



Allegheny County
Jerry Tyskiewicz
Department of Real Estate
Pittsburgh, PA 15219

Instrument Number: 2016-35937

BK-DE VL-16605 PG-253

Recorded On: November 14, 2016 As-Deed Agreement

Parties: MCCLEARY DEVELOPS L L C

To MCCLEARY DEVELOPS L L C

of Pages: *78*

Comment: DECL OF CONDO

***** THIS IS NOT A BILL *****

Deed Agreement 162.00
0
0
Total: 162.00

Realty Transfer Stamp

Department of Real Estate Stamp

<p>Affidavit Attached-No NOT A DEED OF TRANSFER</p> <p>Value 0.00</p>	<p>Certified On/By-> 11-14-2016 / Scott Stickman</p> <p>CONDO DECLARATION</p> <p><i>11/14/16</i></p>
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I hereby certify that the within and foregoing was recorded in the Department of Real Estate in Allegheny County, PA

****DO NOT REMOVE-THIS PAGE IS PART OF THE RECORDED DOCUMENT****

File Information:

Record and Return To:

Document Number: 2016-35937

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User / Station: S Kubiak - Cash Super 04

HERGENROEDER REGA EWING & KENNEDY LLC

CENTRE CITY TWR 650 SMITHFIELD ST

STE 1700

PITTSBURGH PA 15222



Jerry Tyskiewicz
Jerry Tyskiewicz, Director
Rich Fitzgerald, County Executive

**MCCLEARY LOFTS CONDOMINIUMS
AMENDED AND RESTATED DECLARATION OF CONDOMINIUM**

THIS AMENDED AND RESTATED DECLARATION is made this 24 day of October, 2016, by McCleary Developments, LLC, a Pennsylvania limited liability company (hereinafter, the "Declarant").

WITNESSETH:

WHEREAS, McCleary Lofts Condominiums, a Condominium (the "Condominium") was created by the filing of a Declaration of Condominium of McCleary Lofts Condominium, City of Pittsburgh, 10th Ward, County of Allegheny and Commonwealth of Pennsylvania, with the Department of Real Estate of Allegheny County on February 12, 2016, at Book Volume 16286, page 171 (the "Original Declaration"); and

WHEREAS, the Unit Owners desire to amend and restate the Original Declaration pursuant to Article 7 thereof and the applicable sections of the Act (as that term is defined below), all upon the terms, and subject to the conditions, set forth in this Amended and Restated Declaration.

NOW, THEREFORE, the Declarant and the Executive Board, intending to be legally bound hereby, agree as follows:

**Article I
SUBMISSION**

1.1. **Declarant:** Declarant, owner in fee simple of the real estate described in Exhibit "A" attached hereto and incorporated herein by this reference, located in the 10th Ward of the City of Pittsburgh and County of Allegheny, Pennsylvania (the "Real Estate"), hereby submits the Buildings (as that term is defined in Section 2.3(a) of this Declaration), together with the Units and improvements therein erected and the common facilities, easements, rights, and appurtenances thereunto belonging (collectively, the "Property") to the provisions of the Pennsylvania Uniform Condominium Act, 68 Pa. C.S. 3101 *et seq.* (the "Act"), and hereby creates with respect to the Property a condominium to be known as the McCleary Lofts Condominiums (the "Condominium").

1.2. **Easements, Licenses and Restrictions:** The Property is so submitted:

(a) TOGETHER WITH the access easements and the license described in Article VI of this Declaration and as shown on the Plats and Plans; and

(b) SUBJECT TO the licenses and restrictions described in Article VI of this Declaration and as set forth on Exhibit "B" attached hereto and incorporated herein by this reference.

Article II
DEFINITIONS

2.1. **Terms Defined or Used in the Act:** Capitalized terms used herein and in the Plats and Plans shall have the meanings specified or used for such terms in Section 3103 of the Act or elsewhere in the Act, unless otherwise defined herein.

2.2. **More Specific Meanings:** The following terms are used or defined in general terms in the Act and shall have specific meanings hereunder as follows:

(a) **“Association”** means McCleary Lofts Condominium Homeowners’ Association, a Pennsylvania non-profit corporation.

(b) **“Declarant”** shall have the meaning given such term in the introductory paragraph of this Declaration.

(c) **“Real Estate”** shall have the meaning given such term in Section 1.1 of this Declaration.

(d) **“Units” or “Unit”** means any Unit or Units located in the Buildings.

2.3. **Non-Statutory Terms Defined:** The following terms when used herein or in the Plats and Plans shall have the meanings set forth below:

(a) **“Buildings”** means the entire first (1st), second (2nd), third (3rd) and fourth (4th) floors of that certain four (4) story building located along Holmes Street, Pittsburgh PA 15201, and the entire first (1st), second (2nd), third (3rd) and fourth (4th) floors of that certain five (5) unit townhouse condominium building to be constructed, all as more fully set forth on the Plats and Plans attached hereto as Exhibit “D”.

(b) **“Declarant’s Mortgagee”** means any entity who extends credit to the Declarant and is secured by a mortgage.

(c) **“Elevator Facilities”** shall have the meaning given such term in Section 3.2(e) of this Declaration.

(d) **“Finished Surface”** means the full thickness of the wallboard, ceiling board, plaster, and finished flooring and the full thickness excluding the surface facing a Common Element of doors and frames, windows and frames, sashes and sills, all on a boundary of a Unit.

(e) **“Parking Facilities”** means the Surface Parking Area, as depicted on the Plats and Plans.

(f) **“Percentage Interest”** means each Unit Owner’s undivided ownership interest in the Common Elements, share of all votes of Unit Owners and share of Common

Expense Liability appurtenant to each Unit as set forth in Exhibit "C" attached hereto and made a part hereof, as the same may be amended from time to time.

(g) **"Permitted Mortgage"** means a first mortgage to (i) the Declarant; (ii) the seller of a Unit; (iii) a bank, trust company, savings bank, savings and loan association, mortgage service company, credit union, pension fund, or like institutional investor or lender; or (iv) any other mortgage approved by the Executive Board. A holder of a Permitted Mortgage is referred to herein as a "Permitted Mortgagee".

(h) **"Property"** shall have the meaning given such term in Section 1.1 of this Declaration.

Article III
UNITS; BOUNDARIES; TYPES; MAINTENANCE, REPAIR AND REPLACEMENT
RESPONSIBILITIES

3.1. Plats and Plans; Units/Common Elements/Limited Common Elements: The approximate location and dimensions of the Building, Units, Common Elements, Limited Common Elements (to the extent that such Limited Common Elements are amenable to visual representation thereon) and the other structures and improvements comprising the Property, are shown on the Plats and Plans collectively attached hereto as Exhibit "D" and incorporated herein by this reference.

3.2. Unit Boundaries: Each Unit consists of the space within the following boundaries, as, where applicable, shown on the Plats and/or Plans:

(a) **Upper and Lower (Horizontal) Boundaries:** The upper and lower boundaries of the Unit shall be the following boundaries extended to intersection with the vertical boundaries:

(i) **Upper Boundary:** The outermost horizontal plane of the Finished Surface of the uppermost ceiling of such Unit.

(ii) **Lower Boundary:** The horizontal plane of the top surface of the unfinished concrete floor slab upon which such Unit is situated.

(b) **Vertical Boundaries:** The vertical boundaries of the Unit shall be the vertical planes, extended to intersections with each other and with the upper and lower boundaries, of the outermost vertical plane of the Finished Surface of the exterior walls which do not separate the Unit from any other Unit, and of the centerline of the party walls which separate a Unit from other Units.

✓ (c) **Balconies:** The boundaries set forth in Subsections (a) and (b) above shall be extended to include the dimensions for front and/or rear balconies (including railings), if any, which are shown on the Plans for each respective Unit. The aforementioned boundaries shall include any enclosure of any such balcony.

