



COOPERATION AGREEMENT

MADE and entered into as of the 26th day of July, 2002, by and between the CITY OF PITTSBURGH, a municipal corporation existing under the laws of the Commonwealth of Pennsylvania ("the City"), and the URBAN REDEVELOPMENT AUTHORITY OF PITTSBURGH, a Redevelopment Authority established and existing under the Urban Redevelopment Law of the Commonwealth of Pennsylvania, Act of May 24, 1945, P.L. 991, as amended (the "URA"),

WITNESSETH:

WHEREAS, in 1995 the Urban Redevelopment Authority ("URA") purchased certain property (the "Property") to be used for a planned residential community called Summerset at Frick Park ("Summerset") and the expansion of Frick Park to the Monongahela River; and

WHEREAS, the URA and the City as well as Summerset Land Development Associates, L.P. ("SLDA") are subject to a Consent Order and Agreement dated July 14, 2000, as amended by a First Amendment to July 14, 2000 Consent Order and Agreement dated August 24, 2000, recorded in the Recorder's Office of Allegheny County, Pennsylvania in Deed Book Volume 11089, page 111 ("Consent Order") with the Commonwealth of Pennsylvania, Department of Environmental Protection ("DEP") setting forth various restrictions with respect to the development of the Property; and

WHEREAS, the construction of the homes in Summerset and the construction of park and open space is envisioned to occur over three or more phases; and

WHEREAS, the URA wishes to convey certain portions of said Property that will not be used for residential purposes in Summerset to the City for park purposes; and

WHEREAS, the conveyance of such "Non-Residential Land" to the City will necessarily be done in phases as exact boundaries are not currently known due to variables that may occur during each phase of Summerset construction and due to constraints set forth in the aforesaid Consent Order;

WHEREAS, subject to the written approval of the Mayor and Director of Parks and Recreation prior to each transfer and subject to the conditions set forth herein, the City will accept such "Non-Residential Land" for park purposes; and

WHEREAS, the City further wishes to hereby dedicate all Non-Residential Land accepted to become additions to and part of Frick Park; and

WHEREAS, the URA and the City, on the basis of the property surveys and proposed development plan, will dedicate not less than 105 acres of "Non-Residential Land" to become a part of Frick Park; and

WHEREAS, the URA will also be dedicating and conveying public improvements to the City throughout the development of the Property (the "Public Improvements"); and

WHEREAS, subject to the written approval of the Mayor and the Director of the Department of Public Works prior to each transfer, the City will accept these Public Improvements for the benefit of the public; and

WHEREAS, all Non-Residential Land and Public Improvements will be transferred by the URA to the City for and in consideration of the sum of one dollar (\$1) per conveyance; and

WHEREAS, the parties now wish to enter into this Cooperation Agreement (the Agreement") to set forth their understanding with respect to the process of transferring the aforementioned Non-Residential Land and Public Improvements to the City and corresponding maintenance obligations with respect to Summerset.

NOW THEREFORE, in consideration of the mutual promises and intending to be legally bound hereby, the parties agree as follows:

1. INCORPORATION OF RECITALS: The above recitals are incorporated herein by reference.

2. DEFINITIONS:

A. Public Improvements: Shall include various improvements within the environs of Summerset and within the "Non-Residential Land" for the benefit of the public. The design of said Public Improvements which shall be dedicated to the City for maintenance shall be reviewed and approved by the City of Pittsburgh Department of Engineering and Construction and the Pittsburgh Water and Sewer Authority prior to construction. The types of public improvements and the corresponding maintenance responsibilities are generally as follows:

- (1) Streets: Streets constructed to the construction standards of the City within right-of-way dedicated by a recorded subdivision plan shall be accepted and maintained by the City. Streets to be transferred in Phase 1A are: Summerset Drive, Parkview Boulevard, Frick Lane, Hasley Lane, and Crescent Place as shown on Plan A, attached hereto.

- (2) Crescent Park and Other Open Space Areas abutting Summerset planned as additions to Frick Park: For public open spaces constructed to City standards in accordance with a plan approved by the City of Pittsburgh Department of Engineering and Construction, the City will accept ownership and maintenance responsibilities and will provide the same degree of service as it provides in other City parks/property. The City retains full discretion as to whether it retains maintenance responsibilities or delegates them to an Association of Owners at Summerset upon request of said Association. It is acknowledged that certain duties may not be delegable due to union rules. Any additional proposed improvements or maintenance responsibilities, whether or not in excess of City standards, may be undertaken by the Association or SLDC upon entering into a prior written agreement with City.
- (3) Sidewalks and Curbs: Sidewalks and curbs constructed to City standards within rights-of-way dedicated by a recorded subdivision plan shall be maintained, pursuant to applicable law by the adjoining property owner or, if so arranged, by an Association of Owners.
- (4) Water Mains & Storm and Sanitary Sewers: Water Mains and Sewer (sanitary and storm) Lines constructed by the URA within public rights-of-way shall become part of the Water and Sewer System leased from the City by PWSA, and the City shall have no responsibility for maintenance thereof or for "related work" as referenced in the "Nine Mile Run Phase I Agreement between the URA and PWSA dated March 9, 1999 and any supplements thereto.
- (5) Retaining Walls: Retaining Walls constructed to the construction standards of the City within rights-of-way dedicated by a recorded subdivision shall be accepted and maintained by the City. The URA shall provide a detailed map of all retaining walls to City (Department of Public Works ("DPW")) upon completion of Phase 1A of the Summerset Development.

- (6) Lighting: The City shall accept ownership and maintenance responsibility, including payment of the electricity costs, for street lights constructed to the standards of the City within public rights-of-way. In the event special architectural lighting is installed, the City will not accept ownership and maintenance of the light fixture but will, however, pay the electricity costs for these lights. Upon completion of Phase 1A, the URA shall provide DPW with a list of all lights which the City is to own and maintain.
 - (7) Pavilions & stone signs: Unless other arrangements are made with adjoining property owners or an association of owners, the City shall accept ownership and maintenance responsibility for Pavilions located within Frick Park. Upon completion of Phase 1A, the URA shall provide DPW with a map detailing the location of all such pavilions. City shall not be responsible for stone entry signs and pavilions set forth on Plan B, which is attached hereto.
 - (8) Landscaping: The City shall accept ownership and maintenance of walls, pavements, overlooks and plantings in areas to be dedicated as additions to Frick Park, excluding Crescent Park and similar future open spaces cited in item 2 above. The URA shall ensure that a Landscape Maintenance Plan is provided to DPW for trees, plantings, soils used, recommended maintenance schedules, and suppliers of materials used prior to transfer to City.
- B. Non Residential Land: Land not used for residential or for public streets or rights of way in Summerset. Such Non-Residential Land will be transferred to the City to become part of Frick Park. Non-Residential Land proposed to be transferred is shown on the map attached hereto as Exhibit A entitled "Summerset - Public Park Dedication Plan" (attached hereto and incorporated herein). It is understood that the exact boundaries of such Non-Residential Land will remain variable until each phase is completed; however, no less than 105 acres shall be added to Frick Park.
- C. Upon completion of each future phase of development in Summerset, this Agreement shall be amended in writing as requested by either party to reflect any new ownership and/or maintenance responsibilities of City.

- D. A summary list of warranties for all items (including but not limited to trees, landscape materials, lights and building materials that City is undertaking responsibility for) shall be provided to City by the URA. Where required and permitted under warranty terms, URA shall ensure proper transfer is effected from it or SDLA to City.

3. TRANSFER OF NON-RESIDENTIAL LAND TO THE CITY:

- A. Upon completion of a construction phase of Summerset or, upon earlier determination and designation of property as "Non-Residential Land" by the URA, the URA will notify the City in writing of its plans to convey a parcel to the City.
- B. Upon receiving such notification and absent any objection thereto including but not limited to those factors set forth in Sections 3E and 3G herein the City will forward to the URA written approval of the Mayor and the Director of Parks and Recreation to accept the parcel.
 - (1) In the event of an objection by City to such transfer, the City will provide the URA with a written statement of objections.
 - (2) Within thirty (30) days of receiving such objections, the URA shall prepare a written plan to as to how such objections shall be cured to meet the City's approval.
 - (3) The City will be under no obligation to accept such parcel of Non-Residential Land until its objections are cured.
- C. Thereafter, the URA will deliver to the City a deed conveying the specified Property to the City for and in consideration of one dollar (\$1). URA will pay all realty transfer taxes and recording fees.
- D. It is agreed that the deed shall further include language providing that:
 - (1) The Property to be transferred, and each and every improvement made to the property, shall be used only and exclusively for purposes of a public park (i.e. Frick Park) and the City shall not: (a) construct or permit the construction of any structure or other improvement on the Property except such improvements that are consistent with the use of the

Property exclusively for the purposes of a public park (i.e. Frick Park) or (b) place or permit the placement of any signs, billboards or other advertising on the Property other than directional signs and historical markers appropriate for a public park that do not exceed 4 square feet in size; and

- (2) The deed shall also provide that, subject to all applicable laws relating to the use and/or disposition of park property in the event that the particular parcel transferred is no longer used for public park purposes or otherwise violates any restrictive covenant provided in the deed, the URA has the right to enjoin said nonconforming use.

E. Paragraph 26 of the Consent Order contemplates that upon transfer of land to the City, the DEP will terminate the URA's duties and obligations thereunder. Pursuant to Paragraph 27, the City shall be responsible to undertake such duties and obligations. It is understood and agreed by the parties that the City is not obliged to accept any specified parcel of Property in the event that:

- (1) The City has not received necessary grant or other monies needed to assure proper stabilization of any proposed transferred parcel in compliance with the Consent Order, including Paragraphs 13(a) and (b), and/or other applicable state and federal laws; or
- (2) The City has not received necessary grant or other monies needed to comply with all applicable state and federal environmental or other laws that do or will apply to any such transferred parcel relating to environmental concerns including but not limited to surface water, groundwater, soil, and slag thereon.

F. The URA will continue to be responsible for all obligations and responsibilities set forth in the Consent Order not affecting any transferred parcel of Property to the City.

G. Notwithstanding the fact that conveyances of Property affected by environmental issues are not contemplated to be effected until remediation required by the Consent Order and any amendments thereto is complete, it is agreed that the URA will also continue to be responsible for all obligations and responsibilities (including fines and penalties) regarding the implementation and maintenance of all such affected Property (and any affected public improvement)

after transfer to the City. Such implementation and maintenance shall include but not be limited to the proposed seep interception system to be installed pursuant to the plan submitted to the DEP.

- H. The City further retains the right to delay acceptance of a parcel of Property in the event that the parcel remains adjacent to ongoing immediate construction such that it poses a potential hazard to park-goers.
- I. In order to implement any necessary improvements to City property, upon request, the URA will grant the City a perpetual right of entry through its property as required.

4. TRANSFER OF PUBLIC IMPROVEMENTS TO THE CITY:

- A. Upon completion of a construction phase of Summerset or, upon earlier determination and designation by the URA of property as a "Public Improvement" as defined herein, the URA will notify the City in writing of its intent to convey such Improvement to the City. At this time, the URA will forward "as-built" drawings to the City's Departments of Engineering and Construction and Public Works to ensure compliance with City specifications.
- B. Upon receiving such notification and absent any objection thereto, the City will forward to the URA written approval of the Mayor and Director of Public Works to accept the proposed Public Improvement.
 - (1) In the event of an objection by City to such transfer, the City will provide the URA with a written statement of objections.
 - (2) Within thirty (30) days of receiving such objections, the URA shall prepare a written plan to as to how such objections shall be cured to meet the City's approval.
 - (3) The City will be under no obligation to accept such public improvement until its objections are cured.
- C. The URA shall assign all warranties for public improvements in favor of the City prior to any transfer.
- D. Thereafter, the URA will deliver a deed of transfer conveying the specified Public Improvement to the City for and in consideration of

one dollar (\$1). URA will pay all realty transfer taxes and recording fees.

- E. The City and SLDA will enter into a comprehensive agreement detailing maintenance obligations of each party regarding the Summerset development. Attached hereto and incorporated herein as Exhibit B are the Public Offering Statements and Declarations of Summerset Land Development Associates (collectively, the "Declarations"), which detail the maintenance responsibilities of the future Associations of homeowners and tenants. It is agreed that the City shall be responsible for maintenance of the public improvements that it has accepted as is further set forth in Section 2A and the exhibits referenced therein. It is contemplated by the parties hereto that all other maintenance responsibilities shall remain with the SLDA and/or the Homeowners' Association (the "Association").
- F. All future Agreements between the URA, the City, SLDA and/or the Homeowner's Association and any Declarations or side agreements between such parties shall be consistent with this Cooperation Agreement and any amendments thereto.

5. TERM OF AGREEMENT: The term of this Agreement shall commence on the date set forth above, and conclude upon completion of all transfers of Non-Residential Land and Public Improvements contemplated in conjunction with the development at Summerset.

6. GOVERNING LAW: This Agreement shall, in all respects, be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania.

7. AMENDMENT AND TERMINATION: This Agreement contains all terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or to bind any of the parties hereto. This Agreement may not be changed, modified, discharged or extended except by written amendment, duly executed by the parties. It is agreed by both parties hereto that no Amendment to the Summerset at Frick Park Declaration or vote of the Association can serve to vary the terms of this Cooperation Agreement.

8. AUTHORIZING RESOLUTIONS: This Agreement is entered into by the City of Pittsburgh pursuant to Resolution No. 135, effective March 20, 2002, and by the URA pursuant to Resolution No. 59, adopted February 14, 2002.

9. PITTSBURGH HOME RULE CHARTER: This Agreement is subject to the provisions of the Pittsburgh Home Rule Charter.

10. ASSIGNMENT: Neither party to this Agreement may assign its rights or duties to another person or political subdivision, except with the written consent of the other party to this Agreement.

11. ANTI-DISCRIMINATION: The URA shall not discriminate in any obligations performed hereunder on the basis of race, color, religion, ancestry, national origin, place of birth, sex, age, disability, non job-related handicap, or sexual orientation. The URA shall comply with the applicable provisions of the Pittsburgh Code, Title Six - Conduct, Article V-Discrimination, and any amendments thereto.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the day and year first above written.

