

**BY-LAWS  
OF  
THE MCALPIN ON FOURTH CONDOMINIUM UNIT  
OWNERS' ASSOCIATION, INC.**

**ENABLING CLAUSE**

These By-Laws are adopted simultaneously with the execution of a certain Declaration of The McAlpin on Fourth Condominium pursuant to Chapter 5311 of the Ohio Revised Code. The purpose is to provide for the establishment of a Unit Owners association for the government of the condominium property in the manner provided by the Declaration, the Articles of Incorporation, and by these By-Laws. All present and future Unit Owners or tenants, their employees and Eligible Mortgagees, or any person who might use the facilities of the condominium property in any manner shall be subject to the covenants, provisions and regulations contained in the Declaration and these By-Laws, and shall be subject to any restriction, condition or regulation hereinafter adopted by the Board of Directors of the Association (the "Board" or "Board of Directors").

The Declaration is incorporated herein by reference, and all of the covenants, rights, restrictions and liabilities therein contained shall apply to and govern the interpretation of these By-Laws.

The Association hereby approves and adopts all of the rights, remedies, powers and authorities granted to it under the Declaration.

**ARTICLE I.  
NAME AND DEFINITIONS**

1.1 Name. The Association shall be an Ohio corporation not for profit, and shall be called The McAlpin on Fourth Condominium Owners' Association, Inc., hereinafter referred to as the "Association".

1.2 Definitions.

(A) "**Association**" shall mean The McAlpin on Fourth Condominium Unit Owners' Association, Inc., an Ohio corporation not for profit, its successors and assigns.

(B) "**By-Laws**" shall mean this document and all exhibits, drawings, plats, and other documents incorporated herein, or, if amended, incorporating such documents.

(C) "**Common Elements**" shall have the definition set forth in the Declaration.

(D) "**Common Expenses**" shall have the definition set forth in the Declaration.

(E) "**Condominium Property**" shall have the definition set forth in the Declaration.

(F) **“Declarant”** shall mean 4J Redevelopment LLC, an Ohio limited liability company, its successors, heirs, and assigns.

(G) **“Declaration”** shall mean that certain Declaration of The McAlpin on Fourth Condominium filed pursuant to Chapter 5311 of the Ohio Revised Code and all exhibits, drawings, plats and other documents incorporated herein, or, if amended, incorporating such amendments.

(H) **“Limited Common Elements”** shall have the definition set forth in the Declaration.

(I) **“Limited Common Expenses”** shall have the definition set forth in the Declaration.

(J) **“Unit Owner”** shall have the definition set forth in the Declaration.

(K) **“Unit”** shall have the definition set forth in the Declaration.

## ARTICLE II. MEMBERSHIP

2.1 **Membership.** Every Unit Owner shall be a member of the Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation. There shall not be more than one membership for any Unit. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of a Unit shall be the sole qualification for membership in the Association.

2.2 **Suspension of Membership.** During any period in which a Member shall be in default in the payment of any annual or special assessment levied by the Association, the voting rights of such Member may be suspended by the Board of Directors (as hereinafter defined) until such assessment has been paid, pursuant to Article XI of the Declaration. Such rights of a Member may also be suspended for violation of any rules and regulations established by the Board of Directors governing the use of the Common Elements and or other portions of the Condominium Property, all as more particularly set forth in Article V herein.

2.3 **Voting Rights.** The Association shall have one class of voting membership. Each Unit Owner may exercise that percentage of the total voting power of all Unit Owners on any question for which the vote of Unit Owners is permitted or required equivalent to the percentage of interest in the Common Elements appurtenant to its Unit, as set forth in the Declaration. Thus, a majority vote of the Members shall require the vote of the Members who have a percentage interest of at least a total of fifty-one percent (51%) in the Common Elements.