* Cost of Limited main
common element
gets charged to the
benefitting unit owner

22. (d) Each Unit shall include the following items if within the Unit boundaries or part of the title lines described in Section 3202 of the Act which are appurtenant to the Unit (Unless otherwise expressly set forth to the contrary in this Declaration, if any such item lies partially within and partially outside the designated Unit boundaries shall be deemed Limited Common Elements, and each and every such item serving a Unit or Units located totally outside a Unit shall also be deemed Limited Common Elements, the cost and expense of the maintenance, repair and replacement of which shall be attributable to the Unit(s) served thereby. Items lying totally outside of a Unit's boundaries and not serving any particular Unit, e.g., Common Element lighting, shall be deemed Common Elements, the cost and expense of the maintenance, repair and replacement of which shall be attributable to all Units.): *

(i) All lath, furring, wallboards, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the Unit.

(ii) Any chute, flue, duct, wire, pipe, conduit, bearing wall, bearing column or any other type fixture.

(iii) Subject to the provisions of Subsection (ii) above, all spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit are part of the Unit.

(iv) Any shutters, window boxes or other fixtures (including sills, frames and hardware).

(v) There is also included within a Unit (by way of illustration and not of limitation): *

(A) The air space enclosed within the Unit boundaries described above.

(B) All partitions which are wholly contained within such Unit boundaries, including, but not limited to, all doors, door frames, hardware, electrical outlets and wiring, telephone outlets and conduits, and other equipment and devices in such partitions serving only such Unit.

(C) All plumbing fixtures located within a Unit's boundaries and serving only such Unit, and its water and waste connections.

(D) All items of kitchen equipment located within such Unit boundaries and serving only such Unit, and such equipment's water, gas, electric and waste connections.

(E) Exhaust fans and the grilles, registers, ventilation ducts and related fixtures which serve only such Unit, whether or not any of the foregoing is located in any portion of the Common Elements.

(F) Lighting devices, including, without limitation, lamps and bulbs which are surface mounted on, recessed in, or suspended from, ceilings, walls and partitions within or on the perimeter of such Unit, serving only such Unit whether or not such lighting devices are themselves located entirely within the Unit boundaries of such Unit.

(G) Outlets, wires, cables, conduits, circuits and related equipment transmitting electricity for lighting and power or transmitting electrical impulses and signals, including, but not limited to, impulses and signals for telephones, internet and television transmission, which serve only such Unit and which are located entirely within the Unit boundaries of such Unit.

(H) Surface-mounted and recessed medicine cabinets, including, but not limited to, all associated lighting fixtures and accessories.

(I) Refrigerators, ranges, dishwashers, clothes washers and dryers, garbage disposal units and other appliances (if any), and the portions of their water, waste, electrical and exhaust connections located within the Unit boundaries and serving only such Unit.

Those portions of any lighting devices, outlets, medicine cabinets, exhaust fans, ventilation ducts, registers, grilles and similar fixtures which serve only such Unit and which lie partially within and partially outside the Unit boundaries of such Unit shall be deemed to be a part of such Unit.

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out of order?? where is (a) (b) (c) and (d)?

(e) The elevator shaft located central to the building on the Plats and Plans, from the bottom of the horizontal plane of the first (1st) floor concrete slab up to the terminal of such shaft, is a Common Element. All of the equipment within such elevator shaft, including, but not limited to, the elevator cabin, motors, pulleys and cables (collectively, the "Elevator Facilities"), are Common Elements.

(f) The roof of the Building is a Common Element, the cost of maintenance, repair and replacement of which is a Common Expense assessed against all Unit Owners in proportion to their respective Percentage Interests.

(g) The stairwells contained within the Building as marked on the Plats and Plans, extending from the horizontal plane of the first (1st) floor slab up to the terminal of such stairwell are Common Elements, the cost of maintenance, repair and replacement of which is a Common Expense assessed against all Unit Owners in proportion to their respective Percentage Interests.

(h) The exterior façade of the Building is a Common Element, the cost of maintenance, repair and replacement of which is a Common Expense assessed against all Unit Owners in proportion to their respective Percentage Interests.

3.4. Maintenance, Repair and Replacement Responsibilities: Each Unit Owner shall be solely responsible for maintaining, repairing and replacing all aspects of a Unit

within the title lines or boundaries of such Unit to the extent necessary to maintain such Unit, both aesthetically and operationally, in a first-class manner commensurate with comparable condominiums of like type and quality to the Condominium. Notwithstanding the ownership of the various portions of the Common Elements and Limited Common Elements, the Common Elements and Limited Common Elements shall be maintained and repaired by the Association in accordance with the provisions of Section 3307 of the Act, except as expressly set forth to the contrary herein.

Article IV

ALLOCATION OF COMMON ELEMENT INTERESTS, VOTES, COMMON EXPENSE LIABILITIES AND IDENTIFICATION OF UNITS

4.1. **Allocation of Common Element Interest, Votes and Common Expense Liability:** (a) Attached as Exhibit "C" hereto is a list of all initial Units, their Identifying Numbers, location (all as shown more fully on the Plats and Plans), type, and the Percentage Interest appurtenant to each Unit. The Condominium consists of only residential Units.

(b) The Percentage Interest shall be calculated in the following manner: total square footage of each individual Unit (based upon the perimeter horizontal boundaries of each Unit) divided by the aggregate square footage of all Units.

4.2. **Membership and Voting Rights:**

(a) Every Owner of a Unit which is subject to assessment shall be a member of the Association and shall be subject to the covenants set forth herein and have the ability to enforce said covenants. Membership shall be appurtenant to and may not be separated from ownership of any Unit which is subject to assessment.

(b) The Association shall have two classes of voting membership:

CLASS A: Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one (1) vote for each Unit owned. When more than one (1) person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Unit.

CLASS B: The Class B member(s) shall be the Declarant and shall be entitled to three (3) times the votes for each Unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(ii) Five (5) years from the date of the first conveyance of a Unit to a person other than Declarant.

Until the Association makes a Common Expense assessment, the Declarant shall pay all the expenses of the Condominium. After any assessment has been made by the Association all Units, including those owned by the Declarant, shall be assessed for their full portion of the Common Expense liability.



Article V

DESCRIPTION, ALLOCATION AND RESTRICTION OF COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

5.1. Common Elements: The Common Elements are labeled and/or defined as such on the Plats and Plans and shall otherwise be as defined in this Declaration and in the Act. Every Unit Owner has a right and easement of enjoyment to the Common Elements, which is appurtenant to the title of his or her Unit. In the event of an inconsistency between the definition of Common Elements as set forth in the Act and as set forth in this Declaration, the definition set forth in this Declaration shall control.

5.2. Limited Common Elements: The Limited Common Elements are labeled and/or defined as such on the Plats and Plans and shall otherwise be as defined in this Declaration and in the Act. Each Unit Owner has a right and easement of enjoyment to the Limited Common Elements applicable thereto, which is appurtenant to the title of his or her Unit. In the event of an inconsistency between the definition of Limited Common Elements as set forth in the Act and as set forth in this Declaration, the definition set forth in this Declaration shall control.

5.3. Repair and Maintenance by Association: Except as otherwise expressly set forth to the contrary in this Declaration, (a) Common Elements shall be maintained and repaired by the Association and the costs of such maintenance and repairs shall be assessed against all Unit Owners in proportion with their respective Percentage Interests; and (b) Limited Common Elements shall be maintained and repaired by the Association and the costs of such maintenance and repairs shall be apportioned and assessed among the Unit or Units served by such Limited Common Elements. By way of example and not of limitation, in the event that a water pipe lying outside of a Unit's boundaries, the usage of which is common to a third (3rd) and fourth (4th) floor Unit, requires repairs, the cost of such repairs shall be apportioned between such third (3rd) and fourth (4th) floor Unit Owners. In the event that a Limited Common Element is serving a Unit and a tenant of Declarant's Property, the cost and expense of the maintenance, repair or replacement thereof shall be equitably divided between Declarant and the affected Unit based upon usage of such Limited Common Element.