ATTEST:

CITY OF PITTSBURGH

Angeline Moraw

By: [Signature]

Mayor

WITNESS:

Per Wette

By: [Signature]

Director, Department of Planning

WITNESS:

Vermetta Liggins

By: [Signature]

Director, Department of Parks & Recreation

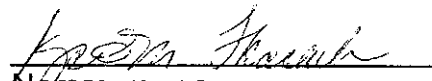
WITNESS:



By: 
Director, Department of Public Works

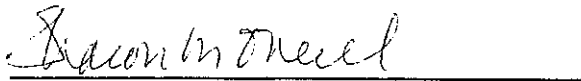
ATTEST:

URBAN REDEVELOPMENT
AUTHORITY OF PITTSBURGH


Name: Kathleen M. Tkachik
Title: Assistant Secretary

By: 
Name: Mulugetta Birru
Title: Executive Director

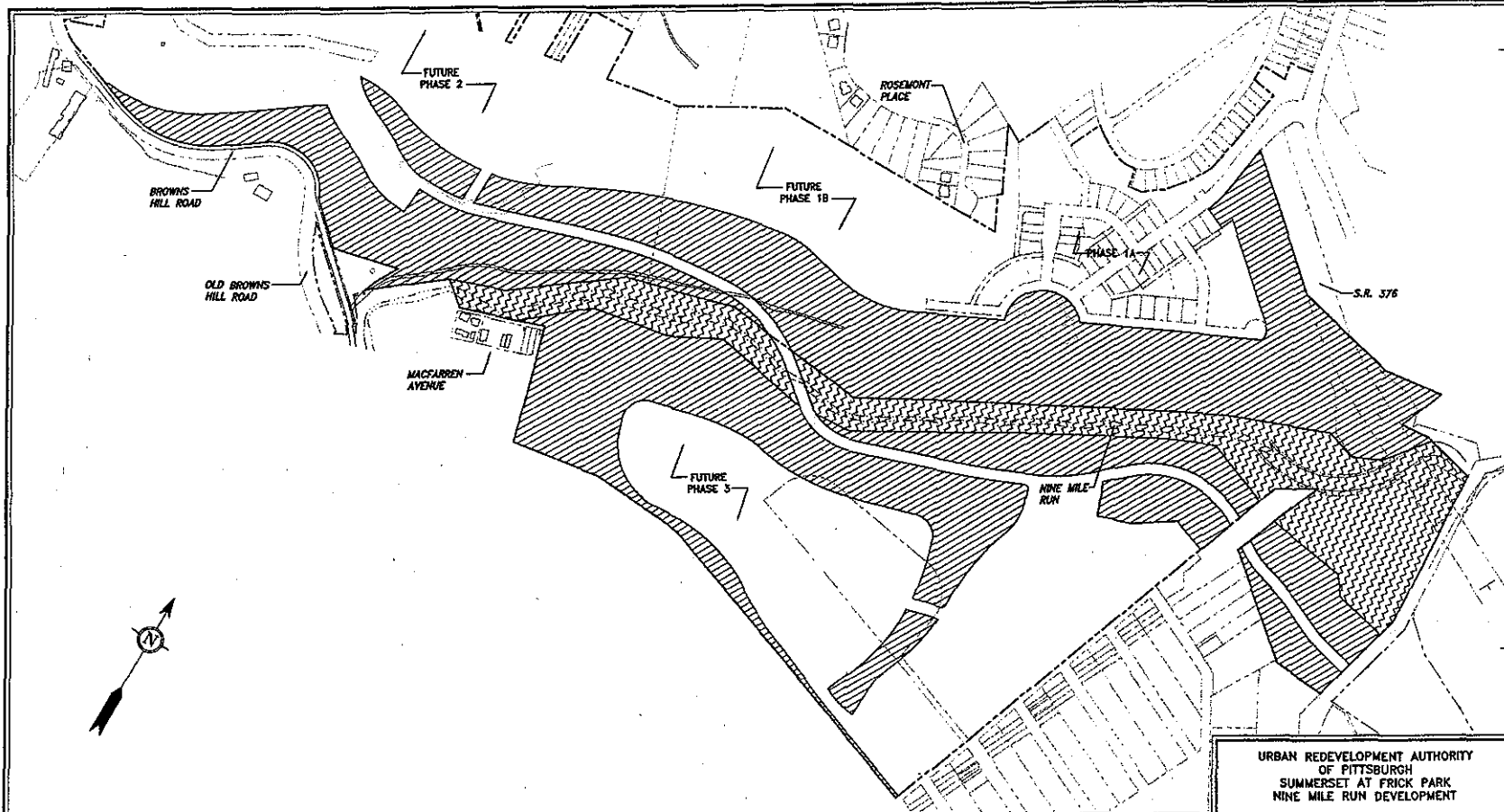
APPROVED AS TO LEGAL FORM FOR URA:



EXAMINED BY: 
Assistant City Solicitor

APPROVED AS TO FORM: 
City Solicitor

Yss/Frick Park/9 Mile Run Coop: FINAL (7/2/02)



DATE	BY	REVISIONS
01/01/02	PC	1

DATE	BY	REVISIONS
01/01/02	PC	1

C.A. _____ WORK
RES. NO. _____ APPROVED _____

LEGEND

AREA PREVIOUSLY DEDICATED - 22.0 ACRES



AREA TO BE DEDICATED - 63.0 ACRES



TOTAL AREA DEDICATED - 165.8 ACRES

SCALE: 1" = 200'



URBAN REDEVELOPMENT AUTHORITY
OF PITTSBURGH
SUMMERSET AT FRICK PARK
NINE MILE RUN DEVELOPMENT

CITY OF PITTSBURGH
DEPARTMENT OF ENGINEERING
AND CONSTRUCTION

PUBLIC PARK DEDICATION PLAN

SCALE AS SHOWN SHEET NO. _____
DATE 05/28/02 1 of 1 ACCESSION NO. _____
CASE NO. _____

Summerset AT FRICK PARK

A Planned Community

DECLARATION

SUMMERSET LAND DEVELOPMENT ASSOCIATES, LP, a Pennsylvania limited partnership to be known as the "Declarant," makes this Declaration on the 22nd day of JUNE, 2001.

STATEMENT OF PURPOSE:

A. The Declarant is developing upon real property in Pittsburgh, in Allegheny County, Pennsylvania, a traditional neighborhood development to be known as Summerset at Frick Park, a Planned Community. Unlike typical suburbs which separate homes from businesses and force dependence on the automobile, the neighborhood design is intended to mix residential uses in a way that enlivens the community.

B. Summerset is being built around a portion of the stream known as Nine Mile Run, close to where it meets the Monongahela River. Only five miles from downtown Pittsburgh and surrounded by residential neighborhoods, the site was used prior to 1972 for the disposal of slag. The site is now being redeveloped and reclaimed in a cooperative effort between the City of Pittsburgh, the Urban Redevelopment Authority of the City of Pittsburgh ("URA") and the Declarant under the strict supervision of the Pennsylvania Department of Environmental Protection. The City's effort includes creation of a public park along the stream valley, linking Frick Park to the Mon River as part of the Nine Mile Run Greenway Project.

C. There is a master plan for Summerset based on the design principles of traditional neighborhood development, which establishes pedestrian-friendly communities through the use of narrow lot widths, smaller lot sizes, narrower, tree-lined streets, sidewalks, and, in some areas, rear

garage access through the use of alleys. Small parks and open space are incorporated throughout the community.

D. Traditional neighborhood development also mixes housing types and uses to create a vibrant community. Unlike typical suburbs that separate homes from businesses and force dependence on the automobile, the neighborhood design may include live/work units and may include small businesses that serve residents of the community.

E. The Declarant records this Declaration for Phase 1A of Summerset to establish an owners' association to enhance community life, to institute and enforce certain covenants and restrictions, to provide for further maintenance of the community, and to allow for self-governing of the community by its owners.

F. This Declaration is intended to comply with the requirements of the Pennsylvania Uniform Planned Community Act ("UPCA"), 68 Pa. C.S.A. §5101 et seq. If there is a conflict between this Declaration and the UPCA, the UPCA must prevail.

DECLARATION:

The Declarant, is the equitable owner of property shown on a Plan of Summerset at Frick Park Phase 1A, recorded in Plan Book V.226, Pages 184-193 in the Office of the Recorder of Deeds of Allegheny County, Pennsylvania (the "Phase 1A Plan"). Declarant, joined by the Urban Redevelopment Authority of Pittsburgh solely in its capacity as the legal owner of the property, submits all of the property shown on the Phase 1A Plan to this Declaration and declares that the property shown on that plan is hereby subjected to the covenants, restrictions and easements of this Declaration, which are intended to run with the land and be binding on all parties and heirs, successors and assigns of parties having any right, title or interest in all or any part of that property.

ARTICLE I:

Definitions

The following definitions apply wherever the capitalized terms appear in this Declaration. Additional terms that apply only to one article are defined the first time they appear.

1.1 **Apartment Lot.** "Apartment Lot" is a Lot intended to be improved by a Building or Buildings containing rental Residential Units.

1.2 **Articles.** "Articles" are the Articles of Incorporation of the Association.

1.3 Assessments. "Assessments" is the collective term for the following Association charges:

a) **General Assessment.** The "General Assessment" is the amount allocated among all Members to meet the Association's annual budgeted expenses, as described in Section 10.2

b) **Townhouse Exterior Maintenance Assessment.** The "Townhouse Exterior Maintenance Assessment" is the amount allocated among the For-Sale Townhouse Units to meet the Association's annual budgeted expense for the exterior maintenance of such Units, as described in Section 10.3.

c) **Individual Unit Assessment.** An "Individual Unit Assessment" is a charge made to a particular Unit for charges relating only to that Unit, as provided in Section 10.5.

d) **Special Assessment.** A "Special Assessment" may be charged to each Unit for capital improvements or emergency expenses, in accordance with the provisions of Section 10.4.

1.4 Association. "Association" is the Summerset Neighborhood Association, a Pennsylvania nonprofit corporation, its successors and assigns. The Association, whose members are the Owners, is responsible for maintaining certain properties and facilities in Phase 1A, as well as future phases of Summerset when added pursuant to Section 2.3, and of enforcing the Declaration.

1.5 Building. "Building" is any building containing Residential Units including Live/Work Units constructed on any Lot. If permitted by the Summerset Design Code, a Building may extend over several Lots, such as a townhouse building where the Units will be conveyed separately but will share party walls. The Summerset Design Code may permit the construction of two or more Buildings on a Lot.

1.6 Bylaws. "Bylaws" are the Bylaws of the Association as amended from time to time.

1.7 City: "City" is the City of Pittsburgh.

1.8 Common Elements. "Common Elements" are real property, labeled or otherwise described as such on Exhibit "B", and any real property, so labeled or described on any plan referred to in any amended declaration recorded pursuant to Section 2.3 as well as any other real property conveyed to and accepted by the Association for the common use and enjoyment of all Owners. "Common Elements" also include any improvements on that real property, all utilities, utility easements and other easement rights or personal property for the Owners' common use, and any other property of any type specifically designated as Common Elements. The term "Common Elements" includes "Controlled Facilities" as those are defined in Section 4.2.

1.9 Common Roads. "Common Roads" are the streets located within Summerset that are intended for automobile traffic. Most of the Common Roads are intended to be dedicated to the

public and will be maintained by the City. Any Common Roads not dedicated to the public shall be part of the Common Elements.

1.10 Condominium Unit. "Condominium Unit" is a Unit in a Building submitted to the Pennsylvania Uniform Condominium Act, 68 Pa.C.S.A. §3101 et. seq.

1.11 Controlled Facilities. "Controlled Facilities" are any real estate, whether or not a part of a Unit, that is not owned by the Association but is maintained, improved, repaired, replaced, regulated, managed, insured or controlled by the Association.

1.12 Consent Order. "Consent Order" is the Consent Order and Agreement, dated July 14, 2000, as amended on August 24, 2000 which sets out requirements for redeveloping Summerset, including requirements designed to maintain the quality of the soil, control the grading of the site and the use of ground water. Parties to the Consent Order are the Commonwealth of Pennsylvania, Department of Environmental Protection, the URA, the City of Pittsburgh and the Declarant.

1.13 Declarant. "Declarant" is Summerset Land Development Associates, LP. The Declarant may designate a successor or successor declarants to take and hold some or all of its respective rights as Declarant under this Declaration.

1.14 Declarant Control Period. "Declarant Control Period" is the time period extending from the date of recording of this Declaration until the earliest occurring of any of the following events:

a) The date seventy five percent (75%) of the Units that may be created in all of phases of Summerset have been conveyed to Purchaser Owners (as hereinafter defined).

b) Seven (7) years from the date of conveyance of the first Unit to a Purchaser Owner; or

c) Voluntary termination by Declarant of the Declarant Control Period by written notice to the Association of such termination and the filing by Declarant of a document certifying to the termination of the Declarant Control Period.

1.15 Declaration. "Declaration" is this Declaration creating the portion of Summerset which will be developed as Phase 1A and any amendment to the Declaration.

1.16 Design Code. The "Design Code" establishes the plan for the development of Summerset through its regulation of land use, architecture and environment. The Summerset Design Code will be adopted by the Declarant and may be amended from time to time. The Summerset Design Code does not need to be recorded to be effective but can be obtained from the Summerset Design Review Board.

1.17 Design Review Board. The "Design Review Board" is the panel established to administer the Summerset Design Code, and described in Article V.

1.18 Executive Board. The "Executive Board" is the governing body of the Association.

1.19 For-Sale Townhouse Units. "For -Sale Townhouse Units" are Residential Units in a townhouse Building subdivided for sale with each Unit on its own individual Lot and held for sale or sold to a Purchaser Owner.

1.20 Limited Controlled Facilities. "Limited Controlled Facilities" are as defined in the UPCA.

1.21 Live/Work Unit. "Live/work Unit[s]" are free-standing or townhouse-style Buildings that are intended to have both a residential unit and space for an office, studio, or other small business.

