incurred by it, any other Unit owner, or the direct loss with respect to the Unit itself, or with regard to the useability thereof, nor diminishes any award for any such loss.

Section 2. Use of Proceeds. The award or proceeds of settlement in any actual or threatened condemnation or eminent domain proceedings, after reduction by the costs, if any, incurred in obtaining the same, shall be applied first to the cost of restoring or replacing all damaged or taken improvements on the remaining Condominium Property in accordance with the Drawings, or in accordance with any new plans and specifications therefor approved by Unit owners exercising no less than eighty percent (80%) of the voting power of Unit owners.

Section 3. Insufficient Proceeds; Excess Proceeds. If the award or proceeds are insufficient for such purpose, the excess cost shall be paid by the Association and, to the extent funds of the Association are insufficient therefor, in the judgment of the Board, such excess cost shall be a Common Expense and assessed among the Units in the same manner as special assessments for capital improvements are assessed. Except as hereinafter provided, the balance of any such award or proceeds of settlement, if there is an excess, shall be allocated and disbursed to the Unit owners, and their first mortgagees, as their interests may appear, in proportion to the relative undivided interests of the Units in the Common Areas. 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.

Section 4. Non-Restorable Unit. Notwithstanding the foregoing, in the event that as a result of any such taking, and consequent restoration or replacement, any Unit could not reasonably be restored to a condition comparable to that which existed prior to the taking, or could not be replaced, prior to the allocation and disbursement of any sum to any other Unit owner or his, her or its mortgagee, there shall be allocated and disbursed from such award or proceeds, to each Unit owner whose Unit cannot be so restored or replaced, and his, her or its respective first mortgagee, as their interests may appear, such amount as is equal to the then fair market value of the Unit that cannot be so restored or replaced. Thereupon, such Unit or Units, and the owners thereof, shall be immediately and automatically divested of any interest in the Condominium, the Condominium Property, and the Association, including, without limiting the generality of the foregoing, divestment of an undivided interest, vote, membership in the Association, and liability for Common Expenses. All such rights and interests shall be reallocated among all other Units and Unit owners in the same relative proportions as those rights and interests were prior to such taking. To illustrate, upon a Unit being divested from the condominium, (a) the voting right of that Unit will be allocated among all other Units in proportion to their respective interests in the Common Areas, and (b) the undivided interest of that Unit will be reallocated among all other Units in the proportions of their relative undivided interests prior to such taking.

Section 5. Power of Attorney. Each Unit owner, by acceptance of a deed to a Unit, appoints the Association, or its designated representative, or authorized successor, as his, her or its attorney-in-fact to represent that Unit owner, settle losses, receive and utilize the award or proceeds of settlement, and do all things necessary or desirable for such attorney-in-fact to exercise the rights and fulfill the responsibilities of the Association set forth in this Article with respect to condemnation or eminent domain proceedings. This power is for the benefit of each and every Unit owner, each holder of a first

mortgage on a Unit, the Association, and the real estate to which it is applicable, runs with land, is coupled with an interest, and is irrevocable.

ARTICLE XIV

GRANTS AND RESERVATIONS OF RIGHTS AND EASEMENTS

Section 1. Easements of Enjoyment; Limitations. Every Unit owner shall have a right and easement of enjoyment in, over and upon the Common Areas and an unrestricted right of access to and from his, her or its Unit, which rights and easements shall be appurtenant to and shall pass with the title to a Unit, subject to the right of the Board to make reasonable rules and regulations concerning the use and management of the Common Areas and the Limited Common Areas, provided that no such rule or regulation shall limit or prohibit the right of ingress and egress to a Unit, or any part thereof, or to that Unit's utility facilities. Each Unit owner shall be deemed to have delegated that Unit owner's right of enjoyment to the Common Areas and to ingress and egress to the Occupants of that owner's Unit.

Section 2. Right of Entry for Repair, Maintenance and Restoration. The Association shall have a right of entry and access to, over, upon and through all the Condominium Property, including each Unit and the Limited Common Areas, to enable the Association to perform its obligations, rights and duties pursuant hereto with regard to maintenance, repair, restoration and/or servicing of any items, things or areas of or in the Condominium Property. In the event of an emergency, the Association's right of entry to a Unit and its appurtenant Limited Common Areas may be exercised without notice; otherwise, the Association shall give the owners or Occupants of a Unit no less than twenty-four (24) hours advance notice prior to entering a Unit or its appurtenant Limited Common Areas.