Article VI

EASEMENTS AND LICENSES; ELEVATOR LICENSE; PARKING FACILITIES

6.1. Additional Easements: In addition to and in supplementation of the easements provided for by Sections 3216, 3217 and 3218 of the Act and the other provisions of the Act, and those in existence as of the date of this Declaration as more fully described in **Section 1.2** her the following easements are hereby created:

- (a) Declarant shall have the right to maintain models, management off

sales offices on the Property, and to relocate such models, management offices, construction offices and sales offices from time to time anywhere within the Property. The models, management offices, and sales offices constituting a portion of Property shall be subject to the following requirements:

(i) The models maintained by the Declarant shall be in Units owned by the Declarant, or in Units owned by others with the express written consent thereof, and not within the Common Elements. Such model Units shall not exceed one (1) in number. The size of each such model shall be the size of the Unit which is the model.

(ii) In addition to the model maintained by the Declarant, Declarant shall have the right to maintain within any Unit owned by the Declarant not more than one (1) management office.

(b) Declarant shall have the right to maintain on the Property such advertising signs as are deemed appropriate.

6.2. Utility Easements: (a) The Units, Common Elements and Limited Common Elements shall be and are hereby made subject to easements in favor of the Declarant, the Association, appropriate utility and service companies and governmental agencies or authorities for such utility and service lines and equipment as may be necessary or desirable to serve any portion of the Real Estate. The easements created in this **Section 6.2(a)** shall include, without limitation, rights of Declarant, the Association or the providing utility or service company or governmental agency or authority, to install, lay, maintain, repair, relocate, and replace gas lines, pipes and conduits, water mains and pipes, sewer and drain lines, telephone wires and equipment, data and communications equipment and facilities, television equipment and facilities (cable or otherwise), electrical wires, conduits and equipment, and ducts and vents over, under, across, through, along and on the Units and Common Elements. Notwithstanding the foregoing provisions of this **Section 6.2(a)**, unless approved in writing by the Unit Owner or Unit Owners affected thereby, any such easement through a Unit shall be located either in substantially the same location as such facilities or similar facilities existed at the time of first conveyance of the Unit by the Declarant, or so as not to materially interfere with the permanent use or occupancy of the Unit by its occupants.

6.3. Unit Owner Access Easements; Elevator License: (a) For the benefit of each Unit Owner and their respective guests, agents, invitees, heirs and assigns, Common Elements shall be and are hereby made subject to a perpetual, transferable, non-exclusive easement to use those portions of the Common Elements for the purposes of ingress, egress and regress to and from each Unit Owner's respective Unit. Such access easements are identified on the Plats and Plans attached hereto.

(b) Each Unit Owner and their respective guests, agents, invitees, heirs and assigns shall be, and hereby are, granted a perpetual, transferable, non-exclusive license to utilize the Elevator Facilities for purposes of ingress and egress to the Common Elements necessary to gain access to each Unit Owner's respective Unit.

Does this right need to be formally transferred to the association ??

6.4. **Parking Facilities:** Parking spaces located within the Surface Parking Area are Common Elements available at no charge to all Unit Owners. Upon purchase of a Unit, each Unit Owner will be assigned a specific parking space by the Declarant for his/her exclusive use.



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6.5. **Rooftop Easement and License:** The roof of the Property, together with all other Common Elements of the Building necessary to gain access thereto including, but not limited to, stairwells, elevator shafts and the actual Building façade and facing, shall be and is hereby made subject to a perpetual transferable, non-exclusive license and easement for the benefit of the Common Elements, Declarant and Declarant's tenants and each of their respective agents and independent contractors, for the purpose of installing equipment necessary for the beneficial use and enjoyment of the Common Elements including, but not limited to, HVAC equipment and satellite dishes and equipment.

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Article VII
AMENDMENT OF DECLARATION

66 2/3 % vote required

7.1. **Amendment Generally:** This Declaration may be amended only upon the approval of at least two-thirds (2/3) of the Unit Owners and in accordance with the procedures specified in Section 3219 of the Act, the other Sections of the Act referred to in Section 3219 of the Act, and the express provisions of this Declaration.

7.2. **Rights of Permitted Mortgagees:** Subject to the limitations imposed by Section 3221 of the Act, no amendment of this Declaration may be made without the prior written approval of all Permitted Mortgagees if and to the extent that such amendment is material, or if and to the extent that such amendment would have the effect of terminating or abandoning the Condominium (except for termination or abandonment as a result of a taking of all the Units by eminent domain or a casualty resulting in termination), or abandoning, encumbering, selling, or transferring the Common Elements or Limited Common Elements, or any portion thereof. Any amendment having the effect of partitioning or subdividing any Units or the Common Elements, or changing the Percentage Interests of the Unit Owners, shall require the written approval of all holders of Permitted Mortgages on the Units affected thereby. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed to be a transfer within the meaning of this Section 7.2.



7.3. **Rights of Declarant:** No change, modification, or amendment which affects the rights, privileges, or obligations of the Declarant shall be effective without the prior written consent of the Declarant.



7.4. **Other Amendments:** If any amendment is necessary in the judgment of the Executive Board to cure any ambiguity or to correct or supplement any provision of this Declaration or the Plats and Plans which is defective or inconsistent with any other provision hereof or thereof or with the Act, or to change, correct or supplement anything appearing or failing to appear in the Plats and Plans which is incorrect, defective, or similarly inconsistent, or if such amendment is necessary to conform to the then current requirements of the Federal

National Mortgage Association or the Federal Home Loan Mortgage Corporation with respect to condominium projects, the Executive Board may, at any time and from time to time effect such amendment without the approval of the Unit Owners or Permitted Mortgagees, upon receipt by the Executive Board of an opinion from independent legal counsel to the effect that the proposed amendment is permitted by the terms of this sentence, together with a like opinion from an independent registered architect or licensed professional engineer in the case of any such amendment to the Plats and Plans. Each such amendment shall be effective upon the recording of an appropriate instrument setting forth the amendment and its due adoption, execution and acknowledgment by one or more members of the Executive Board.

Article VIII **USE RESTRICTIONS**

8.1. Use and Occupancy of Units and Common Elements: The Units, Common Elements and Limited Common Elements shall be occupied and used as follows (subject to further restrictions that may be set forth in the Bylaws or the Rules and Regulations as referred to in the Bylaws):

(a) No part of the Property shall be used for other than housing and the related common purposes for which the Property was designated. Each Unit or any two (2) or more adjoining Units used together shall be used as a residence for a single family or such other uses permitted by this Declaration and for no other purposes. If current zoning regulations applicable to the Real Estate permit professional activities to be conducted within a Unit, application may be made by a Unit Owner to the Executive Board for approval to commence such permitted use of his or her Unit. Each such application shall be considered by the Executive Board on an individual basis. Once the Executive Board has given its approval to a particular use of a Unit, it may not revoke such approval so long as the nature and scope of the approved use remains unchanged. No Unit Owner shall permit his Unit to be used or occupied for any prohibited purpose.

(b) Except as set forth in **Subsection (a)** above, no industry, business, trade, occupation or profession of any kind, commercial, religious, educational, or otherwise, designed for profit, altruism, exploration, or otherwise, shall be conducted, maintained, or permitted on any part of the Property. No signs, advertising or other displays shall be maintained or permitted on any part of the Property except at such location and in such form as shall be determined by the Executive Board. The right is reserved by the Declarant or its agent or agents, to place within the Units "For Sale" or "For Rent" signs on any unsold or unoccupied Units and on any part of the Common Elements. Unit Owners, or their agents, may place "For Sale" or "For Rent" signs upon their respective Units only upon the prior approval of the Executive Board. A Unit Owner shall have no right to place any signs of any nature on any part of the Common Elements.

(c) There shall be no obstruction of the Common Elements nor shall anything be stored in or on the Common Elements without the prior consent of the Executive Board except as herein expressly provided.