1.22 Lot. A "Lot" is a parcel of land shown on the recorded Phase 1A Plan, and any future recorded amendments thereto or additions thereto within Summerset.

1.23 Master Plan. The "Master Plan" is the initial plan for the development of the Master Plan Area. The Master Plan is subject to change based on market conditions, governmental requirements and other modifications that may be made as development progresses if approved by the City and the URA. A copy of the current Master Plan is available in the sales office of the Declarant.

1.24 Master Plan Area. The "Master Plan Area" is the area of approximately 244 acres, the boundaries and area of which are more fully described in Exhibit "A." A large portion of the area is devoted to a public park, Frick Park, and the balance of the area is intended for development as a single, unified traditional neighborhood development to be known as Summerset at Frick Park.

1.25 Member. Each Owner is a "Member" of the Association, as provided in Article VII of this Declaration.

1.26 Owner. "Owner" is the record owner, whether one or more persons or entities, of the fee simple title to any Unit. Owners shall not include those having such interest merely as security for the performance of an obligation.

1.27 Phase 1A. All those certain lots or parcels of land situate in the 14th Ward of the City of Pittsburgh, County of Allegheny and Commonwealth of Pennsylvania being all of Lots Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 47, 48, 49, 50, 60, Parcels A, B, C, D, E, F, G and H in Revision No. 1 to Summerset at Frick Park of record in the Recorder's Office of Allegheny County in Plan Book Volume 226, pages 184 to 193.

1.28 Plan. "Plan" is the Recorded Phase 1A Plan and any other plan Recorded with this Declaration or as an amendment to this Declaration.

1.29 Purchaser Owner. "Purchaser Owner" is any Owner who is not the Declarant or a successor Declarant as defined by the UPCA and who is not a purchaser who intends to be in the business of buying and selling Units in Summerset. "Purchaser Owner" includes apartment Building Owners and any other Owner who owns and rents a Unit or Units.

1.30 Recorded. "Recorded" means recorded in the Office of the Recorder of Deeds, Allegheny County.

1.31 Residential Unit. "Residential Unit" is an individual dwelling unit whether located on its own Lot or contained in a townhouse building or other attached dwelling type (such as in each half of a duplex unit), or in apartment or condominium building, a residential dwelling within a mixed-use building.

1.32 Summerset. "Summerset" refers to the planned community created by this Declaration in Phase 1A. The reference includes future phases provided for in Article II.

1.33 Unit. "Unit" is every Lot, whether or not improved by a Building and every Condominium Unit in Summerset.

ARTICLE II:

Flexible Planned Community

This article describes the real property which will initially be included in the planned community of Summerset and provides the method by which the community may be modified and expanded.

2.1 Property Subject To This Declaration. The property which is subject to this Declaration is Phase 1A.

2.2 Flexible Planned Community. Summerset is a flexible planned community under the UPCA. Real estate may be added to Phase 1A, subject to the conditions stated below and in the UPCA.

2.3 Reservation By Declarant Of Certain Rights. Declarant reserves the following rights, subject to the conditions and limitations described below:

a) **Additions To Phase 1A.** The right, but not the obligation, to add to Phase 1A any property within the Master Plan Area and to create Units, Common Elements and Limited Common Elements, Controlled Facilities and Limited Controlled Facilities within such addition.

b) **Convertible Real Estate.** The right, but not the obligation, to create Units, Common Elements, and Limited Common Elements, Controlled Facilities and Limited Controlled Facilities

upon any Apartment Lot identified on Exhibit "B" including by converting of any rental Residential Units thereon to Condominium Units for sale or by subdividing a rental townhouse Building into Residential Units for sale on their own individual Lots. The maximum number of Residential Units that exists or may be created on any Apartment Lot is stated on Exhibit "B." Although the conversion from a rental Residential Unit to a Condominium Unit may effect a small change in the allocation of votes to the Units under the formula established in Section 6.5 it will not change the number of Residential Units shown on Exhibit "B" or the allocation of common expenses. Exhibit "B" also identifies the Lots which are intended to be developed for townhouse Residential Units for sale on their own individual Lots. These are Lots 12, 24, 32 and 50. These larger Lots will be subdivided for sale by legal description after the townhouse Buildings are completed. The maximum number of Residential Units that may exist on these Lots is shown on Exhibit "B".

c) Withdrawable Real Estate. No right to withdraw property from any portion of Phase 1A Summerset is retained.

d) Amendment to the Declaration. Declarant may exercise the above rights by recording an Amendment to the Declaration. The Amendment to the Declaration, adding any property to Phase 1A may modify or add to the provisions of this Declaration as it applies to the additional property if needed to reflect the different character of the additional property and it may, among other modifications, create "Withdrawable Real Estate" and "Convertible Real Estate," (as defined in the UPCA) within such additions and define what are "Controlled Facilities" "Limited Controlled Facilities" and "Limited Common Elements" in such additions differently than they are defined for Phase 1A; and may create an assessment procedure by which certain Units in the additions are assessed separately for Limited Common Elements, Controlled Facilities or Limited Controlled Facilities.

e) Limitations. Other than as explicitly stated above and in the Sections that follow, there are no limitations on these rights other than limitations created by or imposed by operation of law. These reserved development rights may be exercised with respect to different portions of the Master Plan Area at different times. No assurances are made as to the boundaries of those portions or the order in which the portions will be added. Exercising any development right in any portion of the Master Plan Area does not necessarily mean the right will be exercised in the remainder of the Master Plan Area.

2.4 Time Limit. Unless sooner terminated by a Recorded written consent of the Declarant, Declarant's rights to add real estate and to create units, limited common elements or both, are hereby reserved for the greatest period allowed by law.

2.5 Adjustment of Interests in the Association. Each Unit Owner's interest in the Association, relative voting strength in the Association and share of common expenses liability may be increased or decreased by actions pursuant to any option reserved under Section 2.3 in accordance with the formulas provided in Article VI (governing voting rights) and Articles IX and X (governing assessments).

2.6 Statements.

a) Maximum Number of Units. The maximum number of Units that may be created within all of the Master Plan Area is approximately 713. The maximum number of Units that may be created within any particular portion of the Master Plan Area that may be added to Summerset is 5.68 per gross acre.

b) Use. All of the Units in Phase 1A will be restricted exclusively to residential use. However, residential use may include the Live/Work Units and home based businesses described in Section 11.1.

c) Architectural Style. All buildings and units that may be created in the future upon any convertible or additional real estate will be compatible with other buildings and units that are devoted to similar use in Summerset in terms of architectural style, quality of construction, principal materials employed in construction and size.

d) Use Restrictions. Restrictions in the Declaration affecting use, occupancy and alienation of Units may differ for Units created within any additional and convertible real estate but they will be compatible with the traditional neighborhood concept described in the Statement of Purpose.

e) Further Improvements. No assurances are made as to the type of improvements and Limited Common Elements that may be made or created upon or within each portion of the additional or convertible real estate, nor are any assurances made as to the locations of any buildings or other improvements that may be made within the additional and convertible real estate.

f) Limited Common Elements. No assurances are made that any Limited Common Elements created within any additional and convertible real estate will be of the same general types and sizes as those within other parts of the planned community, or that the proportion of limited common elements to units created within any additional real estate will be approximately equal to the proportion existing within other parts of the planned community.

g) Failure To Follow Master Plan Or To Make Additions. No assurances are given that any additional real estate within the Master Plan Area will be added and no assurances are given that when, and if, the additions are made the Master Plan will remain the same as it is today or that the Master Plan, as it is today, will be followed. If the additions are not made, none of the assurances provided by this Article 2 will apply to the remaining Master Plan Area.

2.7 Addition of Property by Association. After the expiration of the Declarant Control Period, the Executive Board may add additional property of any type to Summerset by an Amended Declaration as above provided.

2.8 Relationship to Surrounding Property. The construction of Summerset is intended to follow design principles that allow interconnectivity of streets with neighboring communities. As provided in Section 3.3, the Declarant has reserved for itself, its successors and assigns and for the Association various street and utility easements to allow the development of Summerset, which may be assigned for the benefit of other properties which are adjacent to, or reasonably near, Summerset (including property separated from Summerset by a public road) whether or not such properties are developed as part of Summerset.

2.9 Master Association.

a) **Reservation of Right.** The Declarant intends to develop the entire Master Plan Area as a single community with shared facilities. However, the Declarant anticipates that the time for development may extend beyond the seven years currently permitted under the UPCA. Therefore, the Declarant reserves the right to submit Summerset to the provisions of §5222 of the UPCA concerning the creation of a Master Association by the execution and recording of an instrument (the "Master Declaration"). For information and not as a limitation, the greatest period presently allowed under the UPCA for such submittal is seven years after the recording of the Declaration.

b) **Operation.** The governing body of the Master Association shall initially be elected by the Executive Boards of the Association and of each additional planned community association, if any, created within future phases of Summerset with each such Executive Board electing three members of the Master Association governing board. Initially, the Master Association shall operate to share information and coordinate the operations of the associations. At a time determined by the Declarant in the Master Declaration, but no later than seven years after its recording, all of the powers of the Summerset planned community associations named in the Master Declaration shall be delegated to, and accepted by, the Master Association, the governing board shall be elected by all of the Members of the constituent associations, and separate Executive Boards of each constituent association shall not be elected.

c) **Common Elements.** The Common Elements of each of the associations comprising the Master Association shall be available to all members of all such associations.

2.10 Models; Sales and Management Offices. The Declarant reserves for itself and its assigns the right to maintain a sales office, a management office and an unlimited number of models within Summerset. These facilities may be located on any Lot or in any Unit in Summerset and may be relocated from time to time at the Declarant's discretion. The sales office, management office and models may be owned by different entities, including builders and other entities that are unrelated to the Declarant. Subject to state law and local ordinances, the Declarant or its assigns may maintain signs on the Common Areas and on the sales office, management office and models advertising Summerset.

ARTICLE III:

Easements

Each Unit is benefitted by, and burdened by, certain easements.

3.1 Easements in Favor of the Association. The Declarant hereby reserves for the Association and its assigns the following easements, which shall benefit Summerset:

a) **Utility Easements.** A blanket easement upon, across, over, through, and under all real estate in Summerset for ingress, egress, installation, replacement, repair and maintenance of all public and private utility and service systems. These systems include, but are not limited to, water, sewer, irrigation systems, drainage, telephone, electricity, television, security, cable or communication lines and other equipment. By virtue of this easement the Association, and its successors or assigns, may install and maintain facilities and equipment, excavate for such purposes and affix and maintain wires, circuits and conduits. However, the exercise of this easement must not unreasonably disturb each Owner's right of quiet enjoyment of his Unit. Further, the Association shall notify affected Owners (except in an emergency) and shall restore the affected property to its original condition as nearly as practicable.

b) **Police Powers.** A blanket easement throughout Summerset for private patrol services, and for police powers and services supplied by the local, state and federal governments. The reservation of such easement does not imply that any such service shall be provided.

c) **Drainage, Erosion Controls.** A blanket easement and right on, over, under and through the ground within Summerset to inspect, maintain and to correct drainage of surface water and other erosion controls. This easement includes the right to cut any trees, bushes or shrubbery, grade soil, or to take any other action reasonably necessary for health or safety or to comply with governmental requirements. The Association shall notify affected Owners (except in an emergency) and shall restore the affected property to its original condition as nearly as practicable.

d) **Encroachment.** An easement for any improvements constructed on the Common Elements which encroach on any Unit, whether due to any minor deviation from the subdivision plan of Summerset or the settling or shifting of any land or improvements.

e) **Retaining Walls.** An easement for maintenance of retaining walls that encroach on individual Units.

f) **Maintenance of Common Elements.** To the extent reasonably necessary, an easement over any Unit for maintenance of the Common Elements, and Controlled Facilities.

3.2 Relationship between Lots.

a) Intent. The design for Summerset is intended to maximize land usage and sense of community by providing gracious squares and parks while offering small but private yards for individual use. As provided by the Summerset Design Code, certain buildings within Summerset may be attached as townhouses, or may be detached but placed on or near the property line. The easements in this Section 3.2 are intended to provide guidelines for reasonable cooperation between neighbors. The Association may make rules for maintenance and use of easement areas and shared improvements that shall be applied uniformly to all Units similarly configured.

b) Lot Lines. The Declarant may, by exercising the powers reserved in Section 2.3 through 2.6, redefine Lots prior to sale by dividing or combining Lots or portions of Lots and adjusting the boundary of a Lot and by recording an amended plan pursuant to §5210(e) of the UPCA. Declarant may also redefine boundaries of Lots pursuant to UPCA §5214. Furthermore, subject to the provisions of Section 2.3 through 2.6, Apartment Lots that are developed as multi-family housing may be subdivided through the use of a condominium or townhouse form of ownership or other appropriate method.

c) Structural Party Walls. Each Owner grants to the Owner of each adjacent Lot the right and easement to maintain and to utilize any exterior or interior wall of a Building that forms a party wall between them. A wall will be considered a party wall only if it provides structural support for the Buildings, or parts of a Building, on more than one Lot. Maintenance of the surface of the party wall shall be the sole responsibility of the Owner whose Building contains such surface. Each Owner shall be liable and responsible if, in connection with that Owner's use and maintenance of the party wall, the Owner damages the adjacent Owner's Lot or the wall itself. The cost of any other repairs to the party wall shall be shared equally by the adjacent Owners.

d) Exterior Walls along a Lot Line. An exterior wall that supports the Building on only one Lot, or that encloses a courtyard on one Lot, shall not be considered a party wall. The Association may make rules and regulations concerning use and maintenance of such walls, including assigning responsibility between the adjoining owners for painting and repair and granting access over the adjoining Lot as reasonably necessary to maintain the wall. All such maintenance and repair shall be in accordance with the Summerset Design Code.

e) Yard Easements. To make the most efficient use of narrow lots, many village and cottage houses are constructed with one wall of the house forming a privacy wall. As further regulated by the Design Code, privacy walls may be solid or may have obscuring glass, such as glass block, or may have windows that are placed above eye level. Any modification to the privacy wall must comply with the Design Code. Where houses are constructed in such a manner, it is intended that the yard adjacent to the privacy wall be available to the adjoining lot owner as an extension of that yard. Subject to regulation under the Design Code, the beneficiary of such an easement shall have the use and maintenance responsibility for the easement area and may place decks or patios and other fixtures (but not a primary structure) upon the easement area. The owner of the privacy wall may enter during reasonable times to maintain the privacy wall but shall not otherwise use the

portion of the yard that is subject to the easement. The Design Review Board may determine the boundaries of the privacy yard easement.

f) Roof Overhang; Footings. For certain building types that are to be built along a property line, the Summerset Design Code may permit roofs, gutters, soffits and downspouts to overhang this property line, and may allow footings and rain leaders to intrude below the surface of the same property line. To the extent allowed by the Design Code and local governmental regulations the adjacent property shall be subject to an easement for such intrusion. However, roofs, gutters, downspouts and rain leaders may not discharge water onto adjacent property.

g) Townhouse or Row House Roof. If a townhouse or row house wall or parapet is constructed along or very near the property line, the owner of the townhouse or row house to be constructed on the adjacent property shall have the right to flash into the existing building, in accordance with industry standards and in order to make the new building watertight. This right shall include the right to make minor cuts on the existing building and to secure flashing or other materials to the existing building, so long as the structural integrity and water tightness of the existing building is not impaired. The cost for flashing shall be incurred by the owner of the new building, but the maintenance of this connection shall be a shared expense between adjacent property owners. Townhouses that share a roof structure shall be subject to additional provisions in a separately recorded instrument.