Section 3. Easements for Encroachments. Each Unit and the Common Areas and Limited Common Areas shall be subject to and benefited by easements for encroachments on or by any other Unit and upon the Common Areas and Limited Common Areas created or arising by reason of overhangs; or by reason of deviations in construction, reconstruction or repair; or by reason of shifting, settlement, or other movement of any portion of the structures; or by reason of errors in the Drawings. Valid easements for these encroachments and for the maintenance of same, so long as the encroachments remain, shall and do exist.

Section 4. Easements for Support. Every portion of a utility line or any improvement on any portion of the Condominium Property contributing to the support of another utility line or improvement on another portion of the Condominium Property shall be burdened with an easement of support for the benefit of all other such utility lines, improvements and other portions of the Condominium Property.

Section 5. Easements for Utilities, Proper Operations. Easements to the Association shall exist upon, over and under all of the Condominium Property for ingress to and egress from, and the installation, replacing, repairing and maintaining of, all utilities, including, but not limited to water, sewer, gas, telephone, electricity, security systems, master television antennas and cable television, if any, and for all other purposes necessary for the proper operation of the Condominium Property. By these easements it shall be expressly permissible for the Association to grant to the providing companies and contractors permission to construct and maintain the necessary poles and equipment, wires, circuits,

conduits, appurtenances and improvements on, above, across and under the Condominium Property, so long as such poles, equipment, wires, circuits, conduits, appurtenances and improvements do not unreasonably interfere with the use and enjoyment of the Condominium Property. Should any public authority or other company furnishing a service request a specific easement, permit, or license, the Board shall have the right to grant such easement, permit, or license without conflicting with the terms hereof. In addition, in the event the Board determines that the grant of easement rights to others is in the best interests of the Association, the Association shall have the right to grant the same, provided that use of the same would not, in the sole judgment of the Board, unreasonably interfere with the use and enjoyment of the Condominium Property by Unit owners and Occupants.

Section 6. Easement for Services. Non-exclusive easements are hereby granted to all police, firemen, ambulance operators, mailmen, delivery men, garbage and trash removal personnel, and all similar persons, and to the local governmental authorities and the Association, but not to the public in general, to enter upon the Common Areas in the performance of their duties, subject to such reasonable rules and regulations as the Board may establish, from time to time.

Section 7. Easements Reserved to Declarant. Non-exclusive easements are hereby reserved to Declarant, its successors and assigns, over and upon the Common Areas and Limited Common Areas (a) for access to and for the purpose of completing improvements for which provision is made in this Declaration, (b) for the periods provided for warranties, or by law, for purposes of making repairs required pursuant to warranties, and (c) to maintain and utilize one or more Units and appurtenances thereto, for sales and management offices and for storage and maintenance, and model Units, parking areas for sales and rental purposes, and advertising signs, for the time referenced in Article III, Section 1(iii) hereof.

Section 8. Power of Attorney. Each Unit owner, by acceptance of a deed to a Unit, appoints the Association, or its designated representative, his, her or its attorney-in-fact, to execute, deliver, acknowledge and record, for and in the name of such Unit owner, such deeds of easement, licenses, permits, and other instruments as may be necessary or desirable, in the sole discretion of the Board, or its authorized representative, to further establish or effectuate the foregoing easements and rights. This power is for the benefit of each and every Unit owner, the Association, and real estate to which it is applicable, runs with the land, is coupled with an interest, and is irrevocable.

Section 9. General. The easements and grants provided herein shall in no way affect any other recorded grant or easement. Failure to refer specifically to any or all of the easements and/or rights described in this Declaration in any deed of conveyance or in any mortgage or other evidence of obligation shall not defeat or fail to reserve said rights or easements but the same shall be deemed conveyed or encumbered, as the case may be, along with the Unit.

Section 10. Easement to Adjoining Property Owners. Declarant granted a perpetual, nonexclusive right of way and easement on, over, through and across a portion of the Condominium Property to the owners of certain properties located adjacent to the Condominium Property more particularly described in the Right of Way and Easement for pedestrian and vehicular access, ingress and egress to and from such adjacent properties and Larchmere Boulevard. The location and dimensions of the Right of Way and Easement which is approximately twelve (12) feet wide are shown on the

Drawings and described in the Right of Way and Easement. The Right of Way and Easement is recorded with the Cuyahoga County, Ohio Recorder's Office as instrument number 200210040915.

