

Wayne - 12888354

AMENDMENT NO. 20

TO DECLARATION AND PLANS OF AWB CONDOMINIUM

THIS AMENDMENT NO. 20 TO DECLARATION AND PLANS OF AWB CONDOMINIUM ("Amendment") is made as of the 21 day of January, 2020, under the following circumstances:

WITNESSETH:

The Declaration of AWB Holdings, LLC is dated the 23rd day of April, 2012 and recorded April 26, 2012 at Document No. 2012022148 in the Office of the Recorder of Allen County, Indiana ("Original Declaration"); and

WHEREAS, the Original Declaration pertains to a condominium development comprising commercial unit owners and residential unit owners within a fifteen (15) story building commonly known as the Anthony Wayne Building, with an accompanying covered parking garage and other common area amenities located in downtown Fort Wayne, Indiana; and

WHEREAS, the Original Declaration has been amended nineteen (19) separate times since its original recording, with the last amendment being Amendment No. 19 to Declaration and Plans of AWB Condominium dated July 25, 2018 and recorded August 14, 2018 at Document No. 2018040723 in the Office of the Recorder of Allen County, Indiana (the Original Declaration, Amendment No. 19, and all amendments to the Original Declaration which are of recorded in the Office of the Recorder of Allen County, Indiana being collectively referred to as the "Declaration"); and

WHEREAS, the Declarant, AWB Holdings, LLC, has substantively completed the build out and construction of the Commercial Units and Residential Units, has relinquished control of the Initial Board to AWB Owners Association, Inc. ("Association") and the Owners thereunder, and has reached agreement with the Association on the completion of various outstanding matters of Exhibit E to the Declaration; and

WHEREAS, Declarant desires to relinquish certain rights, obligations and responsibilities reserved solely unto Declarant pursuant to the Declaration to the Association, and the Association is ready to assume such rights, obligations and responsibilities; and

WHEREAS, Declarant's and Association's agreements as to the ongoing rights, obligations and responsibilities of each other require an amendment to the Declaration; and

WHEREAS, Association desires to amend certain provisions of the Bylaws; and

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RECORDED: 01/31/2020 11:26:47 AM

ANITA MATHER

ALLEN COUNTY RECORDER

FORT WAYNE, IN

2498258 v3
January 7, 2020

AUDITOR'S OFFICE

Duly entered for taxation. Subject
to final acceptance for transfer.

Jan 31 2020

Nicholas D Jordan

AUDITOR OF ALLEN COUNTY

WHEREAS, a meeting of the Owners was held January 21 2020 for the purpose of approving this Amendment with notice being given to the Owners and any Mortgagee holding a first Mortgage of any Condominium Unit pursuant to Section 18(d) of the Declaration and no less than sixty-seven percent (67%) in the aggregate Percentage Vote of the Owners of the Residential Units and no less than sixty-seven percent (67%) in the aggregate Percentage Vote of the Owners of the Commercial Units approved the terms and provisions of this Amendment; and

WHEREAS, Declarant joins in this Amendment for the purpose of providing formal acquiescence to the terms and conditions herein together with providing affirmation of the Applicable Date as required by Section 3.02 of the Bylaws.

NOW, THEREFORE, in consideration of the foregoing, no less than sixty-seven percent (67%) in the aggregate Percentage Vote of both the Owners of the Residential Units and the Owners of the Commercial Units, together with the Association and the Declarant, agree as follows:

1. **Incorporation of Recitals / Defined Terms.** The recitals above are incorporated herein. All defined terms, unless otherwise indicated by this Amendment, shall have the meaning as set forth in the Declaration.

2. **Designated Use of Units.** Pursuant to Section 5(a) of the Declaration, all Condominium Units on the basement level, 1st, 6th, 7th, and 11th floors of the Building, together with Unit 907, are hereby designated as Commercial Units. All other Condominium Units within the Building are designated as Residential Units. No Residential Unit may be converted or utilized, in whole or in part, as a Commercial Unit.

3. **Parking Spaces.** Except for the Parking Spaces retained by Declarant associated with a Commercial Unit or Residential Unit owned or leased by Declarant as of the date of this Amendment or thereafter, Declarant waives all other rights in and to the Parking Spaces and Parking Areas pursuant to Section 7(b) of the Declaration including, but not limited to, the right to cause the installation of a gate in the Parking Garage to provide limited access for assigned parking on or above the fourth (4th) floor. The Association succeeds to the rights of Declarant so waived.

4. **Storage Areas.** Except for those storage spaces located with the Building which have been or will be assigned to the Owner or lessee of a Condominium Unit, Declarant waives all rights in and to the storage spaces or storage units located in the Building. The Association succeeds to the rights of Declarant so waived and will administer them for the benefit of all Owners.

5. **Elevator Designation.** Declarant waives its rights to designate one of the Building's elevators for the exclusive use of the Residential Units pursuant to Section 9(b). The Association succeeds to the rights of Declarant so waived.