3.3 Easements in Favor of Declarant. The easements provided by this section are intended to permit the Declarant to continue and complete construction of the Master Plan Area, whether or not that property is ultimately submitted to a Declaration. Furthermore, Summerset is intended to follow design principles that allow interconnectivity of streets with neighboring communities. Accordingly, the Declarant hereby reserves for itself, its successors and assigns the following easements, which shall benefit all properties within the Master Plan Area and all other properties owned by Declarant or its assigns which are adjacent to, Summerset (including property separated from Summerset by a public road), whether or not such properties are developed as part of Summerset:

a) Private Roads and Paths. A nonexclusive easement for use of any roads or streets which are not accepted for dedication by the public and which are intended for automobile traffic along with a nonexclusive easement for appropriate use of any pedestrian or bicycle paths. If such roads become a primary means of access to a community which is not made part of Summerset, and Summerset does not similarly use the roads of such community, such community shall contribute its pro rata share of the cost of Summerset road maintenance.

b) Utility Easements. A blanket easement upon, across, over, through, and under Summerset for ingress, egress, installation, replacement, repair and maintenance of all public and private utility and service systems. These systems and services include, but are not limited to, water, sewer, irrigation systems, drainage, telephone, electricity, natural gas, television, security, collection of garbage and recyclable materials, cable or communication lines and other equipment. By virtue of this easement the Declarant, and its successors or assigns, may install and maintain facilities and equipment, excavate for such purposes and affix and maintain wires, circuits and conduits. However,

the exercise of this easement must not unreasonably disturb each Owner's right of quiet enjoyment of his Unit.

c) Police Powers. A blanket easement throughout Summerset for private patrol services, and for police powers and services supplied by the local, state and federal governments. The reservation of such easement does not imply that any such service shall be provided.

d) Drainage, Erosion Controls. A blanket easement and right on, over, under and through the ground within Summerset to maintain and to correct drainage of surface water and other erosion controls. This easement includes the right to cut any trees, bushes or shrubbery, grade soil, or to take any other action reasonably necessary for health or safety or to comply with governmental requirements. The entity that exercises this easement shall be responsible for notifying the affected Owners (except in an emergency) but shall not be obligated to restore landscaping or other improvements. This easement may be exercised at the option of the Declarant and shall not be construed to obligate Declarant to take any affirmative action to correct conditions.

e) Encroachment. An easement for any improvements constructed on the Common Elements which encroach on any Unit, whether due to any minor deviation from a recorded subdivision plan of Summerset or the settling or shifting of any land or improvements.

f) Party Wall Encroachments. Party walls in townhouse Units are intended to be constructed so that the Lot line forms the center line of the wall. To take into account deviations which may occur in the course of construction, the Declarant reserves for itself, its successors and assigns as well as the Lot Owners on either side of the wall a perpetual easement for any encroachment by a party wall upon an adjacent Lot due to errors of survey or construction.

g) Maintenance and Improvement of Common Elements. An easement for maintenance and improvement of the Common Elements at the Declarant's discretion and, to the extent reasonably necessary, an easement over any Unit for maintenance of the Common Elements.

h) Continued Construction. To the extent reasonably necessary, an easement over, under and through any roads, whether public or private, and any other Common Elements for construction equipment and any other purpose related to continued construction of any property within the Master Plan Area.

3.4 Reservation of Exclusive Easements. Declarant hereby reserves for itself and its assigns exclusive easements within all of Summerset for installation, replacement, repair and maintenance of cable and fiber optic systems. By virtue of this easement Declarant, and its successors or assigns, may install and maintain facilities and equipment, excavate for such purposes and affix and maintain wires, circuits and conduits. However, the exercise of this easement must not unreasonably disturb each Owner's right of quiet enjoyment of his or her Unit.

3.5 Commercial Use of Images. The Declarant reserves the following rights:

a) Common Elements. The exclusive right for a period of twenty (20) years after the date of this Declaration to grant permission for the Common Elements to be photographed, sketched, painted or its image otherwise reproduced for commercial use (including without limitation its use as a motion picture set or as a background for the display of fashions or other goods).

b) Exteriors. The right to grant permission for similar reproduction of the exteriors of any other part of Summerset that can be viewed from streets, alleys or Common Elements. Such exteriors may be reproduced without the consent of, or payment to, the Unit Owner, but the above right is not intended to prevent any Unit Owner from granting independent permission for any part of Summerset owned exclusively by that Owner, in which case the consent of the Declarant shall not be required.

c) Use of Images. The Declarant may collect a fee for its consent to the use of such images, or for the providing of support services to photographers or others. The exercise of these rights shall not interfere with normal and customary rights of architects as to structures designed by them. Consent of the Declarant shall not be required for photography or other reproductions of the images of Summerset in connection with any news or feature coverage, for academic purposes, or by any governmental agency or other entity interested in the promotion of Pittsburgh or Pennsylvania, the development of tourism or commerce or any other similar purpose.

ARTICLE IV:

Common Elements
Limited Common Elements
Controlled Facilities

Certain property within Summerset and certain easement rights, called the "Common Elements," are to be owned and maintained by the Association for the benefit of all Owners. Some property, although owned by individual Owners (such as the roofs and exteriors of townhouse Units) or by the City (such as parks), may be designated "Controlled Facilities," the maintenance of which may be provided by the Association.

4.1 Common Elements.

a) Association-Owned Common Elements. The Common Elements which shall be owned and maintained by the Association are shown on Exhibit "B".

b) Obligation Of Declarant To Convey Common Elements To Association. The Declarant has an absolute obligation to convey the Common Elements to the Association no later than the sale and conveyance of the last Unit in Phase 1A Summerset to a Purchaser Owner. Conveyance to the Association shall be by special warranty deed free and clear of all liens including the lien of any construction mortgage. The Association shall not be required to pay any

consideration for the conveyance. The obligation created by this Section is binding on all successors to Declarant's interest in the Common Elements regardless of whether they succeed to any of the special declarant rights, as defined by the UPCA.

c) Improvement Of Common Elements. All improvements of the Common Elements identified as 'must be built' in Exhibit "B" to this Declaration will be completed prior to the conveyance of the Common Elements to the Association. The Declarant hereby guarantees the completion of all such improvements and maintenance of such improvements, as may be necessary, prior to the conveyance to the Association. Other than the Declarant's guarantee, there is no bond, escrow or other third party guarantee covering the completion of such improvements.

d) Ownership Until Conveyance: Taxes. Until conveyance of the Common Elements to the Association, the Common Elements will be owned by the Declarant or by Declarant's successor in interest, subject to the obligations set forth in paragraphs (b) and (c), and all taxes levied in respect of said Common Elements will be borne by Declarant or its successor in interest. At the time of the conveyance, the Declarant or its successor will pay all taxes due, without apportionment.

e) Effect Of Conveyance On Association's Budget. The conveyance of the Common Elements to the Association will mark the beginning of the obligation of the Association to maintain them. The effect on the budget of the Association and on the common expense liability of the Unit Owners is described in Articles IX and X.

4.2 Association Controlled Facilities.

a) Sidewalks. The Association shall maintain the sidewalks in Summerset and the cost of their maintenance shall be a common expense.

b) Public Property. While certain parks within Summerset (primarily the smaller, "pocket" parks) are to be owned and maintained by the Association, certain other parks will be dedicated to the public. In Phase 1A, Crescent Park will be dedicated to the public. With the assent of the Association, the City of Pittsburgh may delegate complete or partial control to the Association on a long-term or short-term basis and may share the cost of maintenance with the Association. In addition, the Association may choose to provide additional maintenance to public facilities, to improve the quality of those facilities even though the primary control of those facilities remains with the City. Such facilities shall be considered Controlled Facilities and the cost of the maintenance will be a common expense of the Association.

c) Exterior Maintenance: Townhouse Buildings The Association shall provide exterior maintenance, including, without limitation, painting, repair and replacement of roofs, gutters, downspouts, siding, shutters, trim, porches, for the "For Sale Townhouse Units" identified on the Plan of Phase 1A as lots 12, 24, 32 and 50 and intended to be subdivided into individual Lots, for each Townhouse Unit, as provided in Section 2.3(b) and Exhibit "B." The cost of the maintenance shall be assessed as an Individual Unit Assessment pro rata against all of the Units in the townhouse Building upon which the maintenance is performed.

4.3 Maintenance; Capital Improvements.

a) Generally. The Association shall be responsible for the management, control and improvement of the Common Elements and Controlled Facilities and shall keep the Common Elements and Controlled Facilities attractive, clean and in good repair.

b) Capital Improvements. Subject to design review, the Association may make capital improvements to the Common Elements and may modify the uses of the Common Elements. For example, the Association may add new recreational facilities. Expenses for substantial capital improvements must be approved in accordance with Section 8.6.

4.4 Owners' Easements of Access and Enjoyment.

a) Common Elements. The Declarant hereby grants and conveys to every Owner a right and easement of appropriate use and enjoyment of the Common Elements, other than Controlled Facilities referred to in Section 4.2 (c), subject to the Association's right of regulation in accordance with this Declaration and the Declarant's right to use the Common Elements as provided in paragraph 3.3(c), and subject also to any limitations contained in the conveyance of those Common Elements to the Association. These easements shall be appurtenant to and shall pass with title to every Unit.

b) Tenants, Guests. Subject to the provisions of Section 11.4, any Owner may delegate, subject to the provisions of this Declaration, the Bylaws and the Rules and Regulations, his right to enjoyment to the Common Elements and Controlled Facilities to the members of his family, his tenants or his guests who reside on the Unit or are accompanied by the Owner. The Association may adopt rules to prohibit or restrict use of the Common Elements recreational facilities by a non-resident Owner whose Residential Unit has been leased to a tenant, except when the Owner is a bona fide guest of the tenant.

c) Controlled Facilities. Access to Controlled Facilities is limited to the Association and to the Unit Owner within whose Unit the Controlled Facility exists.

4.5 Use of Common Elements.

a) Members' Benefit. After conveyance of the Common Elements to the Association, the Association shall maintain the Common Elements for the benefit of its Members.

b) Non-Members. The Association may permit limited use and access for all or a portion of the Common Elements that are not dedicated to the public, through the sale of club memberships or other fees. Any such revenue shall benefit the Association.

c) Open-Air Market and Festivals. The principles of traditional neighborhood Development encourage the use of open space and other Common Elements in ways that bring the community together. Accordingly, the Executive Board may from time to time designate portions

of the Common Elements as a farmers' market or other open-air market for the rental of space for pushcarts, kiosks, stands or similar temporary sales structures. Such uses may be for special events or on a recurring or daily basis. The Executive Board may also designate the right to use portions of the Common Elements for festivals or other events intended to enrich and enliven the community. The Executive Board may charge appropriate fees for such use, which will go first to offset clean-up and other additional costs and then to general expenses of the Association.

d) No Commercial Use. Except that shopping and convenience facilities may be included in the community center planned in a future phase of Summerset, there shall be no commercial use of the Common Elements. Common Elements shall not be subdivided or sold.

4.6 Common Road Regulation. To the extent permitted by the City of Pittsburgh, the Association may make rules and regulations concerning driving and parking within Summerset, and may construct traffic calming devices, post speed limit or other traffic signs and take any other reasonable measures to discourage excessive speed and encourage safe driving on the Common Roads. To the extent permitted by the City of Pittsburgh, the Association may enforce any violation in accordance with Section 11.8 and may tow offenders. To allow proper access, no parking will be permitted which encroaches on the alleys.

4.7 Surface Water or Stormwater Management System. The Association shall have the power and duty to maintain proper drainage within Summerset. In the exercise of this power and duty, the Association shall have a blanket easement and right on, over, under and through the ground within Summerset to maintain and to correct drainage of surface water. This easement includes the right to cut any trees, bushes or shrubbery, grade soil, or to take any other action reasonably necessary for health or safety or to comply with governmental requirements.

4.8 Damage or Destruction of Common Elements by Owner. If any Owner or any of his guests, tenants, licensees, agents, employees or members of his family damages any of the Common Elements as a result of negligence or misuse, the Owner hereby authorizes the Association to repair the damage. The cost of repair shall be the responsibility of that Owner and shall become an Individual Unit Assessment payable by the responsible Owner. The Association may, but is not required to, seek compensation for damage from the guest, tenant, licensee, agent, employee or member of said Owner's family who caused the damage, in which case the Owner shall be jointly and severally liable.

