

THE SUMMIT AT WEST RIM ON MOUNT LARSON BLOCK A

DECLARATION OF

COVENANTS, CONDITIONS AND RESTRICTIONS

APRIL, 1999

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EXHIBIT "A" SPECIAL RESTRICTIONS FOR PROTECTION OF LOT
TWENTY-NINE (29), THE SUMMIT AT WEST RIM ON
MOUNT LARSON BLOCK A

EXHIBIT "B" BUILDING SETBACK REQUIREMENTS

**THE SUMMIT AT WEST RIM ON MOUNT LARSON BLOCK A
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

WITNESSETH:

WHEREAS, **PENTA DEVELOPMENT CORPORATION**, a Texas corporation (hereinafter called "Declarant"), intends to restrict the following real property owned by Declarant: (i) **THE SUMMIT AT WEST RIM ON MOUNT LARSON BLOCK A**, a subdivision in Travis County, Texas, according to the map or plat of record in ~~Book Doc #~~, Page ~~199980/44~~, Plat Records of Travis County, Texas **SAVE AND EXCEPT** Lot Thirty-six (36), and (ii) Lot One (1), Block "A," **MOUNT LARSON I**, a subdivision in Travis County, Texas, according to the map or plat of record in Book 86, Page 52D, Plat Records of Travis County, Texas (collectively, the "Property");

WHEREAS, the Property is located west of and in close proximity to Lake Austin, and such location, together with the geological and other natural features of the Property, result in great diversity, natural beauty and uniqueness, which require environmental sensitivity in the development and use of the Property;

WHEREAS, the location of the Property affords panoramic views from many sites on the Property of Lake Austin, the skyline of the downtown of the City of Austin and the surrounding hills;

WHEREAS, the purpose of this instrument is to preserve so far as possible the natural beauty of the Property and the panoramic views from the Property, to avoid harsh contrasts between structures and landscape, to guard against the erection of poorly designed or proportioned structures and the use of unsuitable materials, to encourage and ensure the erection of attractive improvements which are harmonious with their sites and, in general, to enhance the environmental quality and economic value of the Property; and

WHEREAS, Declarant desires to convey the Property subject to all the protective covenants, conditions and restrictions as hereinafter set forth and to create and carry out a uniform plan for the improvement, development and sale of the Property for the benefit of the present and future owners of the Property, and, in furtherance thereof, Declarant hereby adopts and establishes the following declaration of covenants, conditions and restrictions to apply uniformly to the ownership, encumbrance, lease, use, occupancy, enjoyment and conveyance of all the Property.

NOW, THEREFORE, it is hereby declared that all of the Property shall be owned, encumbered, leased, used, occupied, enjoyed and conveyed subject to the following covenants, conditions and restrictions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and shall be binding on all parties having any right, title or interest in or to the Property or any part thereof, their heirs, administrators, legal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE 1 DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified:

1.1 Architectural Committee. "Architectural Committee" shall mean the committee created pursuant to this Declaration as provided in Article 3 hereof.

1.2 Articles. "Articles" shall mean the Articles of Incorporation of the Association, which have been filed in the office of the Secretary of State of the State of Texas, as the Articles may from time to time be amended.

1.3 Assessment(s). "Assessment(s)" shall mean assessment(s) levied by the Association and includes both regular and special assessment(s) as provided in Article 5 hereof.

1.4 Association. "Association" shall mean **The Summit at West Rim on Mount Larson Owners Association, Inc.**, a Texas non-profit corporation.

1.5 Beneficiary. "Beneficiary" shall mean a mortgagee under a mortgage or a beneficiary under a deed of trust.

1.6 Board. "Board" shall mean the Board of Directors of the Association.

1.7 Building. "Building" shall mean a structure, including a residence, having a roof supported by columns or walls for the shelter, support or enclosure of persons or property.

1.8 Bylaws. "Bylaws" shall mean the Bylaws of the Association which may be adopted by the Board, as the Bylaws may from time to time be amended.

1.9 Common Areas. "Common Area" shall mean the following Lots in the Subdivision: Lots Thirty (30) and Forty-three (43), **THE SUMMIT AT WEST RIM ON MOUNT LARSON BLOCK A**, and Lot One (1), Block "A," **MOUNT LARSON I.**

"Common Area" shall also mean all "private joint use driveways" as so designated on the recorded Subdivision plat.