ARTICLE XV

ASSESSMENTS AND ASSESSMENT LIENS

Section 1. Types of Assessments. The Declarant for each Unit within the Condominium hereby covenants and agrees, and each Unit Owner by acceptance of a deed to a Unit (whether or not it shall be so expressed in such deed) is deemed to covenant and agree, to pay to the Association: (1) annual operating assessments, (2) special assessments for capital improvements, and (3) special individual Unit assessments, all of such assessments to be established and collected as hereinafter provided.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote and provide for the health, safety and welfare of Unit owners and Occupants and the best interests of the Condominium Property.

Section 3. Elements-Appportionment: Due Dates.

(a) Annual Operating Assessments.

(1) Prior to the time any Unit owner other than Declarant is to be charged assessments by the Association, and prior to the beginning of each Fiscal Year of the Association after the period for which the first assessments are levied, the Board shall estimate, and prorate among all Units and their owners on the basis of the undivided interest of each Unit in the Common Areas, Common Expenses of the Association in administering the Condominium Property, in performing its duties and in furnishing the services authorized or required to be furnished by it pursuant to this Declaration and the Condominium Act consisting of the following:

- a. the estimated next Fiscal Year's cost of the maintenance, repair and other services to be provided by the Association;
- b. the estimated next Fiscal Year's costs for insurance and bond premiums to be provided and paid for by the Association;
- c. the estimated next Fiscal Year's costs for utility services not separately metered or charged to Unit owners;
- d. the estimated amount required to be collected to maintain a working capital reserve to assure availability of funds for normal operations of the Association, in an amount deemed adequate by the Board, but in no event less than an amount equal to two months' currently estimated assessments on all Units;

e. an amount deemed adequate by the Board to maintain a reserve for the cost of unexpected repairs and replacements of capital improvements and for the repair and replacement of major improvements for which cash reserves over a period of time in excess of one year ought to be maintained; and

f. the estimated next Fiscal Year's costs for the operation, management and administration of the Association, including, but not limited to, fees for property management, fees for legal and accounting services, costs of mailing, postage, supplies and materials for operating the Association, and the salaries, wages, payroll charges and other costs to perform these services and any other costs constituting Common Expenses not otherwise herein specifically excluded.

(2) The Board shall thereupon allocate to each Unit that Unit's share of all of these items, prorated in accordance with each respective Unit's undivided interest in the Common Areas, and thereby establish the annual operating assessment for each separate Unit. For administrative convenience, any such assessment may be rounded so that monthly installments will be in whole dollars.

(3) The annual operating assessment shall be payable in advance, in equal monthly installments, provided that nothing contained herein shall prohibit any Unit owner from prepaying assessments in annual, semiannual or quarterly increments. The due dates of any such installments shall be established by the Board, and, unless otherwise provided, the Association shall collect on or before the first day of each month from those who own the Unit an equal monthly prorata share of the annual operating assessment for that Unit.

(4) If the amounts so collected are, at any time, insufficient to meet all obligations for which those funds are to be used, the deficiency shall be assessed by the Board among the Units on the same basis as heretofore set forth, provided, that if Common Expenses are incurred by the Association prior to the time the Association commences to levy assessments against the Units, Declarant shall pay the same (subject to its right, if any, to reimbursement from Unit purchasers contained in individual contracts for the sale of a Unit or Units).

(5) If assessments collected during any Fiscal Year are in excess of the funds necessary to meet the anticipated expenses for which the same have been collected, the excess shall be retained as reserves, or as reductions in future assessments, as determined by the Board, in its sole discretion, and shall in no event be deemed profits nor available, except on dissolution of the Association, for distribution to Unit owners.

(b) Special Assessments for Capital Improvements.

(1) In addition to the annual operating assessments, the Board may levy, in any Fiscal Year, special assessments to construct, reconstruct or replace capital

improvements on the Common Areas to the extent that reserves therefor are insufficient, provided that (except for new capital improvements required to comply with applicable law or governmental regulation, or to correct any deficiency or defect creating a safety or health hazard to Occupants) new capital improvements not replacing existing improvements shall not be constructed nor funds assessed therefor, if the cost thereof in any Fiscal Year would exceed an amount equal to five percent (5%) of that Fiscal Year's budget, without the prior consent of Unit owners exercising no less than eighty percent (80%) of the voting power of Unit owners.

(2) Any such assessments shall be prorated among all Units in proportion to their respective undivided interests in the Common Areas, and shall become due and payable on such date or dates as the Board determines following written notice to the Unit owners.