4.9 Limitation of Liability. The Association shall use reasonable judgment in providing security, maintaining the Common Elements and enforcing traffic control measures, but neither the Association nor the Declarant makes any representation or assumes any liability for any loss or injury.

ARTICLE V:

Community Planning and Administration of the Design Code

The Summerset Design Code communicates the elements that are essential for creating the community. The Design Review Board assures that as the community evolves over time, changes will be in accordance with the Code.

5.1 Applicability. Any modification of the original building or landscaping on any Lot within Summerset shall be subject to architectural review under this Article V, including without limitation the following:

- a) materials and color selection for the main building and any outbuilding (including roof, doors, windows and trim);
- b) driveways, walks, patios and other ground surface materials;
- c) antennas, satellite dishes or receivers, solar panels or other devices that are visible from outside the Unit;
- d) fountains, whirlpools or other pools;
- e) privacy walls or other fences and gates;
- f) awnings, flower boxes, shelves, statues, or other outdoor ornamentation, and window coverings visible through the window;
- g) construction trailers or other trailers, temporary structures, tents, shacks, and sheds;
- h) signage of any type; and
- i) permanent or semi-permanent play equipment, whether or not secured, such as tree houses, basketball hoops, skateboard ramps and swing sets.

The listing of a category does not imply that such construction is permitted or prohibited. This Article V shall not apply to the original construction of a primary Building and landscaping on a Lot.

5.2 Town Architect. The Town Architect shall be selected by the Executive Board and shall serve at its pleasure. The Town Architect shall have a professional degree in architecture or urban design from an accredited university, or shall have comparable qualifications. The Town Architect does not, however, need to be licensed to practice in Pennsylvania.

5.3 Design Review Board. The Design Review Board shall have a minimum of three members as follows:

- a) Town Architect. The Town Architect shall serve on the Design Review Board or, with the consent of the Executive Board, the Town Architect may select an architect, landscape

architect or urban designer, so long as said individual meets the qualifications required for the position of Town Architect.

b) Additional Members. At least two individuals, selected by the Executive Board, shall serve at the Executive Board's pleasure.

5.4 Design Code. The Declarant will establish the Design Code, which comprises the following, all as may be amended from time to time:

a) The Master Plan which is used as a guide for the general location of public and private improvements;

b) The Urban Regulations, which establish setbacks, lot coverage and other similar matters;

c) The Architectural Regulations, which guide the design of Buildings and describe the materials of which Buildings may be constructed; and

d) Grading and Landscape Regulations, which regulate all earth-moving of any type, all erosion control and stormwater detention, irrigation, and the planting of new trees and plants.

e) Architectural Review Procedure with forms, which describes the review process for compliance with all of the above.

With the consent of the Executive Board, the Town Architect may revise any part of the Design Code from time to time to recognize the development of new and improved materials and techniques, to comply with governmental regulations, and to recognize changing land use conditions over time, both from within and outside Summerset.

5.5 Environmental Controls. Under the Consent Order, the Association and the Design Review Board must administer and enforce the following restrictions:

a) The conduct of all activities upon, and the use, improvement and maintenance of all land within Summerset must strictly conform to and follow the Final Cover Plan established by the Consent Order.

b) All construction in Summerset must be conducted in accordance with the Grading Plan and Subsequent Phase Grading Plan, Waste Plan, Health and Safety Plan, E & S Plan, RAR and Final Cover Plan, which plans are incorporated in the Consent Order.

c) No one shall use ground water for any purpose.

d) No one shall remove the Final Cover as that term is defined in the Consent Order except in accordance with the Final Cover Plan. The Association shall maintain the Final Cover in accordance with the Final Cover Plan.

5.6 Review Procedure.

a) Application. The plans that must be submitted to the Design Review Board are: (i) the construction plans and specifications, including all materials and colors, (ii) elevations of all proposed improvements (iii) proposed clearing, grading and landscaping, and (iv) all other items required by the Design Review Board. Plans and specifications for review shall be submitted in the form required by the Design Review Board.

b) Uniform Procedures. The Design Review Board may establish forms and procedures for the review of applications, including review costs and fees, if any, to be paid by the applicant. The Design Review Board may provide lists of approved materials and may allow for staff review and approval of routine or minor matters.

c) Basis for Decision. Applications shall be approved or denied based upon compliance with the provisions of the Design Code, the above Environmental Controls and the overall quality of design. If the Design Review Board rejects an application due to overall design quality, despite compliance with the Design Code, the Design Review Board shall make suggestions for improving the design.

d) Variances. The Design Review Board may grant variances from the Design Code based on existing topographical or landscape conditions, existing trees, or architectural merit. Any such variance must be in writing. Approval of a variance does not constitute a precedent for other applications, and such requests may be arbitrarily denied.

e) Notification; Construction; Inspection. The Design Review Board shall make best efforts to notify the applicant of its decision within the time allowances set out in its design approval process handbook. However, a delay in reviewing an application shall not be deemed consent to construction. If approval is given, construction of the improvements may begin. All construction must comply with the submitted plans. The Design Review Board or its agent may inspect the property during construction but has no obligation to make any such inspection.

f) Governmental Compliance. Owners are responsible for making sure that construction conforms to governmental regulations and all local building codes. If the Design Review Board notes noncompliance, the Owner will be required to make the necessary changes. However, except for the Environmental Controls set forth above, the Design Review Board is not responsible for compliance with governmental requirements.

5.7 Enforcement.

a) **Fines.** The Design Review Board may require the builder or Owner to post a deposit from which the Design Review Board may deduct fines for failure to comply with the approved plans and specifications, tree regulations and rules for builder conduct. The collection of a fine shall not in any way diminish the available remedies at law or equity.

b) **Suit Permitted.** If any construction is begun which has not been approved or which deviates from approved plans and specifications, the Design Review Board or the Association may require the Owner to resolve the dispute through binding arbitration or may bring suit seeking damages, specific performance, declaratory decree and/or injunction, or any other remedy at law or in equity. If suit is brought and the court finds that the construction was not approved or that the construction deviated from the approved plans or specifications, then the party bringing suit shall also be awarded reasonable attorney's fees, even if the relief requested is not granted.

c) **Trees and Shrubs.** Improper cutting, removal, lack of care or intentional damage to existing trees and shrubs is subject to fines plus a requirement that the tree be replaced with an approved species of comparable caliper, or, if approved by the Design Review Board, a combination of trees totaling the caliper of the removed tree. Fines shall be set by the Design Review Board.

d) **Drainage.** After reasonable notice (except in an emergency), the Declarant or the Association shall have the right to enter onto any Unit and correct improper grading or other modification to the Unit that causes drainage problems. Such corrections shall be made at the cost and expense of the Owner of the Unit, who shall promptly reimburse the Declarant or the Association, as applicable. The Unit shall be subject to a lien for the cost if not paid. The Declarant or the Association, as applicable, shall not be required to repair or replace landscaping or other improvements after such action.

e) **No Waiver.** Failure to enforce any provision of the Design Code or the Environmental Controls shall not be deemed a waiver of the right to do so at any time thereafter. Variances from the Design Code may be granted in particular circumstances; however, such variances shall not create a precedent for other applications.

5.8 Liability. The Design Review Board and its inspectors are concerned primarily with aesthetic considerations, and are not responsible for compliance with governmental requirements or design or construction defects or use of materials affecting the safety or structural integrity of the building. Approval by the Design Review Board of an application shall not constitute a basis for any liability of the Town Architect, the Declarant, or members of the Design Review Board, Executive Board or Association for failure of the plans to conform to any applicable building codes or inadequacy or deficiency in the plans resulting in defects in the improvements, or for the performance or quality of work of any builder or architect approved by it, or for non-compatible or unstable soil conditions or soil erosion, or any other condition of the property.

5.9 Financial Support. The Association shall pay the Town Architect, other professionals and staff reasonable compensation for serving on the Design Review Board, as determined from time

to time by the Board. All members and all professionals and staff shall be compensated for expenses. The Association shall set the Design Review Board's review fees to cover all or part of the expected cost of its operation. If fees do not cover the cost, the Association shall fund the deficit. Fees shall not be intended to create a surplus, other than an ordinary operating fund for the Design Review Board to which any excess fees shall be contributed. The Design Review Board may employ personnel or contract with individuals or companies as necessary to assist in the review process.

ARTICLE VI:

Owners' Association

The Association is responsible for maintaining Summerset and enforcing the Declaration. While the Declarant will control the Association during the early development stage, the owners themselves will be responsible for the continuation of the community through their participation in the Association.

Additional provisions for the governance of the Association may be found in the Articles and By-Laws of the Association.

6.1 Duties. The Association shall have all powers and duties of a unit owners' association under the UPCA. The Association shall maintain, repair and replace the Common Elements, shall enforce the terms of this Declaration, and shall perform all other duties required by this Declaration or by Pennsylvania law, by the City of Pittsburgh and by other government entities having jurisdiction.

6.2 Additional Powers. The Association shall have all of the powers set forth in § 5302 UPCA and in addition, to the extent permitted by governmental authorities, the Association may, but is not obligated to, provide the following services or engage in the following activities:

- a) water, sewer, irrigation systems, drainage, telephone, electricity, television, security, cable television or communication lines and other utility services; supply of irrigation water; garbage and trash collection and disposal;
- b) insect and pest control; improvement of vegetation and wildlife conditions; forestry management, pollution and erosion controls;
- c) emergency rescue, evacuation or safety equipment; fire protection and prevention; lighting of Common Roads which are not dedicated roads; traffic and parking regulation and security patrols within Summerset;
- d) transportation; day care and child care services; landscape maintenance; recreation, sports, craft and cultural programs; and newsletters or other information services;
- e) maintenance of easement areas, public rights-of-way and other public or private properties located within reasonable proximity to Summerset if deterioration would affect the appearance of or access to Summerset; and

f) any other service allowed by law to be provided by a homeowners' association organized under Pennsylvania law.

The Executive Board may, by majority vote, initiate or terminate any of the above services, which shall take effect sixty (60) days after notice to the Members, except in an emergency. As determined by the Executive Board depending upon the nature of the service, such additional services may be part of the common expenses of the Association, may be assessed as an Individual Unit Assessment to affected Units, or may be provided on a fee-for-service or other reasonable basis. If requested by petitions signed by at least 10% of the Members, an Association Meeting may be called and, if a quorum is present, the Executive Board's action to initiate or terminate an additional service under this Section 6.2 shall be repealed by majority vote of the Members. Upon such repeal, the Executive Board may not reinstitute or terminate the service for five years unless also approved by majority vote of the Members.

6.3 Contracts. The Association may contract with any party, including the Declarant, for the performance of all or any portion of the management of the Association and its maintenance and repair obligations. The cost of the contract shall be included within the General Assessment, Special Assessment or Individual Unit Assessment as applicable. The Association may require that Owners contract for certain routine yard maintenance, in order to provide a uniform level of care. The Association also may, but is not obligated to, act as agent for an Owner, if so requested by that Owner, to contract for routine maintenance and other services not required to be provided by the Association, the cost of which would be assessed to that Owner as an Individual Unit Assessment. The terms and conditions of all such contracts shall be at the discretion of the Executive Board.

6.4 Membership. Every Owner shall be a mandatory Member of the Association. Membership shall be appurtenant to and may not be separated from title to any Unit.

6.5 Voting Rights.

a) **Units Generally.** Subject to the special provisions of Section 6.7 concerning selection of the Executive Board, Members shall be assigned 1.0 vote for each Unit owned.

b) **Apartment Lots.** For Apartment Lots which are to be developed for rental townhouses or rental apartments, the owner of an Apartment Lot shall be assigned 0.50 vote for each Residential Unit situated on that Lot. If such Residential Units are converted to Condominium Units or other separate ownership and are offered for sale in the normal course of business, then each of the resulting separately owned Units shall be assigned 1.0 vote.

c) **Double Counting Avoided.** For purposes of assigning votes, when Residential Units are counted the Lot or Lots upon which they are situated are not counted.

6.6 Exercise of Vote. When more than one person holds an interest in any Unit, all such persons shall be Members. However, the number of votes for that Unit shall not be increased, and the Members must determine among themselves how the Unit's vote may be exercised. Corporations,

partnerships and other entities shall notify the Association of the natural person who shall exercise its vote. To the greatest extent permitted by law, the Association may institute voting by electronic or other means.

6.7 Election of Executive Board of Directors.

a) Procedure. Elections shall be conducted in accordance with the Bylaws.

b) Initial Selection by Declarant. Subject to the provisions of paragraph (c) below the Declarant will have the exclusive right to appoint and remove the officers and members of the Executive Board and may elect a majority of the Executive Board during the Declarant Control Period. The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of the Declarant Control Period, in which case the Declarant reserves the right to record an instrument specifying that, until the time Declarant would have been required to end control of the Executive Board, certain actions of the Association or Executive Board must be approved by the Declarant before they become effective.

c) Purchaser Owner Representatives: End of Declarant Control Period. No later than sixty days after at least twenty five percent (25%) of the Units which may be created in the Master Plan Area have been conveyed to Purchaser Owners, Purchaser Owners shall have the right to elect at least one member (and not less than 25%) of the Executive Board. Not later than sixty (60) days after fifty percent (50%) of the Units which may be created in the Master Plan Area have been conveyed to Purchaser Owners, not less than 33% of the members of the Executive Board shall be elected by Purchaser Owners. The Executive Board members elected by Purchaser Owners shall not be subject to removal by the Declarant acting alone. Not later than sixty (60) days after the termination of the Declarant Control Period, all of the existing Executive Board members must resign and the Owners including the Declarant shall elect an Executive Board of at least three members, at least a majority of whom shall be Owners. The Executive Board shall elect the officers. The Executive Board members and officers shall take office upon election.

d) Classes of Votes. Because Summerset will include some rental apartments and townhouses and because owners of apartment Buildings and rental townhouse Buildings are assigned votes for each Residential Unit under paragraph 6.5(b), the following limitations are designed to prevent a single owner acting alone or with affiliates from exercising undue influence over the affairs of the Association: Prior to the termination of the Declarant Control Period, the votes of Owners of rental apartment Buildings or of rental townhouse Buildings shall not count as Purchaser Owner votes under paragraph (c). After the termination of the Declarant Control Period referred to in paragraph (b) if such an Owner, alone or with affiliates, controls at least 20% of the votes of the Association, that Owner may select one member (and not less than 20%) of the Executive Board but shall not vote for any other members of the Executive Board. If such Owner controls at least 40% of the votes of the Association, that Owner shall select two members (and not less than 40%) of the Executive Board but shall not vote for any other members of the Executive Board. In all other membership votes, such Owner shall be entitled to cast votes in the same manner as any other Owner.