1.10 Conservation Easement. "Conservation Easement" shall mean the portions of Lots shown as Conservation Easement or Conservation and Drainage Easement on the plats for the Subdivision.

1.11 Declarant. "Declarant" shall mean Penta Development Corporation, a Texas corporation, and its duly authorized representatives and successors or assigns; provided, however, any assignment of the rights of Penta Development Corporation as Declarant must be expressly set forth in a written instrument recorded in the Real Property Records of Travis County, Texas. The mere conveyance of a portion of the Property without such a written, recorded assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.

1.12 Declaration. "Declaration" shall mean this instrument, as this instrument may from time to time be amended or supplemented.

1.13 Improvement. "Improvement" shall mean every structure and all appurtenances thereto of every type and kind, including, but not limited to, Buildings, outbuildings, storage sheds, patios, sport courts, swimming pools, garages, storage buildings, playscapes, treehouses, swing sets, fences, screening walls, retaining walls, stairs, steps, porches, mailboxes, walkways, driveways, decks, landscaping, poles, signs, exterior air conditioning, water softener fixtures or equipment, exterior lighting fixtures and equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennae, aerials, satellite dishes, wind generators, solar collectors, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television and other utilities.

1.14 Lot(s). "Lot" or "Lots" shall mean the lot or lots of land within the Property as established on the plats for the Subdivision.

1.15 Lower Lots. "Lower Lots" shall mean Lots One (1) through Eighteen (18), inclusive, Lot Twenty-one (21), Lot Twenty-eight (28), Lots Thirty-two (32) through Thirty-five (35), inclusive, and Lots Thirty-seven (37) through Forty-two (42), inclusive, **THE SUMMIT AT WEST RIM ON MOUNT LARSON BLOCK A.**

1.16 Manager. "Manager" shall mean the person, firm or corporation, if any, employed by the Association pursuant to this Declaration and delegated the duties, powers and functions of the Association as provided in Section 4.5(c) hereof.

1.17 Member. "Member" shall mean any person or entity who is a member of the Association.

1.18 Mortgage. "Mortgage" shall mean any mortgage or deed of trust covering any portion of the Property, including any Lot or Lots, voluntarily given by an Owner to secure the payment of a debt.

1.19 Owner(s). "Owner(s)" shall mean any person or entity, including Declarant, holding record legal title to a fee simple interest in any portion of the Property, including any Lot or Lots, but shall not include any Beneficiary whose sole interest in the Property or a portion thereof is derived from a Mortgage.

1.20 Plans and Specifications. "Plans and Specifications" shall mean any and all documents designed to guide or control the construction, alteration or removal of any Improvement, including, but not limited to, those indicating location, size, shape, configuration, materials, including roofing materials, site plans, excavation plans, grading plans, foundation plans, drainage plans, landscaping plans, fencing plans, screening plans, elevation drawings, floor plans, exterior lighting plans, specifications on all building products and construction techniques, samples of exterior colors and materials, plans for utility services, and all other documentation or information relevant to such construction, alteration or removal.

1.21 Subdivision. "Subdivision" shall mean, collectively, (i) **THE SUMMIT AT WEST RIM ON MOUNT LARSON BLOCK A**, a subdivision in Travis County, Texas, according to the map or plat of record in ~~Book Doc. #, Page 19900144~~ Plat Records of Travis County, Texas, and (ii) Lot One (1), Block "A," **MOUNT LARSON I**, a subdivision in Travis County, Texas, according to the map or plat of record in Book 86, Page 52D, Plat Records of Travis County, Texas.

1.22 Upper Lots. "Upper Lots" shall mean Lot Nineteen (19), Twenty (20), Lots Twenty-two (22) through Twenty-seven (27), inclusive, Lot Twenty-nine (29) and Lot Thirty-one (31), **THE SUMMIT AT WEST RIM ON MOUNT LARSON BLOCK A**.

ARTICLE 2 RESTRICTIONS

All of the Property shall be owned, encumbered, leased, used, occupied, enjoyed and conveyed subject to the following limitations and restrictions:

2.1 Residential Use: Construction, Alteration or Removal of Improvements.

(a) All Lots shall be improved and used solely for single family residential use and accessory uses, including, without limitation, a garage, fencing and such other Improvements as are necessary or customarily incident to residential use. No manufacturing, trade, business, commerce, industry, profession or other occupation whatsoever may be conducted or carried on in any portion of the Property or in any Improvement thereon. No Improvement constructed on a Lot may be used

as an apartment house, flat, lodging house or hotel, but such Improvements may be leased for single family residential purposes for a minimum term of thirty (30) days.