(d) The use and the covering of the interior surfaces of windows, whether by

draperies, shades or other items shall be subject to the Rules and Regulations of the Executive Board.

(e) Nothing shall be done or kept in any Units or in or on the Common Elements which will increase the rate of insurance on the Property, or the contents thereof, applicable to residential units, without the prior written consent of the Executive Board, which consent may be conditioned upon the Unit Owner of such Unit being required to pay the full amount of such increase. No Unit Owner shall permit anything to be done or kept in his Unit or in or on the Common Elements which will violate any law, statute, ordinance or regulation of any governmental body or which will result in the cancellation of any insurance maintained by the Executive Board. No waste shall be committed in or on the Common Elements.

(f) Unit Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of the Units or on the Property including, but not limited to, any sign, awning, canopy, shutter, radio or television antenna. No air conditioning units of whatever type other than those installed as of the date that this Declaration is recorded or those thereafter installed by the Declarant may be installed without the prior written permission of the Executive Board. Notwithstanding any of the foregoing language to the contrary, Unit Owners shall be permitted to install satellite dishes upon the 4th floor roof of the Property only upon the consent and approval of the Executive Board with respect to the model of such antenna, its dimensions, the installer thereof and, in any event, in accordance with all applicable laws, ordinances and regulations of any governing body having jurisdiction over the Property. In the event that an Owner receives consent and approval of the Executive Board to install a satellite antenna upon the roof of the Property, all cost and expense occasioned thereby shall be borne solely by the Unit Owner. In addition, in the event that an Owner receives the consent and approval of the Executive Board to install a satellite antenna as aforesaid, said Owner shall be solely responsible for any damage to any portion of the Property, to any property of any other Unit Owner or any third party, or for any injury to any other Unit Owner or other third party resulting from such installation. Such Owner, prior to installation of a satellite antenna in any manner as aforesaid, shall agree to indemnify, defend and hold harmless the Association, the Executive Board and the Condominium from any and all costs, claims, damages and expenses incurred by any Unit Owner or third party which arise as a result of the placement of such satellite antenna in the manner permitted by this Subsection (f).

(g) No animals, livestock, fowl, or poultry of any kind shall be raised, bred, or kept in any Unit or in the Common Elements unless otherwise permitted by the Rules and Regulations adopted by the Executive Board, which Rules or Regulations may exclude or include any kind of pet by type or category, provided that household pets, if permitted, are not kept, bred, or maintained for any commercial purpose; and all pet waste shall be properly disposed of by the Unit Owner and provided further that any such authorized pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property upon three (3) days written notice from the Executive Board. All pets, if permitted, shall be registered with the Executive Board.

(h) No noxious or offensive activity shall be carried on in any Unit or in or on the Common Elements, nor shall anything be done therein, either willfully or negligently, which

*Note:
Service
Animals &
EMOTIONAL
ANIMALS
are NOT
Pets.*

may be or become an annoyance or nuisance to the other Unit Owners or occupants.

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

(j) No benches, chairs or other personal property shall be left on, nor shall any playing, lounging, baby carriages, playpens, bicycles, wagons, toys, or vehicles be left unattended on any part of the Common Elements without the prior consent of, and subject to the Rules and Regulations of, the Executive Board.

(k) No Unit Owner shall overload the electric wiring in his or her Unit, or operate any machines, appliances, accessories or equipment in such a manner to cause, in the judgment of the Executive Board, an unreasonable disturbance to others. Nor shall any Unit Owner connect any machine, appliance, accessory or equipment to the heating system or plumbing system without the prior written consent of the Executive Board. Installation, removal, construction, or repair of any electrical lighting and power circuit or electrical outlet box or terminal device included in such outlet box, or any item of heating or air conditioning equipment, any of which is located within an interior partition of a Unit, may be undertaken by the Unit Owner of such Unit only after application has been made to and written approval has been received from the Executive Board. Such approval shall be granted only if the work performed shall be of similar or superior quality to that present throughout the Units and shall be performed by qualified personnel. The cost of such installation, removal, reconstruction or repair whether undertaken by a Unit Owner or by the Executive Board (under the same procedures utilized for Common Elements) shall be borne by the Unit Owner of the Unit benefited thereby.

(l) No Unit Owner shall place or store anything on the balcony appurtenant to his Unit, nor shall such balcony be decorated, painted or otherwise altered, if, in the opinion of the Executive Board, such placement, storage, decorating, painting or alteration would create an unsightly condition or otherwise not be in conformity with the other Unit balconies.

(m) This **Article VIII** shall not be construed to prevent or prohibit a Unit Owner from maintaining his personal professional library, keeping his personal business or professional records or accounts, handling his personal business or professional telephone calls, or conferring with business or professional associates, clients, or customers, in his Unit.

(n) Reasonable Rules and Regulations, not in conflict with the provisions of this Declaration, concerning the use and enjoyment of the Property, may be promulgated from time to time by the Executive Board, subject to the right of the Association to change such Rules and Regulations. A copy of the initial Rules and Regulations are provided to prospective Owners in the McCleary Lofts Condominiums Public Offering Statement. Copies of the then current Rules and Regulations setting forth any amendments to the initial Rules and Regulations shall be furnished to all Unit Owners by the Executive Board promptly after the adoption of any new Rules and Regulations or any amendments to the initial Rules and Regulations. A copy of the current Rules and Regulations shall be kept on file at the office of the Association and will be provided to an Owner (or prospective Owner) upon request thereof.

Article IX
RIGHTS OF PERMITTED MORTGAGEES

9.1. Reports and Notices: Upon the specific written request of a Permitted Mortgagee or its servicer to the Executive Board, the Permitted Mortgagee shall receive, upon payment of the appropriate cost, some or all of the following designated in the request:

(a) Copies of budgets, notices of assessment, or any other notices or statements provided under this Declaration by the Executive Board to the Owner of the Unit covered by the Permitted Mortgage;

(b) Any audited or unaudited financial statements of the Association which are prepared for the Association and distributed to the Unit Owners;

(c) Copies of notices of meetings of the Unit Owners and the right to be represented at any such meetings by a designated representative;

(d) Notice of the decision of the Unit Owners to make any material amendment to this Declaration;

(e) Notice of substantial damage to or destruction of any Units (the repair of which would cost in excess of \$1,000.00) or any part of the Common Elements (the repair of which would cost in excess of \$10,000.00);

(f) Notice of the commencement of any condemnation or eminent domain proceedings with respect to any part of the Property;

(g) Notice of any default by the Owner of the Unit which is subject to the Permitted Mortgage, where such default is not cured by the Unit Owner within thirty (30) days after the giving of notice by the Association to the Unit Owner of the existence of the default;

(h) The right to examine the books and records of the Executive Board at any reasonable time; or

(i) Notice of any decision by the Executive Board to terminate professional management and assume self-management of the Property.

The request of a Permitted Mortgagee or its servicer shall specify which of the above items it desires to receive and shall indicate the address to which any notice or documents shall be sent by the Executive Board. The Executive Board need not inquire into the validity of any request made by a Permitted Mortgagee hereunder.

Failure to comply with the requirements set forth above shall in no way invalidate actions of the Association and/or the Executive Board.