## ARTICLE III. MEETING OF MEMBERS

3.1 **Annual Meetings.** The annual meeting of Members of the Association for the election of Members to the Board of Directors, and for the transaction of such other business as may properly be brought before such meeting, shall be held at such time and place as may be

designated by the Board of Directors. The first annual meeting of Members of the Association shall be held within one year from the date of the filing of the Declaration for record.

3.2 Special Meetings. Special meetings of the Members may be called by the President of the Association, or by the Board of Directors, or upon written request of the Members who are entitled to vote at least one-half (1/2) of all the votes of the entire membership.

3.3 Notice of Meetings. Written notice of each special or annual meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose of the meeting.

3.4 Quorum. The presence at the meeting of at least two (2) Members, in person or by proxy, shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

3.5 Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of its Unit.

#### **ARTICLE IV. BOARD OF DIRECTORS**

4.1 Number. The affairs of this Association shall be managed by a Board of three (3) Directors. Except for those persons elected or appointed by Declarant, each Director shall be the owner of an interest in a Unit of the Condominium Property.

4.2 Nomination. Nomination for election to the Board of Directors shall be made by a nominating committee. Nominations may also be made from the floor at the annual meeting. The nominating committee shall consist of a chairman, who shall be a member of the Board of Directors, and one Member of the Association. The nominating committee shall be appointed by the Board of Directors prior to each annual meeting of the Members.

4.3 Election.

(A) Not later than sixty days after the Declarant has sold and conveyed Units appertaining to twenty-five percent (25%) of the undivided interests in the Common Elements, the Members of the Association shall meet. The Unit Owners other than the Declarant shall elect one of the Directors at such meeting and the Declarant shall designate two Directors, which Directors shall serve until the meeting described in the subsection (B) below. For purposes of computing the undivided interests referred to in this Section 4.3, those interests shall be computed based on the number of Units sold and conveyed compared to the maximum number of Units that will be created, and the respective interests in the Common Elements appertaining

thereto. Notwithstanding the foregoing, Declarant shall have the right at any time to waive its right to elect one or more Directors or to vote in an election of Directors.

(B) On or before the date that is the earlier of (i) sixty days after the sale and conveyance to purchasers in good faith for value of Units appertaining to seventy-five percent (75%) of the undivided interests in the Common Elements, or (ii) three years after the date the Association is established, the Association shall meet and the number of Directors shall be increased to five (5). All Unit Owners, including the Declarant, shall elect the five Directors to replace all of those Directors earlier elected or designated by the Unit Owners or Declarant, respectively, and new officers of the Association will be selected. The terms of the Directors elected pursuant to this Section 4.3(B) shall be staggered so that the terms of some but not all of the Directors will expire and successors be elected at each annual meeting of the Association. Thereafter, at each annual meeting, the successors to the Directors whose terms then expire shall be elected to serve a three-year term.

(C) Election to the Board of Directors shall be by secret written ballot. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting as set forth in Condominium Act shall prevail.

4.4 Organization Meeting. Immediately after each annual meeting of the Members of the Association, the newly elected Board of Directors and those Directors whose terms hold over shall hold an organization meeting for the purpose of electing officers and transacting any other business.

4.5 Removal. Any Director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a Director, the successor shall be selected by the remaining Members of the Board and shall serve for the unexpired term of the predecessor.

4.6 Compensation. The Directors shall serve the Association without pay. However, any Director is entitled to reimbursement for the actual out-of-pocket expenses incurred in serving the Association.

4.7 Action Taken Without A Meeting. The Directors shall have the right to take any action on behalf of the Association without calling a meeting, which they would be authorized to do at a meeting, by obtaining the written approval of all of the Directors. Any resolution by the Directors approved in this manner shall have the same effect as though taken at a meeting of the Directors.

## **ARTICLE V. MEETING OF DIRECTORS**

5.1 Regular Meetings. Regular meetings of the Board of Directors may be held at such times and places as shall be determined by the Board.