(b) No Improvement may be constructed, altered or removed upon or from any of the Property without the prior written approval of the Architectural Committee. Any action, other than normal maintenance, which in any way alters the exterior appearance of any Improvement, including, without limitation, its color, or which involves the removal of any Improvement or the alteration of the landscaping on a Lot, shall be performed only with the prior written approval of the Architectural Committee.

(c) No Improvement may be constructed on any Lot which would unnecessarily obstruct the view from other portions of the Property, and the positioning of all Improvements upon all Lots is hereby expressly made subject to Architectural Committee review. The Architectural Committee may prevent or allow the construction of a proposed Improvement based upon the effect it will have upon the view from any particular Lot; provided, however, notwithstanding anything to the contrary in this Declaration, the Architectural Committee, the members thereof and the Board shall not be liable to any Owner for monetary damages or otherwise due to the construction of any Improvement within the Property or the creation thereby of an obstruction to the view from such Owner's Lot or Lots. No Improvement shall be allowed on any Lot that is of such size or architectural design or that involves the use of such landscaping, color schemes, exterior finishes and materials and similar features as to be incompatible with residential development in the Subdivision and the surrounding West Lake Hills area. All foundations for Improvements shall, to the extent possible, conform to the topography of the Lot on which the Improvement is being constructed.

2.2 Building Height. No Improvement greater than forty feet (40') or more than two (2) stories in Height may be constructed on the Lower Lots, and no Improvement greater than fifty feet (50') in Height may be constructed on the Upper Lots. As applied to a Building, Height is measured from the average elevation from the existing grade(s), front to rear of the Building, to (i) the highest point of the coping of a flat roof; (ii) to the deck line of a mansard roof; (iii) to the average height of the highest gable on a pitched or hipped roof; or (iv) if none of the preceding, then to the highest point of the Building, excluding spires, antennae, ventilators, chimneys or other similar appurtenances not extending over six feet (6') above the Building on which they are located. The foregoing provisions and restrictions of this Section 2.2 shall not apply to Lot Thirty-seven (37), **THE SUMMIT AT WEST RIM ON MOUNT LARSON BLOCK A.**

2.3 Building Materials and Residence Size.

(a) Masonry. All single family residences shall be of recognized standard construction quality, and shall be constructed of one hundred percent (100%) standard masonry including brick, stone, stucco or other material specifically approved in writing by the Architectural Committee. All chimneys shall also be constructed of one hundred percent (100%) standard masonry. Imitation masonry products shall not be considered standard masonry for purposes of the preceding sentences.

(b) Residence Size. Each single family residence constructed on the Property shall contain not less than Five Thousand (5,000) square feet of enclosed living space on an Upper Lot, and Three Thousand Five Hundred (3,500) square feet of enclosed living space on a Lower Lot, exclusive of porches and patios (open or covered), decks and garages; provided, however, that the Architectural Committee may reduce this requirement for particular Lots based upon the quality of construction and design of the proposed residence. Any such request for a reduction in the minimum square footage requirement below Five Thousand (5,000) square feet for Upper Lots or Three Thousand Five Hundred (3,500) square feet for Lower Lots shall be in writing and shall state the specific reasons therefor. At least one floor of any two-story residence shall contain at least Two Thousand Five Hundred (2,500) square feet of total living area.

2.4 Foundation Exposure. No more than two feet (2') of vertical surface of concrete slab shall be exposed to view from any public or private street or driveway or from another Lot and no areas under any foundation shall be exposed to any public or private street or driveway or to another Lot. All concrete slabs in excess of two feet (2') in height and all swimming pool structures shall be adequately and fully screened from the view of any public or private street or driveway or of any other Lot.

2.5 Roofing Materials.

(a) Lower Lots. All roofs of Buildings constructed on the Lower Lots (i) must be constructed of clay tile, cement tile, slate, synthetic slate, non-reflective standing seam metal of earth tone colors, or forty (40) year architectural dimensional shingle, (ii) must be of high grade and quality, and (iii) must be consistent with the exterior design, color and appearance of other Improvements within the Property. No reflective roofs shall be permitted.