(c) Special Individual Unit Assessments. The Board shall levy assessments against an individual Unit, or Units, and the owner or owners thereof, to reimburse the Association for those costs incurred in connection with that Unit or Units properly chargeable by the terms hereof to a particular Unit (such as, but not limited to, the cost of making repairs the responsibility of a Unit owner, the portion of the costs for insurance attributable to commercial use, and a Unit owner's enforcement and arbitration charges). Any such assessment shall become due and payable on such date as the Board determines, and gives written notice to the Unit owners subject thereto. Additionally, during the first year of the Condominium's existence, and until such time as real estate taxes and assessments are split into separate tax bills for each Unit, the Association shall have the right to pay the real estate taxes and assessments attributable to the Condominium Property and assess each Unit owner for his, her or its share of such real estate taxes and assessments as a special individual Unit assessment. Absent the abatement described in the next paragraph of this Section, the share of those taxes and assessments attributable to a Unit shall be computed by multiplying the total taxes and assessments for all of the Condominium Property by the undivided interest in Common Areas attributable to that Unit. The calculation by the association of the Units' shares of taxes and assessments shall be binding upon all Unit owners.

That portion of the Condominium Property described as Units is expected to be eligible for fifteen (15)-year real estate tax abatement in accordance with the City of Cleveland's tax abatement policy for new housing construction. Declarant has made application for real estate tax abatement for that portion of the Condominium that constitutes improvements by Declarant which constitute Units, but there is no assurance that such tax abatement will be provided, or if provided, when such tax abatement shall commence. Each Unit Owner of the Units may be responsible for real estate taxes based on the full value of the Condominium for one or more subsequent tax billing periods.

Section 4. Effective Date of Assessments. Any assessment created pursuant hereto shall be effective, provided it is created as provided herein, if written notice of the amount thereof is sent by the Board to the Unit owner subject thereto at least ten (10) days prior to the due date thereof, or the due date of the first installment thereof, if to be paid in installments. Written notice mailed or delivered to a Unit owner's Unit shall constitute notice to that Unit owner, unless the Unit owner has delivered written

notice to the Board of a different address for such notices, in which event the mailing of the same to that last designated address shall constitute notice to that Unit owner.

Section 5. Effect of Nonpayment of Assessment; Remedies of the Association.

(a) If any assessment or any installment of any assessment is not paid within ten (10) days after the same has become due, the Board, at its option, without demand or notice, may (i) declare the entire unpaid balance of the assessment immediately due and payable, (ii) charge interest on the entire unpaid balance (or on an overdue installment, alone, if it hasn't exercised its option to declare the entire unpaid balance due and payable), at the highest rate of interest then permitted by law, or at such lower rate as the Board may from time to time determine, (iii) charge a reasonable, uniform, late fee, as determined from time to time by the Board, and (iv) charge the cost of collection, including attorney fees and other out-of-pocket expenses.

(b) Annual operating and both types of special assessments, together with interest, late fees, and costs, including attorneys' fees, shall be a charge and a continuing lien in favor of the Association upon the Unit against which each such assessment is made.

(c) At any time after any assessment or an installment of an assessment levied pursuant hereto remains unpaid for ten (10) or more days after the same has become due and payable, a certificate of lien for all and any part of the unpaid balance of that assessment including all future installments thereof, interest, late fees, and costs, including attorneys' fees, may be filed with the recorder of the county in which the Condominium Property is located, pursuant to authorization given by the Board. The certificate shall contain a description of the Unit against which the lien exists, the name or names of the record owner or owners thereof, and the amount of the unpaid portion of the assessments and charges, and shall be signed by the president or other chief officer of the Association.

(d) The lien provided for herein shall remain valid for a period of five (5) years from the date a certificate of lien or renewal certificate was duly filed therefor, unless sooner released or satisfied in the same manner provided by law in the State of Ohio 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.

(e) Any unit owner who believes that an assessment chargeable to his, her or its Unit (for which a certificate of lien has been filed by the Association) has been improperly charged against that Unit, may bring an action in the court of common pleas of the county in which the Condominium Property is located for the discharge of that lien. In any such action, if it is finally determined that all or a portion of the assessment has been improperly charged to that Unit, the Court shall make such order as is just, which may provide for a discharge of record of all or a portion of that lien.