Article X

REAL ESTATE TAXES

10.1. Real Estate Taxes: It is understood that real estate taxes (including local and county real estate taxes and local school taxes) assessed against the Real Estate are to be separately assessed and taxed to each Unit Owner for his Unit and its corresponding Percentage Interest in the Common Elements, as provided in the Act. For the year in which this Declaration is first recorded, real estate taxes shall be apportioned between Declarant (with respect to Units owned by Declarant) and each Unit Owner on a calendar year basis for local and county taxes and a fiscal year basis for school taxes, and the same shall be *pro rated* between the Declarant (with respect to Units owned by Declarant) and each Unit Owner based upon the total square footage of each Unit plus its share of the Common Elements, as the case may be, divided by the sum of the square footage of the Units plus Common Elements. By way of example and not of limitation, if the total square footage of all Units plus Common Elements equals 40,000 square feet, and a particular Unit contains 3,500 square feet plus 250 square feet of Common Elements (based upon the total square footage of all Common Elements multiplied by the Unit in question's Percentage Interest), said Unit Owner would be obligated to pay 9.375% of the real estate taxes assessed upon all of the Real Estate (3,750/40,000). In the event that real estate taxes for any subsequent year are not separately assessed against each Unit Owner, but rather are assessed against the Real Estate as a whole, each Unit Owner shall be responsible for his, her or its share of said real estate taxes in an amount as determined utilizing the methodology described above. In the event that real estate taxes for any subsequent year are not separately assessed against each Unit Owner, but rather are assessed against the Property as a whole, then each Unit Owner shall pay his proportionate share thereof in accordance with his respective Percentage Interest in the Common Elements. In any event other than a separate assessment, such taxes shall be a Common Expense. The Executive Board shall have authority to advance Association funds in payment of all or a portion of such taxes pending receipt from the respective Unit Owners of their proportionate share thereof.

Article XI ASSOCIATION UNIT(S)

11.1. Conveyance: The Declarant reserves the right, upon written approval of Declarant's Mortgagee, to convey not more than one (1) Unit to the Association or its nominee, each subject to (a) this Declaration, the Bylaws, the Act, covenants, conditions, easements, and restrictions of record, and, in general, all matters which buyers of Units are subject to, and (b) a mortgage securing a note in an amount not to exceed eighty percent (80%) of the discount price of the Unit as initially established by the Declarant, for use as an engineer's or manager's apartment or apartments or such other lawful use as the Executive Board deems proper. From and after such conveyance, the Executive Board shall perform, on behalf of all Unit Owners, all of the obligations appurtenant to such Unit or Units. All costs incurred by the Executive Board with respect to such Unit or Units (including, without limitation, payments or principal and interest due on the notes secured by the mortgages on the hereinabove described real estate, taxes, repairs, maintenance, decorating, utility charges, and similar expenses) shall be deemed to be and shall be included as Common Expenses assessed pursuant to this Declaration in the same manner as would have been required had such Unit been established as part of the Common

Elements rather than as a Unit or Units, for as long as such Unit or Units are owned by the Association.

Article XII
POWERS OF THE EXECUTIVE BOARD

12.1. Powers: In addition to the powers set forth in the Act and the Bylaws, the Executive Board shall have the following powers:

(a) To appoint committees of the Executive Board (which need consist of only one (1) Executive Board Member) and to delegate to such committees the Executive Board's authority to carry out certain duties of the Executive Board subject to the approval and control of the Executive Board.

✓ (b) To engage the services of a manager or managing agent, who may be any person, firm or corporation, upon such terms and compensation as the Executive Board deems fit, and to remove such manager or managing agent at any time, provided any agreement with such manager or managing agent shall extend for not more than one (1) year and must be terminable by either party to such agreement without cause and without payment of a termination fee upon thirty (30) days' or less prior written notice.

(c) To engage the services of any persons (including, but not limited to, accountants and attorneys) deemed necessary by the Executive Board at such compensation as is deemed reasonable by the Executive Board, in the operation, repair, maintenance and management of the Property, or in connection with any duty, responsibility or right of the Executive Board, and to remove, at any time, any such personnel. ✓

(d) To pay any amount necessary to discharge any mechanic's lien or other encumbrance levied against the Property or any part thereof which may in the opinion of the Executive Board constitute a lien against the Property or against the Common Elements, rather than merely against the interest therein of particular Unit Owners. Where one (1) or more Unit Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Executive Board by reason of said lien or liens shall be specially assessed to said Unit Owners.

(e) To expend funds for the maintenance and repair of any Unit or any other portion of the Property which a Unit Owner is obligated to maintain or repair under the terms hereof, if such maintenance or repair is necessary, in the discretion of the Executive Board, to protect the Common Elements, or any other portion of the Property, and the owner of said Unit has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Executive Board to said Unit Owner; *provided* that the Executive Board shall levy a special assessment against such Unit for the cost of said maintenance or repair.

(f) To establish user charges with respect to the use of amenities, if any. Such charges shall be billed to the Unit Owner who, or whose guest, makes use of such amenities.

Nothing herein contained shall require the establishment of user charges with respect to all or any one or more of such amenities. Use of all such amenities shall be subject to the Rules and Regulations of the Executive Board.

(g) Each Unit Owner hereby grants to the Executive Board a Limited Power of Attorney to make and repair any and all emergency repairs within the Unit.

Article XIII **MORTGAGES**

13.1. Permitted Mortgages: A Unit Owner other than the Declarant or the Executive Board may not voluntarily encumber or subject his, her or its Unit to any lien, other than the lien of a Permitted Mortgage. All such Permitted Mortgages and the obligations secured thereby shall be deemed to provide, generally, that the Permitted Mortgage and the rights and obligations of the parties thereto shall be subject to the terms and conditions of the Act, this Declaration and the Bylaws, and shall be deemed to provide specifically, but without limitation, that the Permitted Mortgagee shall have no right (a) to participate in the adjustment of losses with insurers or in the decision as to whether or not or how to repair or restore damage to or destruction of the Property, (b) to receive or apply the proceeds of insurance to the reduction of mortgage debt or otherwise, except in the event and to the extent of either a distribution of such proceeds to the Owner of the Unit encumbered by such mortgage pursuant to Section 3312(g) of the Act or of other insurance proceeds in excess of the cost of repair or restoration, or (c) to accelerate the mortgage debt or to have any other remedies by virtue of waste or alleged waste or other conditions occurring anywhere on the Property other than within the affected Unit or maintain a mortgage anywhere on the Property other than upon the affected Unit; and the obligation secured thereby shall be prepayable, without penalty, upon the happening of any termination as aforesaid. No Unit Owner shall deliver any mortgage, or any obligation to be secured thereby, unless it has first notified the Executive Board of the name and address of the proposed mortgagee and of the amount of the debt proposed to be so secured. When such a Permitted Mortgage is delivered to the Permitted Mortgagee, the Unit Owner shall simultaneously provide executed or conformed copies to the Executive Board. Upon receipt of such copy of a Permitted Mortgage, the Secretary of the Executive Board shall instruct the insurer of the Property to add the name of the Permitted Mortgagee to the mortgagee loss payable provision of the hazard insurance policy covering the Property and to provide such Permitted Mortgagee with a Certificate of Insurance showing that the Permitted Mortgagee's name has been so added. The lien of any purported mortgage which does not comply with all the requirements of this **Article XIII** shall not attach to or affect the Property or any part thereof or interest therein and shall be of no force and effect to the extent that it purports to relate thereto. The Secretary shall maintain a register of such Permitted Mortgages, showing the names and addresses of the Permitted Mortgagees and the amount secured thereby.

13.2. Common Element: The Common Elements cannot be mortgaged or conveyed without the consent of at least two-thirds (2/3) of the Unit Owners (excluding the Developer).

Article XIV **BUDGETS; COMMON EXPENSES;**

Take out one or more secured loans.


ASSESSMENTS AND ENFORCEMENT

14.1. Monthly Assessments: All Common Expense assessments shall be deemed to be adopted and assessed on a monthly basis (not an annual basis, payable in monthly installments) and shall be due and payable in advance, on the first day of each month. Special assessments shall be due and payable in one or more monthly payments, in advance, on the first day of each month, as determined by the Executive Board.

14.2. Subordination of Certain Charges: Any fees, charges, late charges, fines and interest which may be levied by the Executive Board pursuant to Section 3302(a) (10), (11) and (12) of the Act, shall be subordinate to the lien of a Permitted Mortgage on a Unit. Permitted Mortgagees are not required to collect any monies levied by the Executive Board. Failure to pay any monies levied does not constitute a default under an insured mortgage.