(b) Upper Lots. All roofs of Buildings constructed on the Upper Lots (i) must be constructed of clay tile, cement tile, slate, synthetic slate, or non-reflective standing seam metal of earth tone colors, (ii) must be of high grade and quality, and (iii) must be consistent with the exterior design, color and appearance of other Improvements within the Property. No reflective roofs shall be permitted.

2.6 Detached Buildings. With Architectural Committee approval only, detached Buildings such as pool houses, cabanas, guest quarters and servant quarters may be allowed. Masonry, foundation and roof requirements as set forth in Sections 2.3 through 2.5 above must be met with respect to all detached Buildings permitted by the Architectural Committee.

2.7 Windows and Doors. All windows must be of all wood or wood clad construction. Aluminum or other metal windows on Buildings are expressly prohibited. All interior window treatments (i.e., drapes, shutters, blinds, etc.) that can be seen from any public and private street shall consist of or be backed by white or beige material, so that all window treatments look similar from the street. All exterior front doors shall be constructed of solid wood (with or without window panes).

2.8 Reflective or Mirrored Glass. No reflective or mirrored glass shall be used on, in or for the windows or doors of any Buildings or other Improvements constructed upon a Lot. All windows shall be required to contain Southern Low-E non-reflective glass or comparable glass approved by the Architectural Committee.

2.9 Driveways. Driveways on each Lot must be constructed of exposed aggregate (pebble finished concrete), brick pavers or concrete with stamped patterns, and all driveways must also contain a contrasting or harmonious banding or coping around the boundaries of the driveways. Location, design and any decorative surface of all driveways must be approved by the Architectural Committee. Driveways must be shown on the site plan submitted to and approved by the Architectural Committee.

2.10 Athletic Facilities. Sport court construction shall require the prior written approval of the Architectural Committee. Any Owner desiring to install a sport court shall submit design and site plans (including color scheme), landscaping plans and lighting specifications with respect to the proposed sport court. In all cases, court size will be limited to a maximum of forty feet (40') by seventy feet (70'). All court surfaces must be constructed of materials specifically approved by the Architectural Committee. Concrete or asphalt surfaces without additional athletic surfacing materials will not be allowed. The maximum fence height shall be ten feet (10'). Fencing materials will be limited to black net fencing only. No wind shielding materials will be permitted. Lighting will be strictly limited to downward directional cutoff luminair sports lighting systems. A maximum of two (2) twenty foot (20') standards (with a maximum of one (1) one thousand five hundred (1,500) watt metal halide bulb per standard) will be allowed. To ensure that illumination affects the court area only and that lights do not shine or glare on other Lots, the Architectural Committee will have final approval of all lighting design and will have the right to require the use of additional shielding to minimize glare. No usage of such facilities (including lighting) shall occur between the hours of 9:00 p.m. and 8:00 a.m. All basketball backboards must be clear acrylic, and no basketball goals or backboards or any other similar sporting equipment of either a permanent or temporary nature shall be placed on any

Lot where the same would be readily visible from the street or ground level of any other Lot. The Architectural Committee will have the right to regulate the appearance and placement of all sporting apparatus, including basketball goals. Lot Thirty-seven (37), **THE SUMMIT AT WEST RIM ON MOUNT LARSON BLOCK A**, will be exempt from all of the sport court restrictions of this Section 2.10.

2.11 Building Setback Requirements. The building setback lines set forth on the recorded plats of the Subdivision and on Exhibit "B" attached hereto must be complied with. With respect to Lots Twenty-eight (28) and Thirty-eight (38) through Forty (40), inclusive, **THE SUMMIT AT WEST RIM ON MOUNT LARSON BLOCK A**, no Building shall be located closer than twenty-five feet (25') to any "private use driveway" (as so designated on the recorded Subdivision plat) lying adjacent to such Lots. In addition to the foregoing and subject to the next succeeding sentence, no Building or other Improvement shall be located closer than fifteen feet (15') to any side Lot line without the prior approval of the Architectural Committee. However, if an Owner owns two (2) or more contiguous Lots, such Owner may construct Buildings across a side Lot line which serves as a common Lot line between the Lots owned by such Owner.

2.12 Subdividing. No Lot shall be further divided or subdivided, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Architectural Committee; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey an easement or other interest less than the whole, all without the approval of the Architectural Committee.