6.8 No Compensation for Directors. Directors shall receive no compensation for their services unless expressly provided for in resolutions adopted by the Members, but may be reimbursed for expenses.

6.9 Additional Provisions. Additional provisions concerning the operation of the Association and the Executive Board are contained in the Articles and Bylaws.

ARTICLE VII:

Decision Making

Most day-to-day decisions about the maintenance of the Summerset and enforcement of the Declaration are the responsibility of the Executive Board, acting on the Members' behalf. For those decisions requiring Members' approval, the Association Meeting provides a public opportunity for discussion and voting. Where more practical, consensus may be achieved through the internet and other forms of electronic communication that may be devised in the future.

7.1 Association Meeting.

a) When called. The Association Meeting shall be called annually for the election of Members of the Executive Board, and whenever any action is required by this Declaration to be taken by vote or assent in writing of the Members. As a convenient reference and not as a limitation, actions requiring a vote of the Members, or assent in writing, include the following:

Repeal of Additional Services	Section 6.2
Election of the Executive Board of Directors	Section 6.7
Approval of General Assessments when increased more than 15%	Section 8.4
Ratification of expenditures for capital improvements	Section 8.6
Repeal of Rules and Regulations adopted by the Executive Board	Section 11.7
Amendment of Declaration	Section 13.1
Dedication of the Common Elements	Section 13.2
Termination of the Declaration	Section 13.5

b) Quorum. Voting at a Association Meeting requires presence of Members representing the percentage of votes necessary to transact business. The necessary percentage is determined by the Bylaws, and if permitted by the Bylaws and by statute, the Executive Board may revise this percentage from time to time.

c) Notice. Notice of the meeting must be given to Members in accordance with Section 14.4 ("Notices") and in accordance with the Bylaws. Notice of meetings shall also be posted in at least one place within the Common Elements.

d) Proxies; Electronic Voting. To the extent allowed by the Bylaws and statute, proxies and limited proxies may be used to establish a quorum and for voting purposes. To the extent

allowed by law and in accordance with procedure that may be adopted in the Bylaws, a quorum may be evidenced, and votes may be cast, by electronic means.

7.2 Action without Meeting. If permitted by the Executive Board, the membership may approve any matter (specifically including the election of directors) by a written vote conducted by mail, by electronic ballot, or by written consent without a meeting. Notice may be waived in the event of an emergency. Voting or consents shall be in accordance with the Bylaws and statute. Wherever used in this Article, "electronic means" or "electronic ballot" shall specifically include e-mail and, upon approval of the Executive Board, other similar means of communication that may be developed in the future.

7.3 Executive Board Meetings.

a) **Executive Board's Responsibility.** Except as specifically provided in this Article or elsewhere in this Declaration, the Executive Board has been delegated the power, and shall have the authority to act on behalf of the Association and to make all decisions necessary for the operation of the Association, the enforcement of this Declaration and the care of the Common Elements.

b) **Quorum.** Voting at a Executive Board meeting requires presence of at least one-half of the directors, in person or telephone conference or, if allowed by law, by proxy. If permitted by law, any action required to be taken by vote of the Executive Board may be taken in the absence of a meeting (or in the absence of a quorum at a meeting) by obtaining the written approval of a majority of the Executive Board. With the approval of all directors, meetings may be conducted by electronic means.

7.4 Record Keeping. The Executive Board shall keep a record of all meetings, both of the Executive Board and of the Association. For each action taken, the record shall state the vote and a description of the action approved, and, where applicable, the reasons why the action was considered necessary and a summary of the information on which the decision was based. The record shall be available for inspection by any Member.

7.5 Approval. Wherever used in this Declaration, approval by a majority or other proportion of the Members refers to a vote in accordance with this Article, either at a properly called Association Meeting or through a voting procedure established under Section 7.2. Where the Declaration specifies consent in writing, or request in writing, by a majority or other proportion of all Members, then the necessary number is based on the number of votes represented by the total Membership of the Association, and signatures may be collected without a Association Meeting or other voting procedure.

ARTICLE VIII:

Association Budget

To fulfill its obligation to maintain the Common Elements, the Executive Board is responsible for the fiscal management of the Association.

8.1 Fiscal Year. The fiscal year of the Association shall begin January 1 of each year and end on December 31 of that year, unless the Executive Board selects a different fiscal year.

8.2 Budget Items.

a) **General Common Expense.** The budget shall estimate total expenses to be incurred by the Association in carrying out its responsibilities including its responsibilities with respect to the Controlled Facilities. These expenses shall include, without limitation, the cost of wages, materials, insurance premiums, services, supplies and other expenses for the rendering of all services required by this Declaration or properly approved in accordance with this Declaration. The budget may also include reasonable amounts, as determined by the Executive Board, for working capital for the Association and for reserves. If the Common Elements are taxed separately from the Units, the Association shall include such taxes as part of the budget. Fees for professional management of the Association, accounting services, legal counsel and other professional services may also be included in the budget. Assessments for the foregoing expenses shall hereafter be referred to as "General Assessments".

b) **Townhouse Exterior Expense.** As a separate item, the budget shall estimate the expenses, as defined in paragraph (a) to be incurred by the Association in providing exterior maintenance and insurance to the For Sale Townhouse Units as they are defined in Section 1.19. Assessments for these expenses shall hereafter be referred to as "Townhouse Exterior Maintenance Assessment".

8.3 Reserves. The Association may build up and maintain reserves for working capital, contingencies and replacement, which shall be included in the budget and collected as part of the annual General Assessment. Extraordinary expenses not originally included in the annual budget that may become necessary during the year shall be charged first against such reserves. Except in the event of an emergency, reserves accumulated for one purpose may not be expended for any other purpose unless approved by two-thirds of the members of the Executive Board. If the reserves are inadequate for any reason, including nonpayment of any Member's assessment, the Executive Board may at any time levy an emergency assessment in accordance with the provisions of Section 10.4 ("Special Assessment"). If there is an excess of reserves at the end of the fiscal year and the Executive Board so determines, the excess may be returned on a prorata basis to all Members who are current in payment of all assessments due the Association, or may be used to reduce the following year's assessments, at the Executive Board's discretion.

8.4 Preparation and Approval of Annual Budget.

a) Initial Budget. The Declarant shall determine the budget for the fiscal year in which a Unit is first conveyed to a Purchaser Owner.

b) Subsequent Years. Beginning with the year following the year in which a Unit is first conveyed to an Purchaser Owner and each year thereafter, at least one month before the end of the fiscal year, the Executive Board shall, by majority vote, adopt a budget for the coming year and set the annual General Assessments and the Townhouse Exterior Maintenance Expense Assessment at a level sufficient to meet the budget. At least two weeks before the fiscal year to which the budget applies, the Executive Board shall send to each Member a copy of the budget in reasonably itemized form, which shall include the amount of General Assessments payable by each Member.

c) Approval. If General Assessments are to be increased to greater than 115% of the previous year's General Assessment that was not a year in which General Assessments were guaranteed in whole or in part by Declarant, and petitions signed by at least 10% of all Members request review within thirty (30) days after the budget is delivered to Members, the Executive Board shall call an Association Meeting to present the budget and to answer any questions. After presentation, the budget shall be deemed approved unless the percentage required to transact business is present and the budget is rejected by a majority of the Members present. If the budget is rejected, the Executive Board shall approve a new budget within ten (10) days and send a copy to each Member.

8.5 Effect of Failure to Prepare or Adopt Budget. The Executive Board's failure or delay in preparing or adopting the annual budget for any fiscal year, or review of the budget under paragraph 8.4 (c), shall not waive or release a Member's obligation to pay General Assessments whenever the amount of such assessments is finally determined. In the absence of an annual Association budget each Member shall continue to pay the assessment at the rate established for the previous fiscal period until notified otherwise.

8.6 Capital Improvements. Any substantial capital improvement to the Common Elements approved by the Executive Board must be ratified by a majority of the Members. If the substantial capital improvement is approved by the Members, the Executive Board shall determine whether it shall be paid from General Assessments or by Special Assessment. A capital improvement shall be considered substantial if the cost to the Association of the improvement is more than six percent (6%) of the Association's annual budget, or if, when added to other capital improvements for the fiscal year, totals more than ten percent (10%) of the Association's annual budget. However, any repair or replacement of existing improvements shall not be considered a capital improvement. Approval of the Summerset Design Review Board is required for all capital improvements. This section shall not limit the right of the Declarant to make improvements to the Common Elements.

8.7 Controlled Facilities. Expenses for Controlled Facilities shall be budgeted as a separate item as provided in 8.2 (b).

8.8 Limited Common Elements. There are no limited common elements in Phase 1A, Summerset.

8.9 Accounts. Reserves shall be kept separate from other Association funds, either in a single account for all reserves or separated by purpose. All other sums collected by the Executive Board with respect to Assessments and charges of all types may be commingled in a single fund.

ARTICLE IX:

Allocation of Expenses

The Declaration provides a formula for allocating interests among the Units for assessment of common expenses.

9.1 Generally. The common expenses of the Association shall be allocated among the Units in accordance with the relative values described in Section 9.2. This allocation will apply to all Units created in Summerset, both present and future. The fractional allocation of the common expenses of the Association may be calculated for each existing Unit by dividing the value assigned to that Unit by the sum of the values of all existing Units in Summerset.

9.2 Residential Use. Lots and other Residential Units shall be assigned the following values after they are improved by a dwelling or constructed within a Building and a certificate of occupancy has been issued for the Unit in question:

- a) Village Lots, identified on the Exhibit "B", shall be assigned a value of 1.0.
- b) Estate Lots, identified on the Exhibit "B", shall be assigned a value of 1.25.
- c) All other Residential Units, including Cottage Lots and For-Sale Townhouse Units, rental townhouse and apartment Units and Condominium Units, shall be assigned a value of .75. The Lots upon which these Units are or will be situated are identified on the Phase 1A Plan and on Exhibit "B". When Residential Units are counted, the Lot upon which the Unit or Units are situated is not counted.

9.3 Unimproved Lots. Unimproved Lots shall be assigned a value of 0.25. Upon completion of improvements, the value shall be changed as provided in Section 9.2. If the Declarant or an Owner combines two Lots or parts of Lots and uses them as a single Lot, the Association may assess them as a single Lot or other formula in accordance with regulations consistently applied.

9.4 Exempt Units. Lots that are used by non-profit entities primarily for the benefit of residents of Summerset may have a zero allocation. The Declarant may grant such exempt status of record at any time up to and including the time of conveyance of the Lot to a Purchaser Owner. Once granted, such exempt status shall continue so long as the use of the Unit remains substantially the same. The Association also has the authority to grant exempt status for qualified entities upon terms and conditions established by the Association.

9.5 Additional Property. If Units of substantially different size or use are created within Additional Property, the Declarant may by Supplemental Declaration establish a different relative value for those Units based on a reasonable determination of the expected usage levels consistent with the determination for other properties within Summerset. The fractional allocation of the common expenses shall be adjusted according to the formula described in Section 9.1 as additional property is added to Summerset or property is withdrawn from Summerset.

ARTICLE X:

Covenants for Maintenance Assessments

The cost of fulfilling the Association's financial obligations is divided equitably among the Members by means of Assessments. To assure the Association of a reliable source of funds and to protect those Members who contribute their equitable share, assessments are mandatory and are secured both by a lien on the lot and the Member's personal obligation.

10.1 Obligation for Assessments. The Declarant, for each Unit owned within the property submitted by this Declaration or Amended Declaration to become part of Summerset, hereby covenants, and each Owner of any Unit by acceptance of a deed or other transfer instrument, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following (to be known collectively as "Assessments"):

- a) General Assessments for expenses included in the budget, applicable to all Units; and
- b) Special Assessments for the purposes provided in this Declaration, applicable to all Units; and
- c) Townhouse Exterior Maintenance Assessment for expenses included in the budget, applicable only to For Sale Townhouse Units, and
- d) Individual Unit Assessments for any charges particular to that Unit, applicable to that Unit

together with a late fee and interest, as established by the Executive Board, and cost of collection when delinquent, including a reasonable attorney's fee whether or not suit is brought. Upon default in the payment of any one or more installments, the Executive Board may accelerate the entire balance of such Assessment, which shall be declared due and payable in full.

10.2 Allocation of Common Expenses. Common Expenses shall be allocated among all of the Units as provided in Article IX ("Allocation of Expenses").

10.3 Allocation of Townhouse Exterior Maintenance Expenses. Townhouse Exterior Maintenance Assessment shall be allocated to the For Sale Townhouse Units on a pro rata basis by dividing the total expense by the number of For Sale Townhouse Units.

10.4 General Assessments.

a) Establishment by Executive Board. The Executive Board shall set the date or dates such assessments become due and may provide for collection of assessments annually or in monthly, quarterly or semiannual installments.

b) Date of Commencement. The annual General Assessments and the Townhouse Exterior Maintenance Assessment shall begin on the day fixed by the Executive Board of the Association. The initial Assessment on any Unit subject to assessment shall be collected at the time title is conveyed to the Owner. During the initial year of ownership, each Owner shall be responsible for the prorata share of the annual General or Special Assessment charged to each Unit, prorated to the month of closing.

10.5 Special Assessment. In addition to the General Assessment, the Executive Board may levy in any fiscal year a Special Assessment applicable to that year and not more than the next four succeeding years as follows:

a) Capital Improvements. Any substantial capital improvement that has been approved in accordance with Section 8.6 ("Capital Improvements") or any capital improvement not required to be approved by the Members may be paid by Special Assessment.

b) Emergency Assessment. By a two-thirds (2/3) vote, the Executive Board may impose a Special Assessment for any unusual or emergency maintenance or repair or other expense which this Declaration or the law requires the Association to pay (including, after depletion of reserves, any unexpected expenditures not provided by the budget or unanticipated increases in the amounts budgeted).