14.3. Limitation on Expenditures: All expenses, charges, and costs of the maintenance, repair or replacement of the Common Elements, and any other expenses, charges or costs which the Executive Board may incur or expend pursuant hereto, shall be approved by the Executive Board, and a written memorandum thereof prepared and signed by the Treasurer. There shall be no structural alterations, capital additions to, or capital improvements on, the Common Elements (other than for purposes of repairing, replacing and restoring portions of the Common Elements) requiring an expenditure in excess of Fifty Thousand (\$50,000.00) Dollars without the prior approval of the Unit Owners entitled to vote representing two-thirds (2/3) of the votes of all Unit Owners.

14.4. Reserve: Each annual budget for monthly assessments of Common Expenses shall include an amount reasonably considered by the Executive Board to be sufficient as a reserve for replacements and contingencies. To initiate such reserve, the Declarant shall collect from each of its grantees, at time of settlement, an amount equal to one-sixth (1/6th) of the first annual budget allocable to the Unit purchased by such grantee and shall remit such amount to the Executive Board. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year may be charged first against such reserve, as the Executive Board shall determine. In addition, the Executive Board shall have the right to segregate all or any portion of the reserve for any specific replacement or contingency upon such conditions as the Executive Board deems appropriate.

14.5. Accounting: On or before the fifteenth (15th) day of April of each calendar year commencing 2016, the Executive Board shall supply to all Unit Owners an itemized accounting of the Common Expenses for the preceding calendar year actually incurred and paid together with a tabulation of the amounts collected pursuant to the annual budget or monthly assessments and leases and sales of property owned or managed by the Executive Board on behalf of the Association, and showing the net excess or deficit of income over expenditures plus reserves. 

14.6. Further Assessments: If any annual budget proves inadequate for any reason, including nonpayment of any Unit Owner's monthly assessments, or any nonrecurring Common Expense or any Common Expense not set forth in the annual budget as adopted, the Executive Board may at any time levy further monthly assessments according to each Unit Owner's

Percentage Interest in the Common Elements. Such further monthly assessments shall be payable over such period of time as the Executive Board may determine in its sole discretion. The Executive Board shall serve notice of such further assessments on all Unit Owners by a statement in writing giving the amount and reasons therefor, and such further monthly assessments shall become effective as determined by the Executive Board.

14.7. Surplus: Any amounts accumulated from assessments for Common Expenses and income from the operation of the Common Elements to which such Common Expenses pertain in excess of the amount required for actual Common Expenses and reserves for future Common Expenses shall be credited to each Unit Owner in accordance with Percentage Interest, said credits to be applied to the next monthly assessments of Common Expenses due from said Unit Owners, until exhausted.

14.8. Acceleration: If a Unit Owner is in default in the payment of the aforesaid charges or monthly assessments for sixty (60) days, the Executive Board may, in addition to all other remedies in the Act or Declaration contained, accelerate all other monthly assessments to become due for the fiscal year in which such default occurs; *provided however*, that a foreclosing Permitted Mortgagee shall be entitled to automatic subordination of such assessments in excess of the amounts given priority over mortgage liens in the Act. Permitted Mortgagees are not required to collect assessments.

14.9. Interest and Charges: All sums assessed by the Executive Board against any Unit Owner as a regular or special assessment shall bear interest thereon at the then maximum legal rate from the tenth (10th) day following default in payment of any monthly assessment when due. Any delinquent Owner shall also be obligated to pay (a) all expenses of the Executive Board, including reasonable attorneys' fees, incurred in the collection of the delinquent assessments by legal proceedings or otherwise, and (b) any amounts paid by the Executive Board for taxes or on account of superior liens or otherwise to protect its liens, which expenses and amounts, together with accrued interest, shall be deemed to constitute part of the delinquent assessment and shall be collectible as such, subject to Section 14.2 above.

14.10. Confession of Judgment: IN ORDER TO EXPEDITE THE EXECUTIVE BOARD'S COLLECTION OF ANY DELINQUENT ASSESSMENT, TO THE EXTENT PERMITTED BY LAW, EACH UNIT OWNER (BY THE ACCEPTANCE OF THE DEED TO HIS UNIT) SHALL BE DEEMED TO HAVE APPOINTED ANYONE OR MORE EXECUTIVE BOARD MEMBERS THE ATTORNEY-IN-FACT FOR SUCH UNIT OWNER TO CONFESS JUDGMENT AGAINST SUCH UNIT OWNER IN ANY COURT OF COMPETENT JURISDICTION IN PENNSYLVANIA, FOR ANY SUCH UNPAID ASSESSMENT(S) OR INSTALLMENTS THEREOF, WHICH APPOINTMENT (BEING FOR SECURITY) SHALL BE IRREVOCABLE; AND FOR SO DOING A COPY OF THIS ARTICLE XIV AND SAID DEED, BOTH VERIFIED BY AFFIDAVIT, SHALL BE A SUFFICIENT WARRANT. THE AUTHORITY GRANTED HEREIN TO CONFESS JUDGMENT SHALL NOT BE EXHAUSTED BY ANY EXERCISE THEREOF BUT SHALL CONTINUE FROM TIME TO TIME AND AT ALL TIMES UNTIL THE DECLARATION SHALL BE TERMINATED.

Article XV
LEASING

15.1. Restrictions: A Unit Owner may lease or sublease his Unit (but not less than his entire Unit) at any time and from time to time provided that (except for a lease or sublease made by Declarant or a Permitted Mortgagee which is either in possession or is a purchaser at judicial sale): (a) no Unit may be leased or subleased for transient or hotel purposes or for an initial term of less than ninety (90) days; (b) no Unit may be leased or subleased without a written lease or sublease; (c) a copy of such lease or sublease shall be furnished to the Executive Board within ten (10) days after execution thereof; and (d) the rights of any lessee or sublessee of the Unit shall be subject to, and each such lessee or sublessee shall be bound by, the covenants, conditions and restrictions set forth in the Declaration, Bylaws and Rules and Regulations and a default thereunder shall constitute a default under the lease or sublease; *provided, however, that the foregoing shall not impose any direct liability on any lessee or sublessee of a Unit to pay any Common Expense assessments on behalf of the Owner of that Unit; and provided further, that if a tenant is in violation of any provision of this Declaration, the Bylaws or the Rules and Regulations, the Association may bring an action in its own name and/or in the name of the Unit Owners to have the tenant evicted and/or to recover damages. The foregoing remedy shall not be exclusive but shall be in addition to all any other remedy or remedies which may be available to the Association. If permitted by present or future law, the Association may recover all of its costs, including court costs and reasonable attorney's fees, and such costs shall be a continuing lien upon the Unit which shall bind the Unit in the hands of the then Unit Owner and such Unit Owner's heirs, successors and assigns. The Association shall give the tenant and the Owner notice in writing of the nature of said violation, and twenty (20) days from the mailing of such notice in which to cure the violation before the Association may file for eviction.*

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No 3rd party
consequencing
for protection
??

Article XVI
INSURANCE

16.1. Generally: The Executive Board shall acquire and pay for insurance required by the Act in addition to and subject to the following:

(a) Such insurance as the Executive Board deems advisable in the operation, and for the protection of the Common Elements and the Units.

(b) The amount of property insurance obtained pursuant to the Act shall be equal to the full insurable replacement value of the insured property, without deduction for depreciation, and in no event shall be less than the aggregate principal amount of all Permitted Mortgages. Such insurance policy(ies) may, at the option of the Executive Board, contain a "deductible" provision in an amount determined by the Executive Board but not to exceed Twenty-Five Thousand Dollars (\$25,000.00).

ACV coverage
is NOT
permitted

Such full insurable replacement value of the insured property shall be limited to the items from the outside edge of Unit Boundaries out. Everything inside the outside edge of the Unit Boundaries shall be the insurable responsibility of the Unit Owner.

(c) Each Unit Owner and the Executive Board hereby waives and releases any and all claims which he or it may have against any other Unit Owner, the Association, the Executive Board and members thereof, the Declarant and their respective employees and agents, for damage to the Common Elements, the Units, or to any personal property located in the Units or Common Elements, caused by fire or other casualty or any act or omission of any such party to the extent that such damage is covered by fire or other form of hazard insurance.