5.2 Special Meetings. Special meetings of the Board of Directors may be held at any time upon call by the President or by any two Directors. Written notice of the time and place

of each such meeting shall be given to each Director by delivery or by mail, at least two (2) days before the meeting, which notice need not specify the purposes of the meeting.

5.3 Quorum. A quorum of the Board of Directors shall consist of a majority of the Directors then in office. At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by a majority vote of those present.

## **ARTICLE VI. POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

6.1 Powers. The Board of Directors shall have power to:

(A) Promulgate rules and regulations governing the use of the Common Elements, including, but not limited to, the conduct of the members and their guests, and to provide penalties for failure to comply with said rules and regulations;

(B) Exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration;

(C) Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors;

(D) Employ a manager, independent contractors, or such employees as they deem necessary and to prescribe their duties; and

(E) In addition to the powers and authority granted to the Board of Directors by these By-Laws, the Board of Directors shall have the powers and authority granted by the Condominium Act, except as such powers and authority conflict with those powers and authority granted by these By-Laws.

6.2 Duties. It shall be the duty of the Board of Directors to:

(A) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members or at any special meeting, when such statement is requested in writing by one-third (1/3) of the members who are entitled to vote:

(B) Supervise all officers, agents and employees of this Association and to see that their duties are properly performed;

(C) As more fully provided herein, and in the Declaration, to:

(i) Fix the amount of all assessments and charges against each Unit at least thirty (30) days in advance of each assessment period, as provided in Article XI of the Declaration, including the cost of insurance, as provided in Article VI of the Declaration, and

(ii) Send written notice of each assessment to every Unit Owner subject thereto at least thirty (30) days in advance of each assessment period.

(D) Issue, or to cause an appropriate officer or Director to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states that any assessment has been paid, such certificate shall be conclusive evidence of such payment;

(E) Cause all officers, agents or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(F) Cause the Common Elements and Limited Common Elements to be maintained; and

(G) Cause the exterior of the buildings and roofs and all other parts of the Condominium Property to be maintained.

## **ARTICLE VII. COMMITTEES AND POWERS**

7.1 Committees. The Association may appoint an Architectural Control Committee, as provided for in the Declaration, and a Nominating Committee, as provided in these By-Laws. In addition the Board of Directors may appoint other committees as deemed appropriate in carrying out its purposes, such as:

(A) A Maintenance Committee which shall advise the Board of Directors on all matters pertaining to the maintenance, repair or improvements of the properties, and shall perform such other functions as the Board in its discretion determines;

(B) A Publicity Committee which shall inform the members of all activities and functions of the Association, and shall, after consulting with the Board of Directors, make such public releases and announcements as are in the best interests of the Association; and

(C) A Finance Committee which shall supervise the annual audit of the Association's books and approve the annual budget and statement of income and expenditures to be presented to the membership at its regular annual meeting, as provided in Article III, Section 3.1. The Treasurer shall be an ex officio member of the Committee.

7.2 Complaints. It shall be the duty of each committee to receive complaints from members on any matter involving Association functions, duties and activities within its field of responsibility. It shall dispose of such complaints as it deems appropriate or refer them to such other committee, Director or officer of the Association as is further concerned with the matter presented.

## **ARTICLE VIII. OFFICERS AND THEIR DUTIES**

8.1 Enumeration of Offices. The officers of this Association shall be a President and Vice-President, a Secretary and a Treasurer, and such other officer positions as the Board may from time to time by resolution create.

8.2 Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

8.3 Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one year unless he or she shall sooner resign, or shall be removed or otherwise disqualified to serve.

8.4 Special Appointments. The Board may elect such other officers, on a temporary or special basis, as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

8.5 Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

8.6 Vacancies. A vacancy in any office may be filled in the manner prescribed for regular election. The officer elected to such vacancy shall serve for the remainder of the term of the officer being replaced.