10.6 Individual Unit Assessments. The Association may levy at any time an Individual Unit Assessment against a particular Unit for the purpose of defraying, in whole or in part, the cost of any special services to that Unit. An individual Unit Assessment shall include any fees, charges, late charges, fines, interest and legal fees levied against the Unit Owner by the Association pursuant to this Declaration or the By-Laws and Rules and Regulations Adopted by the Association pursuant to Section 11.7.

10.7 Capital Contribution; Initial Fee. At the closing and transfer of title of each Unit to the first Purchaser Owner, the first Purchaser Owner shall contribute an amount equal to two months assessments. This contribution shall be deposited in the general funds of the Association for start-up expenses of the Association and for working capital for the Association, and shall not be considered as a pre-payment of assessments.

10.8 Effect of Nonpayment of Assessment; Remedies.

a) Assessment. For purposes of this Section, "Assessment" means all Assessments and all fees, charges, late charges, fines and interest charged by the Association under Section 5302(a)(10), (11) and (12) of the UPCA and reasonable costs and expenses of the Association,

including legal fees, incurred in connection with collection of any sums due to the Association by a Unit Owner or enforcement of the provisions of the Declaration, By-Laws, or Rules and Regulations of the Association.

b) Personal Obligation. All Assessments, shall be the personal obligation of the Owner of the Unit at the time when the Assessment became due and of each subsequent Owner. No Owner may waive or otherwise escape liability for an Assessment by abandonment of the Unit.

c) Lien: Due Dates: Priority. An Assessment is a lien on the Unit against which it was levied or whose Owner was fined or charged with the amount in question, from the time the assessment, fine or other charge became due, as provided in Section 5315 of the UPCA. If an Assessment is payable in installments and one or more installments are not paid when due, the entire outstanding balance of the Assessment becomes effective as a lien from the due date of the delinquent installment. The priority of the lien is governed by Section 5315 of the UPCA and this Declaration constitutes notice and perfection of the lien.

d) Notice Of Claim. Although this Declaration constitutes notice and perfection of the lien of the Assessment, the Association may give further notice by Recording a claim, signed by an officer or duly authorized agent of the Association, containing substantially the following information:

- i) The name of the record Owner of the Unit;
- ii) The legal description of the Unit, which may be by reference to a Recorded Plan and street address, against which the claim is made;
- iii) The amount claimed to be due and owing as delinquent Assessment, including a statement of the interest accrued and accruing thereon, collection costs and attorneys fees;
- iv) The date when the Assessment became due;
- v) That the claim is made by the Association pursuant to this Declaration.

e) Suit for Payment; Foreclosure of Lien. The Association may bring an action at law against the Owner personally obligated to pay the Assessment, or may foreclose the lien in a like manner as a mortgage on real estate, or both. The Association, acting on behalf of the Owners, shall have the power to bid for an interest in any Unit foreclosed at such foreclosure sale and to acquire, hold, lease, mortgage and convey the Unit.

f) Other Remedies. The Association shall have the right to suspend the voting rights and right to use of the Common Elements by an Owner for any period during which any Assessment against his Unit remains unpaid.

10.9 Certificate of Payment. The treasurer of the Association, upon request of any Owner, shall furnish a certificate signed by a member of the Executive Board stating whether any assessments

are paid to date by that Owner. Such certificate, when co-signed by the secretary of the Association, may be relied upon by a good faith purchaser or mortgagee as conclusive evidence of payment of any assessment therein stated to have been paid.

ARTICLE XI:

Use of Units

The following covenants are designed to protect the quality of life for all Owners within Summerset and to set a standard for reasonable cooperation within the community.

11.1 Permitted Uses.

a) Determination. Permitted uses for Units, which may include residential use, live/work units, retail, office, restaurant or other commercial or civic use, shall be determined based on the Summerset Design Code and the Phase 1A Plan, subject to the zoning requirements of the City of Pittsburgh. At the Declarant's discretion, the Declarant shall make the determination of record at the time of the Unit's addition to Summerset, or at any time up to and including the time of conveyance of the Unit to someone other than the Declarant. If the Declarant fails to make such a determination of record, the Summerset Design Code, or the approval of the Building or modification under Article V, may describe permitted uses.

b) Home-based Businesses. Unless prohibited by law, home-based business that does not generate significant noise, odor or traffic shall be permitted in any residential area. Signage for home-based business shall be regulated under the Summerset Design Code.

c) Live/Work Units. Units designated by the Design Code as live/work units are intended to have both a residential unit and space for an office, studio, or other small business. Commercial use of a live/work space may be more intensive than a home-based business, some signage shall be permitted, and business guests may visit the live-work unit. In most cases, the primary occupant of the office space is to occupy the residential unit as well.

d) Accessory Buildings. Subject to the Design Code and local law, garage apartments or other accessory units not exceeding one bedroom may be permitted. Such units are typically used for home offices or guest accommodations, and may be rented in accordance with Section 11.4.

11.2 Prohibited Uses.

a) Nuisances. No nuisance or other use that creates an unreasonable disturbance shall be permitted on any Unit. The Association may from time to time define and determine unacceptable uses.

b) Insurance. Nothing shall be done or kept on any Unit or the Common Elements that will increase the rate of, or result in cancellation of, insurance for the Common Elements or any other Unit or its content, without the prior written consent of the Association.

- c) Soliciting. The Association may regulate or prohibit soliciting within Summerset.
- d) Time Sharing. No time-share ownership of Units is permitted.
- e) Earth Moving Activities. No grading, excavating, earth moving activities or other disturbance of the ground shall be conducted by any Owner, its contractors, agents or representatives, anywhere in Summerset, without first submitting the plans to and obtaining the approval of the Design Review Board.
- f) Ground Water. Use of the ground water at Summerset is prohibited.

11.3 Attractiveness and Safety of Units.

- a) Generally. Each Owner shall keep all parts of his Unit in good order and repair and free from debris. The Summerset Design Code or the Association may regulate placement and maintenance of garbage and trash containers and fuel or gas storage tanks (including the prohibition of such tanks), and other matters affecting the attractiveness or safety of Units.
- b) Signage. No sign, advertisement or notice of any type or nature whatsoever (including "For Sale" or "For Rent" signs) shall be erected or displayed on any Unit or portion of the Common Elements unless specifically permitted by the Summerset Design Code.
- c) Vehicles. The Summerset Design Code or the Association may regulate or prohibit the parking of trailers, recreational vehicles, nonfunctioning or excessive numbers of vehicles, sports equipment or any other item visible on the Unit, and may require that garage doors be kept closed except when automobiles are entering or leaving the garage. To allow proper access, no parking will be permitted which encroaches on the alleys.
- d) Sports Equipment. Play structures, such as basketball hoops and swing sets, must be kept in good repair and may be limited, in accordance with the Summerset Design Code, to back yards or alleys. Large play structures such as skate board ramps that are visible from outside the Unit may be prohibited.

11.4 Leasing. Other than those located on Apartment Lots, Residential Units shall not be leased by their Owner without permission by the Association which may be withheld without any reason given. Subject only to applicable law and to reasonable rules and regulations as promulgated by the Association, which may be modified from time to time accessory Residential Units within a Lot, such as an outbuilding apartment, may be rented if the primary unit is owner-occupied. The Association may establish a minimum lease term of at least six months. If the Residential Unit is leased in violation, the Association may attach rentals and may evict the tenant as if it were a tenant violation under paragraph 11.8 (c).

11.5 Pets. Pets may be kept by an Owner on his Unit but only if such pets do not cause an unsafe condition or unreasonable disturbance or annoyance within Summerset. Each Owner shall be held

strictly responsible to immediately collect and properly dispose of wastes and litter of his pets. The Association reserves the right to regulate the number, type and size of pets (specifically including particular breeds of dogs deemed to create unreasonable danger); to prohibit the keeping of animals other than customary household pets, which it may define, acting reasonably; to designate specific areas within the Common Elements where pets may be walked and to prohibit pets on other areas; to require pets to be on leash; and to restrict the rights of tenants to keep pets.

11.6 Temporary Structures; Camping. The Association or Declarant may permit the use of tents, trailers and other temporary buildings on the Common Elements or elsewhere within Summerset during art festivals, craft fairs, block parties and other special events, subject to regulation by the Summerset Design Code. Temporary structures that are visible from outside the Lot are permitted in the side and rear yards only, for up to two weeks per year. In addition, reasonable, occasional use of tents for festive occasions or children's backyard camping is part of life and should be enjoyed. No other camping is permitted within Summerset. The Summerset Design Code may prohibit or regulate all other construction trailers, tents, shacks, barns, sheds or other structures of a temporary character that are visible from outside the Unit.

11.7 Rules and Regulations.

a) Generally. The Association may from time to time adopt rules or amend previously adopted rules and regulations governing the details of the operation, use, maintenance and control of the Units, Common Elements and any facilities or services made available to the Owners. This right shall include without limitation the right to approve rental agents, contractors and sub-contractors who do business within Summerset.

b) Effect. Rules and Regulations shall take effect immediately upon approval by the Executive Board, or at a later date selected by the Executive Board. If requested by at least 10% of the Members, an Association Meeting may be called and any Rule or Regulation may be repealed by majority vote of the Members.

c) Notice. A copy of the Rules and Regulations adopted from time to time shall be posted in a conspicuous place within Summerset or furnished to each Owner.

11.8 Enforcement.

a) Owner's Responsibility. Each Owner and Owners' family members, guests and tenants shall conform and abide by the covenants contained in this Declaration and any Rules and Regulations which may be adopted from time to time by the Association. Each Owner shall be responsible for assuring such compliance, and any violation by family members, guests or tenants may be considered to be a violation by the Owner.

b) Notice, Hearing and Fines. Any Owner who is believed to be in violation of this Declaration or the Rules and Regulations shall be given notice and an opportunity to be heard. After such hearing, the Association shall have the right to assess fines, up to the maximum allowed by law and may restrict the Owner's use of the Common Elements for up to sixty (60) days or until

remedied, whichever is longer. However, the primary goal of this provision is not to punish but to conciliate and resolve problems. The Association may suggest or approve agreements and withhold the requirement of paying a fine if the agreement is honored. Fines shall be charged against the Unit as an Individual Unit Assessment. Any fines collected shall be contributed to the general fund of the Association.

c) Tenant Violations. If a tenant is believed to be in violation of the Declaration or Rules and Regulations, the Association shall notify the Owner and tenant and provide an opportunity for hearing. If the Association determines after notice and opportunity for hearing that a tenant has violated this Declaration or Rules and Regulations, the Association may assess fines against the Owner as provided in paragraph (b). In addition, if the violation continues for ten days after notice to the Owner of the findings, or if the tenant materially violates either Declaration or Rules and Regulations more than once in any one-year period, the Association shall have the right to evict the tenant. Each Owner by acceptance of a deed irrevocably appoints the Association as its agent and attorney-in-fact in such an eviction action. All costs related to such action shall be charged to the Owner as an Individual Unit Assessment.

d) Corrective Action for Unit Maintenance. If the Association determines after notice and hearing that any Owner has failed to maintain any part of the Unit (including the yard and any wall, fence, Building, garden structure or other structure) in a clean, attractive and safe manner, in accordance with the provisions of this Declaration, the Summerset Design Code and applicable rules and regulations, the Association shall notify the Owner of its findings and may assess fines as provided in paragraph (b). If the violation continues for ten days after notice to the Owner, the Association shall have the right without liability to enter upon such Unit to correct, repair, restore, paint and maintain any part of such Unit and to have any objectionable items removed from the Unit. The Association may reduce or eliminate the time for notice if it believes the condition creates a hazard. All costs related to such action shall be assessed to the Owner as an Individual Unit Assessment.

e) Pets. After notice and hearing, the Association may find that a pet causes an unsafe condition or unreasonable disturbance or annoyance and may require the Owner or tenant to take steps to cure or limit the offensive condition. If such steps are ineffective, if the Owner or tenant fails to cooperate or if the pet is considered to create an unsafe condition, the Association may require that an Owner or tenant permanently remove the pet from Summerset.

f) Covenants' Committee. The Association may appoint a Covenants' Committee, composed of Unit Owners, to hear violations of the Declaration or Rules and Regulations and to recommend or impose fines or take any other enforcement action under this Section 11.8.

g) Additional Remedies. All remedies listed in this section are non-exclusive and may be applied cumulatively. The Association shall also have the right to bring suit to enforce the Declaration and Rules and Regulations, as described in Section 13.3 ("Enforcement of the Declaration").

ARTICLE XII:

Transfer and Leasing of Units

The UPCA requires residents at Summerset who resell their Unit to provide to their buyer, with the help of the Association, the information listed in this Article

12.1 Transfer of Units. If an Owner transfers all of his ownership in his Unit, the transfer automatically includes his membership in the Association.

12.2 Leasing of Units. The leasing of a Unit does not affect the liability of the Owner with respect to his obligations under this Declaration, the By-laws and any rules and regulations promulgated, from time to time, by the Executive Board.

12.3 Resale of Units: Mandatory Disclosure to Purchaser(s).

a) **Mandatory Disclosures.** In the event of a resale of Unit by a Purchaser Owner, the seller shall furnish to a purchaser, before execution of any contract for sale of a Unit or otherwise before conveyance, a copy of the Declaration (not including, however, the plats and Plans, the By-Laws, the Rules or Regulations of the Association) and a certificate containing (if applicable) the requirements of § 5407 of the UPCA.

b) **Association's Obligation To Cooperate.** The Association must fully cooperate in the preparation and delivery of this information certificate to a selling Owner and shall furnish selling Owner with a certificate concerning the amounts owed to the Association with respect to the Unit in question within ten (10) days after it is requested in writing by the Owner. The Association may assess the reasonable cost of the preparation of its certificate to the selling Owner and require payment prior to the delivery of the certificate to the selling Owner.

c) **Owner's Liability.** An Owner providing this certificate to a purchaser is not liable to the purchaser for any erroneous information contained in the Association's certificate or provided by the Association to the Owner and included in his certificate. An Owner is not liable to a purchaser for the failure or delay of the Association to cooperate in the preparation of the certificate in a timely manner, but the purchase contract is voidable by the purchaser until the certificate has been provided and for five (5) days thereafter or until conveyance, whichever first occurs.

d) **Purchaser's Liability.** A purchaser is not liable for any unpaid assessment or fee larger than the amount set forth in the certificate prepared by the Association.