(d) If the act or omission of a Unit Owner, or of a member of his family, a household pet, guest, occupant, or visitor of such Unit Owner shall cause damage to the Common Elements, then such Unit Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Executive Board, to the extent such payments is not waived or released under the provisions of **Subsection (c)** above.

(e) Any release or waiver referred to in **Subsections (c) and (d)** hereof shall be valid only if such release or waiver does not affect the right of the insured under the applicable insurance policy to recover thereunder. The Unit Owners and the Executive Board, with regard to the insurance carried by each of them, shall use their best efforts to see that their insurance carriers agree that such release or waiver does not affect their rights of recovery.

(f) If the Executive Board fails within sixty (60) days of an insured loss to initiate a claim for damages recoverable under the property insurance policy(ies) obtained pursuant to the Act, the holder of any Permitted Mortgage may initiate such a claim on behalf of the Executive Board. At least once every three (3) years, but more frequently if in the Executive Boards' judgment the Property is rapidly appreciating in value, the Executive Board shall cause an appraisal of the Property to be made for the purpose of determining the current full insurable replacement value of the insured property, without considering depreciation, and the Executive Board shall change the amount of property insurance on the Property to the amount of the then current full insurable replacement value of the Property as established by such appraisal, provided that such insurance shall not be decreased below the aggregate principal amount of all Permitted Mortgages.

(g) Each Unit Owner, other than the Declarant, shall notify the Executive Board in writing of any additions, alterations or improvements to his Unit and he shall be responsible for any deficiency in any insurance loss recovery resulting from his failure to so notify the Association. The Executive Board shall use its reasonable efforts to obtain insurance on any such additions, alterations, or improvements if such Unit Owner requests it to do so and if such Unit Owner shall make arrangements satisfactory to the Executive Board to reimburse it for any additional premiums attributable thereto; and in the absence of insurance on such additions, alterations or improvements, the Executive Board shall not be obligated to apply any insurance proceeds to restore the affected Unit to a condition better than the condition existing prior to the making of such additions, alterations, or improvements.

(h) Comprehensive public liability and property damage insurance as required by the Act shall be in such limits as the Executive Board shall deem desirable provided that such limit shall not be less than One Million Dollars (\$1,000,000.00) per occurrence, for personal injury and/or property damage, insuring the Association, the Executive Board members, the

managing agent, if any, and respective agents and employees, and the Unit Owners from any liability to the public or to the Unit Owners, their tenants, guests or invites, relating in any way to the ownership and/or use of the Property or any part thereof, or the use of any part of Declarant's Property by way of the easements and licenses granted under this Declaration.

(i) The Executive Board may obtain such other forms of insurance, including, but not limited to, Executive Board member and officer liability insurance, and such Workmen's Compensation insurance as may be necessary to comply with applicable laws.

(j) The Executive Board shall obtain a fidelity bond or bonds or insurance to protect against dishonest acts on the part of the Executive Board members, officers, agents, employees, volunteers, and all others who handle, or are responsible for handling, funds of the Association. Such bond or bonds or insurance shall name the Association as an obligee or insured and shall be in an amount equal to one hundred and fifty percent (150%) of the then current Common Expense budget or such higher amount as the Executive Board deems appropriate. Such bond or bonds of insurance shall contain a waiver of defense based upon the exclusion of persons who serve without compensation from the definition of "employee" or other appropriate provisions to assure coverage of such persons.

(k) Except as otherwise provided in this Declaration, premiums for all insurance obtained or maintained by the Executive Board, fees and expenses of an insurance trustee, if any, and the cost of any appraisal which the Executive Board deems advisable in connection with any insurance, shall be Common Expenses.

(l) The Executive Board shall use its best efforts to secure policies providing that the policies cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual Unit Owners or any officer or employee of the Executive Board or managing agent, if any, without a prior demand in writing that the Executive Board or managing agent, as the case may be, cure the defect and without a reasonable period of time thereafter in which to cure the same.

(m) Insurance coverage on the furnishings and other items of personal property belonging to a Unit Owner and insurance for his personal liability to the extent not covered by insurance maintained by the Executive Board shall be the responsibility of each such Unit Owner.

Article XVII **INDEMNIFICATION**

17.1. Generally: The Association shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or compelled action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Executive Board or Association) by reason of the fact that the person is or was an Executive Board member or officer, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by that person in connection with such action, suit, or proceeding if that person acted in good faith and in a

manner that person reasonably believed to be in, or not opposed to, the best interest of the Executive Board and the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Executive Board or the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

The Association may indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending, or compelled action, suit or proceeding by or in the right of the Executive Board to procure a judgment in its favor by reason of the fact that he is or was an Executive Board member or an officer against expenses (including attorney's fees) actually and reasonably incurred by that person in connection with the defense or settlement of such action or suit, if that person acted in good faith and in a manner that person reasonably believed to be in, or not opposed to, the best interest of the Executive Board or the Association and except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Executive Board or the Association.

To the extent that an Executive Board member or officer has been successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to in the foregoing two paragraphs, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in connection therewith.

Any indemnification under the first two paragraphs of this Article XVII shall be made by the Executive Board on behalf of the Association only to the extent that an Executive Board member or officer has been successful, on the merits or otherwise, in the defense of any action, suit, or proceeding referred to in the foregoing two paragraphs, or in defense of any claim, issue or matter therein, whereupon he shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in connection therewith.

Any indemnification under the first two paragraphs of this Article XVII shall be made by the Executive Board on behalf of the Association only as authorized in the specific case, upon a determination that indemnification of the Executive Board member or officer is proper in the circumstances because he has met the applicable standard of conduct set forth in the first two paragraphs of this Article XVII. Such determination shall be made (a) by the Executive Board by a majority vote of a quorum consisting of Executive Board members who were not parties to such action, suit or proceeding, or (b) if such a quorum is not obtainable, or, even if a quorum of disinterested Executive Board members so directs, by independent legal counsel in a written opinion, or (c) by a vote of the members of the Association.

Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Executive Board on behalf of the Association in advance of the final disposition of such action, suit or proceeding, as authorized by the Executive Board in the specific case, upon receipt

of an undertaking by or on behalf of the Executive Board member or officer to repay such amount, unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this **Article XVII**.

The sums necessary to discharge the obligations of the Association under this **Article XVII** shall be deemed Common Expenses.

The indemnification provided by this **Article XVII** shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, vote of members of the Association or disinterested members of the Executive Board, or otherwise, both as to act in his official capacity and to act in other capacities while holding such office, and shall continue as to a person who has ceased to be an Executive Board member or an officer.

Any term used in the singular or plural, or in the masculine or feminine or neuter form, shall be singular or plural, or masculine or feminine or neuter as a proper reading may require.

17.2. Cross Indemnification of Declarant and Unit Owners: Declarant and each Unit Owner hereby agree to indemnify, defend and hold harmless the other and each of their respective heirs, personal representatives, employees, agents, successors or assigns, from and against any and all claims, demands, suits or responsibilities or the like, by or on behalf of Declarant, any Unit Owner or any third party, for damages, either property damage or personal injury, arising out of or in any manner related to or connected with the use of the licenses and easements granted such party pursuant to this Declaration. ✓

Article XVIII **DECLARANT'S RIGHTS**

18.1. Control: (a) Until the sixtieth (60th) day after conveyance of twenty-five percent (25%) of the Units to Unit Owners other than Declarant, Declarant shall have the right to appoint and remove any and all officers and members of the Executive Board. Declarant may not unilaterally remove any members of the Executive Board elected by Units Owners other than Declarant.

(b) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units to Units Owners other than Declarant, one (1), or thirty three and one-third percent (33^{1/3}%), of the three (3) members of the Executive Board shall be elected by Unit Owners other than Declarant.