(f) Each such assessment together with interest, late fees, and costs, including attorneys' fees, shall also be the joint and several personal obligations of the Unit owner or owners who owned the Unit at the time when the assessment fell due. The obligation for the delinquent assessments, interest, late charges and costs shall not be the personal obligation of that owner or owners' successors in title unless expressly assumed by the successor or successors, or required by the applicable law,

provided, however, that the right of the Association to a lien against that Unit, or to foreclose any lien thereon for these delinquent assessments, interest, late charges and costs, shall not be impaired or abridged by reason of the transfer, but shall continue unaffected thereby, except as provided in Section 6 of this Article.

(g) The Association, as authorized by the Board, may file a lien or liens to secure payment of delinquent assessments, interest, late fees, and costs, including attorneys' fees, bring an action at law against the owner or owners personally obligated to pay the same, and an action to foreclose a lien, or any one or more of these. In any foreclosure action, the owner or owners affected shall be required to pay a reasonable rental for that Unit during the pendency of such action, and the Association as plaintiff in any such foreclosure action shall be entitled to become a purchaser at the foreclosure sale. In any such foreclosure action, interest and costs of such action (including attorneys' fees) shall be added to the amount of any such assessment, to the extent permitted by Ohio law.

(h) No claim of the Association for assessments and charges shall be subject to setoffs, off sets, or counterclaims.

(i) No Unit owner may waive or otherwise escape liability for the assessments provided for in this Declaration by non-use of the Common Areas, or any part thereof, or by abandonment of his, her or its Unit.

(j) Assessments shall run with the land, are necessary to continue the care, repair and maintenance of Units and their undivided interests in the Condominium, and to continue to provide utility and security service, and, accordingly, assessments accruing or becoming due during the pendency of bankruptcy proceedings shall constitute administrative expenses of the bankruptcy estate.

Section 6. Subordination of the Lien to First Mortgages. The lien of the assessments and charges provided for herein shall be subject and subordinate to the lien of any duly executed first mortgage on a Unit recorded prior to the date on which such lien of the Association arises, and any holder of such first mortgage which comes into possession of a Unit pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale, shall take the property free of any claims for unpaid installments of assessments and charges against the mortgaged Unit which became due and payable prior, in the case of foreclosure, to the date of the sale, and, in all other cases, to the date of legal title vested in the successor owner. The foregoing will not relieve any successor owner from the obligation for assessments accruing thereafter.

Section 7. Certificate Regarding Assessments. The Board shall, upon demand, for a reasonable charge, furnish a certificate signed by the president, treasurer, secretary or other designated representative of the Association, setting forth whether the assessments on a specified Unit have been paid. This certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Common Profits. Any Common Profits shall be disbursed to the Unit Owners, added to a reserve fund, or credited to reduce Assessments, as the Board may determine, but in each case according to the undivided interest of each Unit in the Common Areas.

ARTICLE XVI

CONDOMINIUM INSTRUMENT REQUIREMENTS

Section 1. General. The Condominium Act requires that certain information be provided in the Condominium instruments. Much of this is provided elsewhere in the Condominium organizational documents and in other documents, but in order that all such information be provided in this Declaration, various items of that information are set forth in the following sections of this Article.

Section 2. Deposits. Any deposit or down payment made in connection with a sale of a Unit by Declarant or its agent will be held in trust or escrow until delivered at the time of the closing of the sale or returned to or otherwise credited to the buyer, or forfeited to the Declarant. If, in the case of any such sale, a deposit or down payment of two thousand dollars (\$2,000.00) or more is held for more than ninety (90) days, interest at the rate of at least four percent (4%) per annum for any period exceeding ninety (90) days shall be credited to the buyer at the time of the closing of the sale or upon return or other credit made to the buyer, or added to any forfeiture to the Declarant. Deposits held in trust or escrow pursuant to sales by Declarant or its agent shall not be subject to attachment by creditors of Declarant or the buyer.

Section 3. Association Control. Except in its capacity as a Unit owner of unsold Units, the Declarant or its agent will not retain a property interest in any of the Common Areas after control of the Association is assumed by the Association, except as expressly provided herein. The owners of Units that have been sold by the Declarant or its agent will assume control of the Association and the Common Areas, as elsewhere provided herein, in compliance with the requirements of the Condominium Act. Neither the Association nor the Unit owners will be subject to any management contract or agreement executed prior to the assumption of control of the Association by Unit owners other than Declarant for more than (1) one year subsequent to that assumption of control unless such a contract or agreement is renewed by a vote of the Unit owners pursuant to the provisions of the Bylaws.