8.7 Multiple Officer. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 8.4 of this Article.

8.8 Duties. The duties of the officers are as follows:

(A) President. The President shall preside at all meetings of the members, shall see that orders and resolutions of the Board are carried out, shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

(B) Vice-President. The Vice-President shall act in the place and stead of the president in the event of the absence, inability or refusal to act of the President, and shall exercise and discharge such other duties as may be required of the Vice President by the Board.

(C) Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members, keep the corporate seal of the Association and affix it on all papers requiring said seal, serve notice of meetings of the Board and of the members, keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

(D) Treasurer. The Treasurer, or any other Director specified by the Board, shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors, shall sign all checks and promissory notes of the Association, keep proper books of accounts, cause an annual audit of the Association's books to be made by a public accountant at the completion of each fiscal year, and shall prepare an annual budget and statement of income and expenditures to be presented to the membership at its regular annual meeting and deliver a copy of each to the members.

## ARTICLE IX. ASSESSMENTS

9.1 Creation of the Lien and Personal Obligation of Assessments. By the Declaration each member is deemed to covenant and agree to pay the Association an annual general operating assessment or charge, which may include reserve funds necessary for future capital improvements. All assessments or charges together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the Unit and shall be a continuing lien upon the property against which each such assessment is made. All assessments or charges, together with such interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the owner of such property when the same became due, and shall pass to its successor in title.

### 9.2 Annual Assessments.

(A) For the twelve-month period immediately following the conveyance of the first Unit to an Unit Owner, the Board of Directors shall fix the annual assessment, including reserve funds, payable in equal monthly installments.

(B) All insurance premiums shall be charged by assessment against Unit Owners as a common expense and payable to the Association at such times as is determined by the Association.

9.3 Special Assessments. In addition to the annual assessments authorized above, the Association may levy in any assessment year, an assessment for special funds estimated to be necessary for present or future capital improvements, for defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common or Limited Common Elements, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting.

9.4 Date of Commencement of Annual Assessments. Due Dates: Unless otherwise determined by the Board of Directors, the annual assessment provided for herein shall commence as to all Units on the first day of the month following the sale of the first Unit to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.

9.5 Effect of Non-Payment of Assessments. Remedies of the Association: Any assessments which are not paid when due shall be delinquent. If an assessment is not paid within thirty (30) days after the due date, the entire amount shall be immediately payable in full and interest may be charged at the maximum rate allowed by law or such other rate as specified by the Board until such time as the same has been paid in full. Notice of such default shall be given, in writing, to any Eligible Mortgagee of such Unit (as defined in the Declaration). The Association shall file a certificate for such lien with the Recorder of Hamilton County, Ohio pursuant to authorization given by the Board of Directors, which shall contain a description of the Unit, the name or names of the Unit Owner or Owners and the amount of such unpaid portions of the assessments and shall be subscribed by the President or other authorized officer



of the Association. Such lien shall remain valid for a period of five (5) years from the time of filing thereof, unless sooner released or satisfied in the same manner provided by law or discharged by the final judgment or order of a court in an action brought to discharge all or any portion of such lien. The Association may bring an action at law against the subject Unit Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. No Unit Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Elements or Limited Common Elements or any other portions of the Condominium Property or abandonment of its Unit.

9.6 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall take priority over any lien or encumbrance subsequently arising or created except liens for real estate taxes and assessments and liens of first mortgages which have been filed for record. Sale, transfer or foreclosure of any Unit shall not affect the assessment lien. Except as set forth in the Declaration, no sale or transfer shall release such Unit from liability for any assessments then due or thereafter becoming due or from the lien thereof.