(c) Not later than the earlier of (i) five (5) years after the first conveyance of a Unit to a person other than Declarant, or (ii) One Hundred and Eighty (180) days after seventy-five percent (75%) of the Units have been conveyed to Units Owners other than Declarant, all members of the Executive Board shall resign, and the Units Owners (including Declarant to the extent of Units owned by Declarant) shall elect a new three (3) member Executive Board.

Article XIX
GENERAL PROVISIONS

19.1. Enforcement: Enforcement of the covenants and restrictions set forth in this Declaration, the Act and the administrative rules and regulations adopted pursuant thereto, shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant, condition, or restriction imposed by this Declaration either to restrain violation or to recover damages, or to collect any liens or charges imposed pursuant to this Declaration, and against the Property to enforce any lien created by said covenants, and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Executive Board may also impose fines or other sanctions, the collection of which shall be as provided in this Declaration. The expenses of enforcement by the Association (including reasonable attorney's fees) shall be chargeable to the Unit Owner violating said covenants and restrictions, and shall constitute a lien on the Unit, collectible in the same manner as assessments hereunder. Before an individual Owner may act to enforce any provisions of this Declaration notice must be given to the Executive Board and the Executive Board given a reasonable opportunity to take appropriate action.

19.2. Severability: Invalidation of any one of the covenants or restrictions set forth in this Declaration by judgment or court order shall in no way effect any other provision hereof which shall remain in full force and effect.

19.3. Services: The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Property or the enforcement of this Declaration. The Association may but shall not be required to arrange as an Association expense with others to furnish water, trash collection, sewer services and other common service to each Unit.

19.4. Personal Property and Real Property for Common Use: The Association through action of the Executive Board may acquire, hold, mortgage and dispose of tangible personal property and real property.

19.5. Implied Rights: The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

19.6. Captions: The captions and headings utilized in this Declaration are for convenience of reference only and are in no way to be construed as defining, limiting or modifying the scope or intent of the various provisions of this Declaration.

19.7. Gender: As used in this Declaration, the word person shall mean and include where appropriate, an individual, corporation, partnership or any other entity; the plural shall be substituted for the singular and the singular for the plural where appropriate and words of any gender shall be construed to include any other gender.

19.8. Notices: Any notice required to be sent to the Association or any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepared, to the last known address of the Association and/or the person who appears as an Owner on the records of the Association at the time of such mailing.

19.9. Pennsylvania Municipality Planning Code: This Declaration shall be construed to grant the City of Pittsburgh all of the rights, duties, and responsibilities provided for by the Pennsylvania Municipalities Planning Code (53 P.S. Section 10101, *et seq.*) as amended, and the City of Pittsburgh Zoning Ordinance, as they may refer to the Common Elements and rights of access.

19.10. Terms and Perpetuities: The covenants and restrictions of this Declaration shall run with and bind the Real Estate for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. The Declaration may be terminated during the first twenty (20) year period by an instrument signed by not less than ninety (90%) percent of all Owners, and thereafter by an instrument signed by not less than seventy-five (75%) percent of all Owners. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now-living descendants of Barrack Obama, President of the United States, subject to prior amendment or termination as set forth hereinabove.

19.11. Effective Date: This Declaration shall be effective upon recording in the office of Recorder of Deeds of Allegheny County.

19.12. Binding Effect: This Declaration and all of its terms and conditions shall extend to and be binding upon the Declarant and each Owner and their respective heirs, personal representatives, successors and permitted assigns.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the said Declarant has signed these presents on the day and year first above written.

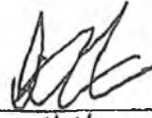
WITNESS:

McCleary Developments, LLC



A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

By:



A handwritten signature in black ink, appearing to be the name 'CHUKWEMENA' written in a stylized, cursive manner.

Name: CHUKWEMENA CHUKWEMENA

Title: Managing Member

EXHIBIT "A"
Submitted Real Estate



ALL that certain piece or parcel of land situate in the 10th Ward, City of Pittsburgh, Allegheny County, known as Lots 65 through 76 in the Margaret G. Semple Plan, as recorded in Plan Book Volume 6, page 240, being more fully bounded and described as follows:

BEGINNING at a point at the intersection of the southwesterly line of 53rd Street and the northwesterly line of Holmes Street; said point also being the southeasterly corner of Lot 65 in the above said Margaret G. Semple Plan; Thence along the said northwesterly line of Holmes Street and the southeasterly line of Lots 65 through 76 of said plan, S 55° 30' W, a distance of 266.10' to the northeasterly line of McCandless Avenue, said point being the southwesterly corner of Lot 76 in said plan; Thence along said northeasterly line of McCandless Avenue and the southwesterly line of said Lot 76, N 44° 45' 24" W, a distance of 116.87' to a point on the southeasterly line of Kent Way, said point also being the northwesterly corner of said Lot 76; Thence along said southeasterly line of Kent Way, and along the northwesterly line of Lot 76 through Lot 65 in said plan, N 55° 30' E, a distance of 267.28' to a point on said southwesterly line of 53rd Street, said point also being the northeasterly corner of said Lot 65; Thence along said southwesterly line of 53rd Street, and the northeasterly line of said Lot 65, S 44° 11' E, a distance of 116.66' to a point on the northwesterly line of said Holmes Street and the southeasterly corner of said Lot 65; said point also being the Point of Beginning.

CONTAINING: 30,668.88 S.F.
0.704 Acres

EXHIBIT "B"

Easements, Licenses and Restrictions

- 1) All easements, restrictions, etc., as shown on the Plats and Plans.
- 2) Defects, liens, encumbrances, adverse claims, or other matters, if any, first appearing in the public records or attaching subsequent to the recording of this Declaration.
- 3) Easements and licenses granted to, *inter alia*, Declarant pursuant to Article VI of this Declaration.
- 4) Easements and licenses granted to, *inter alia*, Unit Owners pursuant to Article VI of this Declaration.



EXHIBIT "C"

**Schedule of Units Identifying Numbers, Location
Type, and Percentage Interests**



<u>Unit No.</u>	<u>Location</u>	<u>Unit Type</u>
101	1st Floor	2bed/2bath
102	1st Floor	2bed/2bath
103	1st Floor	2bed/2bath (Patio)
104	1st Floor	2bed/2bath
201	2nd Floor	2bed/2bath
202	2nd Floor	1bed/1bath
203	2nd Floor	2bed/2bath
204	2nd Floor	2bed/2bath
205	2nd Floor	1bed/1bath (Patio)
206	2nd Floor	2bed/2bath
301	3rd Floor	2bed/2bath
302	3rd Floor	1bed/1.5bath
303	3rd Floor	2bed/2bath
304	3rd Floor	2bed/2bath
305	3rd Floor	3bed/2bath
401	4th Floor	2bed/2bath (Balcony)
402	4th Floor	1bed/1bath (Balcony)
403	4th Floor	2bed/2bath (Balcony)
404	4th Floor	2bed/2bath (Balcony)
405	4th Floor	3bed/2bath (Balcony)
TH1	Townhouse	3bed/2.5bath TH (1st Fl Deck + Rooftop Deck)
TH2	Townhouse	3bed/2.5bath TH (1st Fl Deck + Rooftop Deck)
TH3	Townhouse	3bed/2.5bath TH (1st Fl Deck + Rooftop Deck)
TH4	Townhouse	3bed/2.5bath TH (1st Fl Deck + Rooftop Deck)
TH5	Townhouse	3bed/2.5bath TH (1st Fl Deck + Rooftop Deck)

<u>Sq-Ft</u>	<u>Percentage Interest</u>
1,109	3.37%
1,633	4.96%
1,336	4.05%
1,360	4.13%
960	2.91%
690	2.09%
972	2.95%
1,085	3.29%
671	2.04%
1,081	3.28%
1,111	3.37%
738	2.24%
963	2.92%
1,084	3.29%
1,719	5.22%
1,337	4.06%
833	2.53%
1,115	3.38%
1,290	3.91%
1,722	5.23%
2,030	6.16%