Section 4. Limited Warranties. Following are the limited warranties (and limitations thereon) which the Declarant gives to the buyers of a Unit from it, which are not binding upon the Declarant nor enforceable by the buyers unless and until the sale of the Unit to the buyers is closed:

(a) Units. Except as provided in subparagraph (c), below, the Declarant warrants to provide and pay for the full cost of labor and materials for any repair or replacement of structural, mechanical, and other elements pertaining to the Unit, occasioned or necessitated by a defect in material or workmanship, that arises within a period of one (1) year from the date the deed to the buyers for that Unit is filed for record.

(b) Common Areas and Facilities. The Declarant warrants to provide and pay for the full cost of labor and materials for any repair or replacement of the roof and structural

components, and mechanical, electrical, plumbing, and common service elements serving the Condominium as a whole, occasioned or necessitated by defects in material or workmanship, that arise within a period of two (2) years from the date the deed is filed for record following the first sale of a Unit in the Condominium to a purchaser in good faith for value.

(c) Appliances, etc. In the case of ranges, refrigerators, disposals, and other appliances, if any, installed and furnished by the Declarant as part of the Unit, the Declarant assigns to the buyers all express and implied warranties of the manufacturer, and the Declarant's warranty with respect to such items is limited to the Declarant's warranty that the same have been properly installed.

(d) Extended Warranties. The Declarant assigns to the buyers any warranties made to the Declarant that exceed the time periods for warranties that the Declarant has given to the buyers by this limited warranty.

(e) Limitations. The warranties described in paragraphs (a) through (d) above are limited as follows:

(1) No responsibility is assumed for damage from any cause, whatsoever, other than to repair or replace, at the Declarant's cost, items containing defects covered by Declarant's warranty.

(2) No responsibility is assumed for consequential or incidental damage except to the extent, if any, not permitted to be excluded or limited by law.

(3) Implied warranties, if any, are limited to one (1) year from the date on which the Unit is deeded to the buyers, except to the extent, if any, that limitation is not lawful.

(4) No warranty, either express or implied, is made regarding the presence or absence of radon gas at or in the vicinity of the Unit.

(5) Any claim for breach of warranty not made, in writing, and received by Declarant within forty-eight (48) hours after expiration of the warranty period, shall be deemed waived.

(6) Any action brought with respect to any warranty extended pursuant hereto or by law shall be commenced within one (1) year of the expiration of the applicable warranty period or be forever barred.

(7) Any request for service or claim of breach of warranty must be sent in writing to the Declarant at such address as the Declarant may designate, from time to time, in writing to the buyers. The Declarant or the Declarant's designated representative will commence performance of the Declarant's obligations under this warranty within thirty (30) days after receipt of the buyer's request for service, and complete the same as

soon as reasonably possible. All repairs and adjustments will be made Monday through Friday, 8:00 AM to 5:00 PM.

(8) New homes, no matter how carefully constructed, go through a period of normal settlement and shrinkage during which hairline cracks, some wood shrinkage and warping, nail or screw pops and the like may occur. To the extent not inconsistent with the warranties provided in this Article XVI and Chapter 5311 of the Ohio Revised Code, these and other minor deficiencies and imperfections are not considered construction defects, are not the responsibility of Declarant and are not part of the limited warranties provided in this Article XVI.

(f) Other Rights; Disclaimer. This written limited warranty gives the buyers specific legal rights and the buyers may also have other legal rights under law. These written warranties are the only express warranties the Declarant gives to the buyers unless additional warranties are included in a written contract between the Declarant and the buyers. DECLARANT DISCLAIMS ANY AND ALL WARRANTIES OTHER THAN AS SET FORTH ABOVE IN THIS ARTICLE XVI. THE LIMITED WARRANTIES PROVIDED HEREUNDER ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY DECLARANT TO BUYERS; AND NO OTHER WARRANTIES, REPRESENTATIONS OR PROMISES, WHETHER ORAL, IMPLIED OR OTHERWISE, HAVE BEEN MADE BY DECLARANT TO BUYERS, OR SHALL APPLY OR CONTROL THE RIGHTS OF THE PARTIES IN ANY WAY OR MANNER WHATSOEVER, INCLUDING , WITHOUT LIMITATION, TO THE EXTENT NOT INCONSISTENT WITH THE WARRANTIES IN THIS ARTICLE XVI AND CHAPTER 5311 OF THE OHIO REVISED CODE, ANY WARRANTIES, REPRESENTATIONS AND PROMISES THAT COULD BE CONSTRUED TO COVER THE PRESENCE OF RADON OR OTHER ENVIRONMENTAL POLLUTANTS OR ANY IMPLIED WARRANTIES OF HABITABILITY, WORKMANSHIP OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES BASED UPON VERBAL AFFIRMATIONS OF FACT OR PROMISES, DESCRIPTION OF THE GOODS, OR IMPROVEMENTS UPON THE PROPERTY, OR ANY SAMPLE OR MODEL.