9.7 Non-Liability of Foreclosure Sale Purchaser for Past Due Common Expenses. Where the Eligible Mortgagee of a Unit acquires an ownership interest in a Unit as a result of foreclosure of its mortgage or of the acceptance of a deed in lieu of foreclosure, such Eligible Mortgagee, its successors and assigns, shall not be personally liable for the assessments levied prior to the acquisition of an ownership interest in such Unit by such Eligible Mortgagee. Such assessments shall be a lien, however, and shall be paid out of the monies received at the foreclosure sale, if the proceeds therefrom are sufficient for such purpose. To the extent such assessments are not paid, however, they shall be deemed to be Common Expenses and shall be levied against all of the Unit Owners at the time of the first assessments next following the acquisition of title by such Eligible Mortgagee.

9.8 Enforcement Assessments. The Association may levy a reasonable assessment against any Unit Owner for violations or breaches of the Declaration, By-Laws, and rules and regulations adopted from time to time by the Association. The Association may also impose on a Unit Owner reasonable charges for damage to the Common Elements or other property by such Unit Owner or such Occupant. Prior to imposing such an assessment or charge, the Board of Directors shall comply with the provisions of Section 9.3 of the Declaration.

9.9 Method of Payment. The Association may, at its option, require the Members to pay each of their respective shares of the annual assessment by electronic automatic debit from such Member's checking account.

## **ARTICLE X. MISCELLANEOUS**

10.1 Association's Right to Enter Units. The Association or its agents may enter any Unit when necessary in case of any emergency and for any maintenance or construction purpose for which the Association is responsible. Such entry shall be made with as little inconvenience to the Unit Owners as practical and any damage caused thereby shall be repaired by the Association. In the event of any emergency originating in or threatening any Unit, the Association or its agents may enter the Unit immediately whether the Unit Owner is present or not.

10.2 Books and Records. The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

10.3 Remedies for Violation of Declaration, By-Laws, etc. In the event of any violation or breach by any Unit Owner of any provisions of the Act, Declaration, By-Laws of the Association or Rules and Regulations, not cured within thirty (30) days, the Association and the Board of Directors, after written notice to any Eligible Mortgagee and the Unit Owner, shall have each and all of the rights and remedies which may be provided for in the Condominium Act, Declaration or the By-Laws or said Rules and Regulations or which may be available at law or in equity and may prosecute any action or other proceedings against such defaulting Unit Owner and/or Owners for enforcement of any lien, statutory or otherwise, including foreclosure of such lien and the appointment of a receiver for the Unit and ownership interest of such Unit Owner, or for damages or injunction or specific performance or for judgment for payment of money and collection thereof or for any combination of remedies, or for any other relief. All expenses of the Association in connection with any such actions or proceedings including court costs and attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the maximum rate permitted by law per annum until paid, may be charged to and assessed against such defaulting Unit Owner, and shall be added to and deemed a part of its respective share of the Common Expenses, and the Association shall have a lien for all of the same, as well as for non-payment of its respective share of the Common Expenses, upon the Unit of such Unit Owner and upon all of its additions and improvements thereon. In the event of any such violation or breach by any Unit Owner, the Association and the Board of Directors, and the manager or managing agent, if so authorized by the Board of Directors, shall have the authority to correct such violation or breach, and to do whatever may be necessary for such purpose, and all expenses in connection therewith shall be charged to and assessed against such Unit Owner. Any and all of such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise by the Association or the Board of Directors.

#### 10.4 Amendment.

(A) These By-Laws may be amended from time to time at an annual or special meeting of the Association by an affirmative vote of not less than seventy-five percent (75%) of the voting membership.

(B) Notwithstanding any other provision of the By-Laws, no amendment shall discriminate against any Unit Owner or against any Unit or group of Units unless the Unit Owners so affected consent; and no amendment shall change any Unit nor the share in the Common Elements and facilities appurtenant to it, nor increase the Unit Owner's share of the Common Expenses, unless the Unit Owner of the Unit concerned and all Eligible Mortgagees of such Units shall join in the execution of the amendment. Neither shall an amendment make any change in the Article entitled "Insurance" nor in the Article entitled "Reconstruction or Repair After Casualty" unless all Eligible Mortgagees join in the execution of the amendment.