6. **EXHIBIT E / Developer Improvements.** The “Additional Notes” of Exhibit “E” to the Declaration are hereby deleted in their entirety. Declarant waives any and all rights to change the exterior color of the Building and to change or modify the configuration of exterior signage on the Building or otherwise modify or change the existing building directory located within the first floor lobby of the Building (except as provided by Section 12 of this Amendment). Notwithstanding the foregoing, Owners of Commercial Units may install and maintain in good quality and workmanship building directory or directories in the first floor of the Building lobby and outside the doors of the Building on Clinton Street at such Owner(s)’ cost and expense. All such directory signage, together with the design, size, building material, location and an affirmation confirming the Owner(s) responsible for the cost and maintenance of such directory or directories shall be subject to the prior written approval of the Board, which approval shall be neither untimely or unreasonably withheld.

7. **Alterations, Additions and Improvements.** Except for any Residential Unit or Commercial Unit owned or leased by Declarant, Declarant waives any and rights it has pursuant to Section 14 of the Declaration to alter the boundaries between Condominium Units or alter the boundaries of Common Area or Limited Common Area without first obtaining the prior written consent of the Association and, as applicable, causing an amendment to the Declaration to be filed in the Office of the Recorder of Allen County, Indiana. Additionally, there shall be no subdivision of Residential Units in such a manner that results in greater than five (5) Residential Units per floor within the Building. Except for any Residential Unit in existence as of the effective date of this Amendment, all Residential Units shall have a minimum floor space area of no less than 1000 square feet.

8. **Owner Base Insurance.** Declarant waives the right to charge any insurance expense incurred by Declarant pursuant to Section 15(j) as a Common Expense. The Association succeeds to the rights of Declarant so waived.

9. **Election to Rebuild.** Declarant waives its right to consent in the event the Building is rebuilt pursuant to Section 16(d).

10. **Covenants and Restrictions.** Declarant waives its rights afforded pursuant to Section 17 of the Declaration.

11. **Amendment of Declaration.** Declarant affirms that, as of the date of this Amendment, Declarant owns less than thirty percent (30%) of the Percentage Interest. Section 18(d)(ii) of the Declaration is deleted in its entirety. Section 18(g) of the Declaration is deleted in its entirety.

12. **Declarant’s Reserved Rights.** Declarant affirms that its rights pursuant to Section 21 expired as of the Applicable Date and are no longer in force and effect.

13. **Reservation of Rights to the Use of the Common Areas.** Except for communication equipment situated upon the roof of the Building pursuant to lease agreements between Declarant and any third party as of the date of this Amendment (but not as to any new lease agreements dated after the date of this Amendment), Declarant waives its rights pursuant to Section 24(a) and (b) of the Declaration. The Association succeeds to the rights of Declarant so waived, including, but not limited to, the sole right to grant future rooftop easements.

Section 24(c) of the Declaration is amended and restated in its entirety to provide:

(c) The name of the Building shall be referred to as the “Anthony Wayne Building.” Any Commercial Owner owning 10% or more of the Percentage Interest in the Building shall have the right to sell or assign naming rights and identification signage for the Property and/or the Building so long as i) all naming rights shall be in a style of “(designated name) at Anthony Wayne Building; ii) all signage shall refer solely to the name of the business that is a tenant and conducts business within the Building; iii) all signage above the first story of the Building shall be restricted to no more than one (1) blade style sign at the southwest corner of the Building; one (1) façade sign on the north crown façade of the Building; one (1) façade sign on the south crown façade of the Building; one (1) identification sign on the east side of the Building above the 15th floor; one (1) identification sign on the west side of the Building above the 15th floor; and no more than one (1) façade sign, each, on the west and south facades of the Building below the 6th floor (in addition to and exclusive of signage identifying the Building as Anthony Wayne Building); iv) all signage at or below the first story of the Building be limited to no more than twelve (12) signs; v) that all signage as to location, size, illumination, and design be subject to the prior written approval of the Board, which approval shall not be unreasonably or untimely withheld; vi) that all signage be properly permitted pursuant to applicable local ordinance or regulation; and vii) that the cost of installing, maintaining, removing and insuring such signage be borne by the Declarant or Owner pursuant to requirements reasonably imposed by the Board, except for signage which identifies the Building as Anthony Wayne Building, which signage shall be the responsibility of the Association. Subject to the foregoing conditions (i) – (vii), any rent, sales price, license fee obtained for such naming rights shall be the exclusive property of the Declarant or such Owner. In the event no Owner owns 10% or more of the Percentage Interest in the Building, exterior façade signage may be provided in a manner not inconsistent with the provisions of this Section 24(c) and such other rules and regulations the Board may adopt from time to time. The foregoing shall not apply to outdoor directional signage placed at ground level or at or below the first story of the Building necessary for pedestrian or automobile circulation in finding a Commercial Unit, which signage shall be subject to the approval of the Board, which approval shall not be unreasonably or untimely withheld. All Owners or tenants of Commercial Units or Residential Units of the Building shall refer to their address as at “Anthony Wayne Building”.