ARTICLE

XIII:

Insurance

Insurance is essential to protect the interests of the various Owners and to assure that funds will be available for rebuilding after a casualty. However, because insurance costs may increase significantly or new types of coverage made available, this Article gives some flexibility to the Executive Board to select insurance coverage that is reasonable for the conditions that exist at that time.

13.1 Review of Coverage. The Executive Board shall review limits of coverage for each type of insurance at least once each year.

13.2 Casualty Insurance. The Executive Board may obtain and, if additional Common Elements with significant insurable improvements are added to Summerset, shall be required to obtain and maintain, casualty insurance on the Common Elements for fire damage. Endorsements for extended coverage, vandalism, malicious mischief, flood and windstorm should be obtained where available at reasonable cost. Coverage shall be in an amount not less than necessary to comply with the co-insurance percentage stipulated in the policy, but in any event not less than 80% of the insurable value (based upon replacement) of the improvements constructed on the Common Elements.

13.3 Public Liability. The Executive Board may obtain public liability insurance in such limits as the Executive Board may from time to time determine, insuring against any liability arising out of, or incident to, the ownership and use of the Common Elements and any topographic conditions or water access located on or adjoining Summerset. At the Executive Board's discretion, such coverage may include easements, such as walkways, which benefit the Association. Whenever practicable, such insurance should be issued on a comprehensive liability basis and should contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association, the Executive Board or other Owners.

13.4 Director Liability Insurance. The Executive Board may obtain liability insurance insuring against personal loss for actions taken by members of the Executive Board and advisory members in the performance of their duties. Such insurance shall be of the type and amount determined by the Executive Board in its discretion.

13.5 Other Coverage. The Executive Board shall obtain and maintain workman's compensation insurance if and to the extent necessary to meet the requirements of law, and such other insurance as the Executive Board may determine or as may be requested from time to time by a majority vote of the Members.

13.6 Unit Coverage. Each Owner shall obtain casualty insurance for improvements on the Unit. If available at reasonable cost, the policy shall name the Association as an additional insured. Coverage shall be in an amount not less than necessary to comply with the co-insurance percentage stipulated in the policy, but in any event not less than 80% of the insurable value (based upon replacement) of the improvements constructed on the Unit. If requested by the Association, an Owner shall provide evidence of such insurance to the Association.

13.7 Repair and Reconstruction after Fire or Other Casualty.

a) Common Elements. If fire or other casualty damages or destroys any of the improvements on the Common Elements, the Executive Board shall arrange for and supervise the prompt repair and restoration of the improvements unless the area is to be redeveloped as provided in Section 13.2 ("Redevelopment"). The Executive Board shall obtain funds for such reconstruction first from the insurance proceeds, then from reserves for the repair and replacement of such improvements, and then from any Special Assessments that may be necessary after exhausting insurance and reserves.

b) Unit Owners' Buildings And Improvements. If fire or other casualty damages or destroys a Building or any other improvements in Summerset, the Owner or Owners who own the Building or improvement, or such portions thereof as are affected, shall immediately proceed to rebuild and restore the same to the condition existing immediately prior to such damage or destruction, unless other plans are approved by the Summerset Design Review Board. If the Owners fail to clean and secure the property within 30 days after a casualty, the Association may, in accordance with the provisions of paragraph 11.8(d) ("Corrective Action for Unit Maintenance"), remove debris, raze or remove portions of damaged structures and perform any other clean up the Association deems necessary to make the property safe and attractive. The cost of such clean-up shall be assessed to the Owners in question, as an Individual Unit Assessment.

ARTICLE XIV:

Amendment and Termination

Owners should be able to rely on the Declaration and the general principles it states. Amendment should not be easy. However, new solutions will be proposed from time to time to make the Association operate more efficiently or to adjust to changing conditions. Where clearly to the community's benefit, these new provisions should be incorporated into the Declaration.

14.1 Amendment.

a) Generally. Except as otherwise provided, this Declaration may be amended at any time by an instrument signed by the president or vice president and secretary of the Association, certifying approval in writing by Unit Owners representing sixty seven percent (67%) of the votes in the Association.

b) Unanimous Consent. Unless expressly permitted or required by other provisions of the Uniform Planned Communities Act, no amendment may create or increase special declarant rights, alter the terms or provisions governing the completion or conveyance or lease of common

facilities or increase the number of units or change the boundaries of any unit, the common expense liability or voting strength in the association allocated to a unit, or the uses to which any unit is restricted, except with the unanimous consent of all unit owners affected.

c) Technical Corrections. The Executive Board may amend this Declaration without the approval of the Owners or the holders of liens, if, in the judgment of the Executive Board and the opinion of independent legal counsel, the amendment is necessary to do any of the following:

- i) cure an ambiguity;
- ii) correct or supplement any provision of the Declaration, including the plats and plans, that is defective, missing or inconsistent with any other provision of the Declaration or with the Uniform Planned Communities Act; or
- iii) conform to the requirements of any agency or entity that has established national or regional standards with respect to loans secured by mortgages or deeds of trust or units in planned community or so-called "PUD" projects, such as Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

d) Declarant Rights. Declaration provisions pursuant to which any special declarant rights have been reserved to a Declarant shall not be amended without the express written joinder of the Declarant in such amendment.

e) Recording. Any amendment shall take effect upon recording in the public records of Allegheny County.

14.2 Dedication.

a) Common Roads. If any portion of the Common Roads has not previously been dedicated to the public, the Declarant or Association shall have the right to convey title to or dedicate the Common Roads to the appropriate public agency or authority.

b) Common Elements. All other Common Elements may be dedicated to the public by the Executive Board upon consent in writing of Unit Owners representing sixty seven percent (67%) of the votes in the Association.

c) Necessary Approval. Any dedication or conveyance described above is subject to acceptance by the applicable governmental agency.

14.3 Duration; Termination. The covenants and restrictions contained in this Declaration shall run with and bind all of the properties situated in Summerset and shall inure to the benefit of and be enforceable by the Declarant, the Association, and all Owners of property within Summerset, their respective legal representatives, heirs, successors or assigns for twenty years, and shall be automatically extended for each succeeding ten year periods unless an instrument signed by Owners

representing 90% of the votes in the Association shall have been recorded, agreeing to terminate the Declaration as of a specified date.

This Declaration may also be terminated in any of the following ways:

a) Unanimous Consent. The Declaration may be terminated at any time by the consent in writing of all Owners.

b) Dedication of Common Elements. The Declaration may be terminated by consent in writing by Unit Owners representing sixty seven percent (67%) of the votes in the Association, if the Common Elements have been accepted for dedication or taken by eminent domain by the appropriate unit of local government.

14.4 Rerecording. Unless this Declaration is terminated, the Association shall rerecord this Declaration or other notice of its terms at intervals necessary under Pennsylvania law to preserve its effect.

14.5 Condemnation. If all or part of the Common Elements is taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be paid to the Association. The Executive Board shall have the right to act on behalf of the Association with respect to the negotiation and litigation of the taking or condemnation affecting such property.

ARTICLE XV:

General Provisions

15.1 Interpretation

a) Construction. The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform and consistent plan for the development and operation of Summerset as a community of the highest quality. The italicized portions at the beginning of each Article are intended to state the purposes for the provisions that follow and may be used as an aid to interpretation. However, if the italicized portion conflicts with the operative provision, the operative provision shall govern.

b) Governmental Regulation. All provisions of this Declaration, including without limitation modifications to the Master Plan and redevelopment provisions, shall be subject to applicable government regulation or agreements.

15.2 Invalidity. The invalidity of any part of this Declaration shall not impair or affect the validity or enforceability of the rest of the Declaration, which shall remain in full force and effect.

15.3 Enforcement of Declaration.

a) Enforcement. Suit may be brought against any person, persons or entity violating or attempting to violate the provisions of this Declaration, either to restrain violation or to recover damages, and against his or its property to enforce any lien created by this Declaration. To enforce this Declaration or the Rules and Regulations, the Association, the Declarant or any Owner may bring an action for damages, specific performance, declaratory decree or injunction, or any other remedy at law or in equity. The Executive Board shall be empowered to bring suits on behalf of the Association.

b) No Waiver. Failure to enforce any provision of this Declaration or the Rules and Regulations shall not be deemed a waiver of the right to do so at any time thereafter.

c) Association's Legal Fees. Any and all costs, including but not limited to attorneys' fees and court costs, which may be incurred by the Association in the enforcement of any of the provisions of this Declaration, whether or not suit is brought, may be assessed as an Individual Unit Assessment to the Owner against whom such action was taken.

15.4 Notices. Any notice required to be sent to the Owner shall be deemed to have been properly sent when mailed, postage prepaid, or hand delivered to the Unit and, if different, to the last known address of the person who appears as Owner of the Unit as that address is stated on the records of the Association at the time of the mailing. If the Owner has given approval, notice may be given by electronic means to an address provided by the Owner.

15.5 Gender and Number. The use of the masculine gender herein shall be deemed to include the feminine gender and the use of the singular shall be deemed to include the plural, whenever the context so requires.

15.6 Law to Govern. This Declaration shall be construed in accordance with the laws of the Commonwealth of Pennsylvania.

15.7 National City Rights. So long as National City Bank of Pennsylvania, its successors or assigns, ("National City") holds a mortgage on any part of the property pursuant to a certain Revolving Development Loan Agreement dated JUNE 22, 2001 in the original principal amount of \$1,500,000.00 (the "Development Loan") with the Declarant:

(a) No material amendments to this Declaration may be made, nor may the Association be terminated, or any Declarant rights transferred except as otherwise authorized by law or as set forth in the Declaration, without the prior written approval of National City, and

(b) The Executive Board may not adopt or amend any rules and regulations without the prior written approval of National City, which shall not be unreasonably withheld, provided that if National City receives a written request to approve the adoption or amendment of

rules and regulations but does not deliver to the Executive Board a negative response within fifteen (15) days, it shall be deemed to have approved such request.

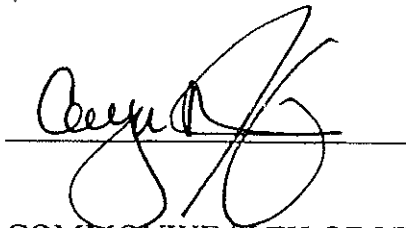
In the event that National City takes possession of the property in accordance with the provisions of the Development Loan, National City shall have the right to exercise the Declarant's rights under this Declaration.

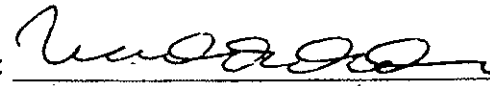
IN WITNESS WHEREOF, the undersigned does hereby make this Declaration for Summerset and has caused this Declaration to be executed as of the day and year first above written.

ATTEST/WITNESS:

SUMMERSET LAND DEVELOPMENT
ASSOCIATES, L.P., a Pennsylvania limited
partnership

By: MRRC SUMMERSET, INC., a Pennsylvania
corporation, its Managing General Partner



By: 
Title: (MARK SCHNEIDER) VICE PRESIDENT

COMMONWEALTH OF PENNSYLVANIA : ss
COUNTY OF ALLEGHENY :

ACKNOWLEDGMENT

On this, the 21st day of June, 2001, before me, Michelle Cindrich the undersigned officer, personally appeared MARK SCHNEIDER, who acknowledged himself to be the Vice President of MRCC Summerset, Inc., the Managing General Partner of Summerset Land Development Associates, L.P., a Pennsylvania limited partnership, and that he, as such President, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


Notary Public

My Commission Expires

Notarial Seal
Michelle L. Cindrich, Notary Public
Pittsburgh, Allegheny County
My Commission Expires Aug. 14, 2004
Member, Pennsylvania Association of Notaries

The undersigned is executing this document solely as the legal owner of the property, and in agreeing to execute said document is in no way whatsoever making any warranties as to any of the representations set forth herein nor shall the undersigned have any liability, responsibility or obligation whatsoever for anything set forth in this document, including without limitation, any obligation of the Declarant hereunder.

URBAN REDEVELOPMENT AUTHORITY OF
PITTSBURGH

ATTEST/WITNESS:

Deborah A. Burrell

By: [Signature]

Name: Valuzetta Birra

Title: Executive Director

[SEAL]

COMMONWEALTH OF PENNSYLVANIA : SS

COUNTY OF ALLEGHENY :

ACKNOWLEDGMENT

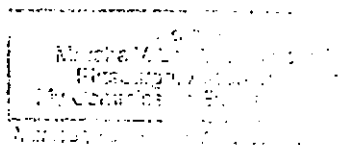
On this, the 26 day of June, 2001, before me, the undersigned officer, personally appeared Valuzetta Birra, who acknowledged himself to be the Executive Director of the Urban Redevelopment Authority of Pittsburgh, a redevelopment authority established and existing under the laws of the Commonwealth of Pennsylvania, and that he, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the authority by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Marsha V. Landeris

Notary Public

My Commission Expires



JUL 3 10 41 07

CHICAGO TITLE
INSURANCE COMPANY
ADJUTANT CLERK

DECLARATION

JUL -3 PM 2:30

By:

John L. Cichuliz
JOHN L. CICHULIZ

SUMMERSET LAND DEVELOPMENT
ASSOCIATES, L.P.

D 107.52
H 107.52
107.52



AFTER RECORDING, PLEASE RETURN TO:
CHICAGO TITLE INSURANCE COMPANY
ATTENTION: MLC
920 GRANT BUILDING
PITTSBURGH, PA 15219

CTIC NO. 01-0338