(C) A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted, which certificate shall be executed by the officers of the Association with the formalities of a deed. The amendment shall be effective when such

certificate and a copy of the amendment are recorded in the Hamilton County, Ohio Recorder's Office.

10.5 Covenants. The provisions of the Declaration and the By-Laws and the rights and obligations established thereby shall be deemed to be covenants, running with the land, so long as the property remains subject to the provisions of the Act and shall inure to the benefit of and be binding upon each and all of the Unit Owners and their respective heirs, representatives, successors, assigns, purchasers, lessees, grantees and Eligible Mortgagees. By the recording or the acceptance of a deed conveying a Unit or any interest therein, or any ownership interest in the property whatsoever, the person to whom such Unit or interest is conveyed shall be deemed to accept and agree to be bound by and subject to all of the provisions of the Act, the Declaration and the By-Laws.

10.6 Rights of Enjoyment. Each Member shall be entitled to the use and enjoyment of the Common Elements and facilities as provided in the Declaration. Any Member may delegate its rights of enjoyment of the Common Elements to the members of its family, its tenants or contract purchasers, who reside on the property. Such Member shall notify the Secretary in writing of the name of any such delegee. The rights and privileges of such delegee are subject to suspension to the same extent as those of the Member.

10.7 Indemnification of Board Members and Officers. Each Board member and officer of the Association and its employees and each former Board member, officer or employee of the Association, shall be indemnified by the Association against the costs and expenses reasonably incurred by such person in connection with the defense of any pending or threatened action, suit or proceeding, criminal or civil, to which such person is or may be made a party by reason of such person being or having been such Board member or officer of the Association (whether or not such person is a Board member or officer at the time of incurring such costs and expenses), except with respect to matters as to which such person shall be adjudged in such action, suit or proceeding to be liable for misconduct or negligence in the performance of such person's duty as such board member or officer. In case of the settlement of any action, suit or proceeding to which any Board member or officer of the Association, or any former Board member or officer of the Association, is made a party or which may be threatened to be brought against such person by reason of being or having been a Board member or officer of the Association, such person shall be indemnified by the Association against the costs and expenses (including the cost of settlement) reasonably incurred by such person in connection with such action, suit or proceeding (whether or not such person is a Board member or officer at the time of incurring such costs and expenses), if (A) the Association shall be advised by independent counsel that in the judgment of such independent counsel such Board member's or officer's actions did not constitute misconduct and that such Board member or officer was not negligent in the performance of such person's duty with respect to the matters covered by such action, suit or proceeding, or (B) disinterested Association members entitled to exercise a majority of the voting power shall, by vote at any annual or special meeting of the Association, approve such settlement and the reimbursement to such Board member or officer of such costs and expenses. The phrase "disinterested Association members" shall mean all members of the Association other than (i) any Board member or officer of the Association who at the time is or may be entitled to indemnification pursuant to the foregoing provisions (the "affected Board Member or officer"), (ii) any corporation or organization of which any such affected Board Member or officer owns of record or beneficially 10% or more of any class of voting securities, (iii) any firm

of which such affected Board member or officer is a partner, and (iv) any spouse, child, parent, brother or sister of any such affected Board member or officer. The foregoing rights of indemnification shall inure to the benefit of the heirs and legal representatives of each such affected Board member or officer, and shall not be exclusive of other rights to which any affected Board member or officer may be entitled as a matter of law, under the Declaration, any vote of the Association members or any agreement.

10.8 Fiscal Year. The fiscal year of the Association shall begin on the first day of January and end on the 31<sup>st</sup> day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

The Declarant, 4J Redevelopment LLC, an Ohio limited liability company, has adopted these By-Laws of The McAlpin on Fourth Development Company Condominium Unit Owners' Association, Inc., this 18th day of April, 2007.

**4J REDEVELOPMENT LLC**

By: \_\_\_\_\_

Joseph S. Straka, authorized agent