14. **Applicable Date.** Declarant and Association agree and affirm that the Applicable Date pursuant to Section 3.02 of the Bylaws, and as referenced in the Declaration, was April 22,

2015. Recording of this Amendment with the Allen County, Indiana Recorder's Office shall satisfy the requirements of notice of the Applicable Date.

15. **Annual Meeting.** Section 2.02 of the Bylaws is amended to provide for the Annual Meeting of the Members to be held on the third Tuesday in November, beginning in November, 2020. All officers and members of the Board whose terms would otherwise have expired at a January Annual Meeting when elected, shall have a term which now expires at the Annual Meeting held in the November prior to the January Annual Meeting at which their term would have expired.

16. **Succession of Declarant's Rights by Association.** Any rights waived by Declarant pursuant to this Amendment which are succeeded to by the Association, pursuant to the terms hereof, shall constitute an amendment of those provisions and sections stated above in which the Association has succeeded to the rights of Declarant for the purpose of affording the Association all of the rights and privileges in exercising such rights effective as of the date hereof.

17. **Remaining Terms and Provisions.** Except as modified, amended or deleted pursuant to the terms of this Amendment, the remaining terms and provisions of the Declaration shall remain in force and effect. In the event of any conflict between the terms of the Declaration and this Amendment, the terms and conditions of this Amendment shall control.

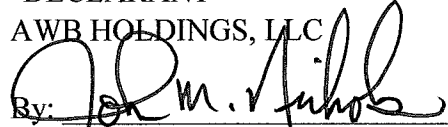
18. **Applicable Consent.** The undersigned, on behalf of the Association, affirm that no less than sixty-seven percent (67%) in the aggregate of the Percentage Vote of both the Owners of the Residential Units and the Owners of the Commercial Units approved this Amendment following a meeting of the Owners held on January, 21 2020 after notice of such meeting was provided to the Owners pursuant to the terms and conditions of the Declaration and the Bylaws.

IN WITNESS WHEREOF, this Declaration is executed as of the date set forth above and is to be deemed effective upon its recording with the Allen County, Indiana Recorder's Office.

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“DECLARANT”

AWB HOLDINGS, LLC

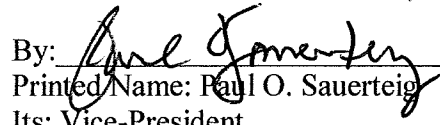
By: 

Printed Name: John M. Nichols

Its: Manager

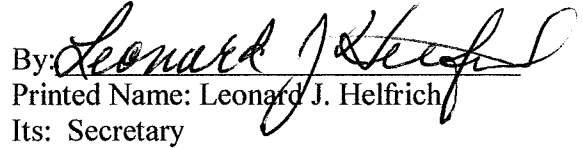
“ASSOCIATION”

AWB OWNERS ASSOCIATION, INC.

By: 

Printed Name: Paul O. Sauerteig

Its: Vice-President

By: 

Printed Name: Leonard J. Helfrich

Its: Secretary

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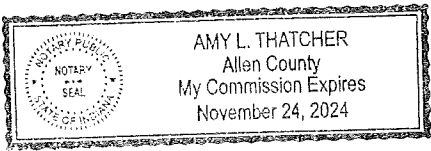
STATE OF INDIANA)
)SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, this 21st day of January, 2020, personally appeared John M. Nichols, the Manager of AWB Holdings, LLC, an Indiana limited liability company, and acknowledged the execution of the foregoing instrument on its behalf. In witness whereof, I have hereunto subscribed my name and affixed my official seal.

My Commission Expires: 11/24/24 Signature: *Amy L. Thatcher*

Resident of Allen County, Indiana Printed Name: Amy L. Thatcher
Notary Public

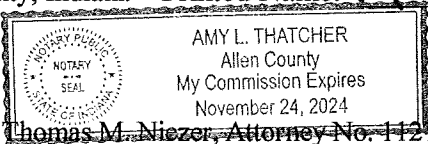
STATE OF INDIANA)
)SS:
COUNTY OF ALLEN)



Before me, the undersigned, a Notary Public in and for said County and State, this 21st day of January, 2020, personally appeared Paul O. Sauerteig and Leonard J. Helfrich, the Vice-President and Secretary, respectively, of AWB Owners Association, Inc., an Indiana non-profit corporation, and acknowledged the execution of the foregoing instrument on its behalf. In witness whereof, I have hereunto subscribed my name and affixed my official seal.

My Commission Expires: 11/24/24 Signature: *Amy L. Thatcher*

Resident of Allen County, Indiana Printed Name: Amy L. Thatcher
Notary Public



THIS INSTRUMENT prepared by ~~Thomas M. Niezer, Attorney No. 11274-02~~, Barrett McNagny LLP, 215 East Berry Street, P.O. Box 2263, Fort Wayne, Indiana 46801-2263.