Section 5. Declarant's Obligations. Declarant will assume the rights and obligations of a Unit owner in its capacity as owner of Units not yet sold, including, without limitation, the obligation to pay Common Expenses attaching to such Units, from a date not later than that upon which Common Expenses are first charged with respect to any other Unit.

ARTICLE XVII

RIGHTS OF LENDING INSTITUTIONS

The following provisions inure to the benefit of each mortgagee holding a mortgage encumbering a Unit if such mortgagee shall have given the Association notice of its mortgage and its name and address:

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

(b) Any holder of a mortgage, 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 Assessments or Special Charges at the time said written request is received by the Board.

(c) In general, and in order to facilitate the marketability of the Units, the Board shall comply, to the best of its ability, with mortgagee requests for information.

(d) 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.

ARTICLE XVIII

AMENDMENTS

Section 1. Power to Amend. Except as otherwise specifically provided herein, additions to, changes in, or amendment of this Declaration (or the other Condominium organizational documents) shall require the consent of Unit owners exercising not less than eighty percent (80%) of the voting power of Unit owners. Notwithstanding the foregoing:

(a) the consent of all Unit owners shall be required for any amendment effecting a change in:

- (1) the boundaries of any Unit;
- (2) the undivided interest in the Common Areas appertaining to a Unit or the liability for Common Expenses appertaining thereto;
- (3) the number of votes in the Association appertaining to any unit; or
- (4) the fundamental purposes to which any Unit or the Common Areas are restricted;

(b) the consent of Unit owners exercising not less than eighty percent (80%) of the voting power of Unit owners shall be required to terminate the Condominium; and

(c) in any event, Declarant reserves the right and power, and each Unit owner by acceptance of a deed to a Unit and each mortgagee by accepting a mortgage encumbering any Unit, is deemed to and does give and grant to Declarant a power of attorney, which right and power is coupled with an interest and runs with the title to a Unit and is irrevocable (except by Declarant), for a period of three (3) years from the date of the filing of the Declaration, to amend the Condominium organizational documents, to the extent necessary to (i) supplement and modify the Drawings as construction of the building is completed as required by Section 5311.06 of the Ohio Revised Code, (ii) cure any ambiguity, inconsistency, or formal defect or omission in the Declaration, the Bylaws and/or the Drawings, (iii) comply with any regulations of any federal or state governmental agency or instrumentality, (iv) conform to the requirements then governing the making of a mortgage loan or the purchase, guaranty, or insurance of mortgages by an institutional or governmental lender or an institutional or governmental guarantor, insurer or purchaser of a mortgage on a Unit including, but not limited to, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, or (v) correct typographical errors or obvious factual errors or omissions the correction of which would not impair the interest of any Unit owner, mortgagee, insurer, or guarantor, provided, further, that if there is a Unit owner other than the Declarant, the Declaration shall not be amended to increase the scope or the period of control of the Declarant.

Section 2. Method to Amend. An amendment to this Declaration (or the Drawings or the Bylaws), adopted with the consents of Unit owners, shall be executed with the same formalities as to execution of this Declaration by two officers of the Association and shall contain their certification that such amendment was duly adopted in accordance with the foregoing provisions. Any amendment adopted by the Declarant or a duly empowered successor Declarant pursuant to authority granted it pursuant to the Declaration shall be duly executed by it with the same formalities as to execution of this Declaration and shall contain the certification of such signor or signors that such amendment is made pursuant to authority vested in Declarant or any duly empowered successor Declarant by the Declaration. Further, such amendment must refer to the volume and page number in which this Declaration and its attached exhibits are recorded and must contain an affidavit by a duly elected officer of the Association that a copy of the amendment has been mailed by certified mail or hand-delivered or sent by telegram to all mortgagees having bona fide liens of record against any Unit that previously shall have given the Association notice of their name and address. Except as otherwise provided in paragraph (c) above, no amendment shall have any effect, however, upon a bona fide first mortgagee until the written consent to such amendment of such first mortgagee has been secured. Such consents shall be retained by the Secretary of the Association and his or her certification in the instrument of amendment as to the names of the consenting and non-consenting mortgagees of the various Units shall be sufficient for reliance by the general public. If less than all first mortgagees consent to an amendment to this Declaration, the Bylaws and/or the Drawings, said amendment or modification shall nevertheless be valid among the Unit owners, *inter se*, provided that the rights of a non-consenting first mortgagee shall not be derogated thereby. Any amendment duly

adopted and executed in accordance with the foregoing provisions shall be effective upon the filing of the same with the auditor and recorder of the county in which the Condominium Property is located.

ARTICLE XIX

GENERAL PROVISIONS

Section 1. Covenants Running With the Land. The covenants, conditions, restrictions, easements, reservations, liens and charges created hereunder or hereby shall run with the and bind the land, and each part thereof, and shall be binding upon and inure to the benefit of all parties having any right, title or interest in or to all or any part of the Condominium Property, and the Association, and their respective heirs, executors, administrators, successors and assigns.

Section 2. Actions. In addition to any other remedies provided in this Declaration, Declarant (only with respect to those rights directly benefiting the Declarant), the Association, and each Unit owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens and charges set forth herein or in the Bylaws or now or hereafter imposed by or through the Association's Rules. Failure by Declarant, the Association or by any Unit owner to proceed with such enforcement shall in no event be deemed a waiver of the right to enforce at a later date the original violation or a subsequent violation, nor shall the doctrine of laches nor any statute of limitations bar the enforcement of any such restriction, condition, covenant, reservation, easement, lien or charge. Further, the Association and each Unit owner shall have rights of action against each other for failure to comply with the provisions of the Condominium organizational documents, rules and regulations, and applicable law, and with respect to decisions made pursuant to authority granted thereunder, and the Association shall have the right to assess reasonable charges against a Unit owner who fails to comply with the same, including the right to assess charges for the costs of enforcement and arbitration, provided that neither the Association nor its Trustees, officers, or other representatives, shall be liable to any Unit owner or Occupant, or their invitees, for damage to any Unit or any part thereof, or any personal property of such Unit owner, Occupant or invitee, or for injury to such person, unless the damage or injury was proximately caused by the gross negligence or the intentional tortious act of the Association or such Trustee, officer or other representative. Notwithstanding the foregoing, in the event of any dispute between the Association and any Unit owner or Occupant, other than with regard to assessments, that cannot be settled by agreement between them, the matter shall first be submitted to arbitration in accordance with and pursuant to the arbitration law of Ohio then in effect, by a single independent arbitrator selected by the Board. Nothing contained herein shall prevent or prohibit the Association from using summary abatement or similar means to enforce any provisions hereof or restrictions against the Unit or its use, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished by summary means.

Section 3. Severability. Invalidation of any one or more of these covenants, conditions, restrictions or easements by judgment or court order shall in no way affect any other provisions, which provisions shall remain in full force and effect. In the event any language of this Declaration conflicts with mandatory provisions of the Condominium Act, the latter's requirements shall prevail and the conflicting language shall be deemed to be invalid and void, provided that such invalidity shall in no

wise affect any other provisions of this Declaration, which provisions shall remain in full force and effect.

Section 4. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations, partnerships, men or women, shall in all cases be assumed as though in such case fully expressed.

Section 5. Captions. The captions of the various provisions of this Declaration are not part of the context hereof, but are merely labels to assist in locating the various provisions hereof.

IN WITNESS WHEREOF, the undersigned have executed this instrument this 13th day of May, 2004.

LARCHMERE LOFTS LLC
By: *Edward J. Perotti*
Edward J. Perotti, member

STATE OF OHIO)
) SS
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said county and state personally appeared Larchmere Lofts LLC, an Ohio limited liability company, by Edward J. Perotti, its member, who acknowledged that he did sign the foregoing instrument on behalf of said company, and that the same is his free and voluntary act and deed individually and as such member.

IN WITNESS WHEREOF, I have set my hand and official seal this 13th day of May, 2004, at Cleveland, Ohio.

Gregory M. Vadopivec
Notary Public

This instrument prepared by:

Kadish, Hinkel & Weibel
1717 East Ninth Street, Suite 2112
Cleveland, OH 44114
216/696-3030