2.13 Signs. No sign of any kind shall be displayed to the public view without the prior written approval of the Architectural Committee, except for signs which are part of Declarant's overall marketing plan for the Property. The Architectural Committee may permit signs of any type advertising portions of the Property for sale or lease and it may set standards for the same.

2.14 Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property or any portion thereof and no odors shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property or to its occupants. Refuse, garbage and trash shall be kept at all times in covered containers and all such containers shall at all times be kept within an enclosed structure or appropriately screened from view of all adjacent property and public and private rights-of-way; provided, however, garbage containers shall be permitted to be placed outside of enclosed structures and may be removed from screened areas a maximum of two (2) times each week, for no longer than twelve (12) hours each time, for garbage collection. All construction sites shall be kept clean and orderly and no discharge of any oil, grease or other similar substances shall be permitted.

2.15 Noise; Nuisances. No exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on any portion of the Property. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or its occupants. No construction activity shall be conducted on any portion of the Property between the hours of 7:00 p.m. and 7:00 a.m. No noxious or offensive activity shall be conducted on any portion of the Property. No portion of the Common Areas shall be used at night in any way which creates noise or lights which disturbs any other Owner. The Board, in its sole discretion, shall determine whether an action or activity constitutes a violation of this Section 2.15.

2.16 Condition and Repair of Improvements and Landscaping. All Improvements upon the Property shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner thereof. Automatic underground sprinkler systems must be installed in all front yards. Such systems shall be well maintained and operated at each residence to keep lawns and landscaping in a condition acceptable to the Association and appropriate to the season, weather conditions and water availability. All landscaping plans shall be prepared and implemented in order to prevent erosion to the maximum extent reasonably practicable. Each Owner shall keep all trees, shrubs, grass and plantings on such Owner's Lot or Lots free of disease and insects consistent with good horticultural practice. All landscaping and irrigation shall be installed simultaneously with the completion of a residence on a Lot and shall at all times thereafter be kept in neat and well-groomed condition and appearance, with all trees, shrubs and plantings properly pruned, yards regularly mowed, edged and raked and all areas kept free of trash, debris, weeds and overgrowth. Without limiting the generality of the foregoing, each Owner shall promptly treat oak trees on their Lots that show symptoms of oak wilt or other life-threatening diseases in a manner consistent with good horticultural practice. The Association shall have the right, at its option and election, to enter upon any Lot containing trees infected with oak wilt or other diseases where the Owner of such Lot has failed to timely and effectively treat such oak wilt or other disease. In such cases, the Association may take such steps and actions as the Association deems advisable to treat the oak wilt or other disease and assess the Owner of such Lot for the cost of such treatment. The Association may also, as a legitimate Association expense, undertake a Subdivision-wide or area-wide oak wilt or other tree disease treatment approach and assess equally all of the Lots in the Subdivision for such treatment. The Board, in its sole discretion, shall determine whether the provisions of this Section 2.16 have been satisfied.

2.17 Hazardous Activities; Fertilizers, Pesticides and Herbicides.

(a) No activities shall be conducted or allowed to exist on any portion of the Property and no Improvements shall be constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, activities that are expressly prohibited include (1) mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate or earth, (2) the use or discharge of firecrackers or other fireworks within the Property, (3) the use or storage of liquid propane gas, gasoline, oil or any type of flammable liquids or gases in other than closed tanks within an enclosed structure or permanently screened from view; provided, however, only such liquids and gases as are customarily used for residential purposes shall be allowed on the Property, (4) any activities which may be offensive or hazardous by reason of odor, fumes, dust, smoke, noise, vibration or pollution, or which are hazardous by reason of excessive danger, fire or explosion, (5) hunting, trapping and the discharge of firearms, (6) open fires in other than a contained barbecue unit for cooking purposes, while attended and in use, or within a safe and well designed interior or exterior fireplace, (7) the use of bows and arrows, crossbows, slingshots, darts or other projectile devices, or (8) the discharge or leakage of any type of hazardous or toxic chemical or material, such as oil, fertilizers, pesticides or herbicides; provided, however, only such materials as are customarily used for residential purposes shall be allowed on the Property. Water wells are permitted if all applicable governmental requirements are met by the Owner of the Lot.

(b) No fertilizers, pesticides or herbicides other than those generally available for consumer use and approved by an agency, such as the Food and Drug Administration, for the purpose intended shall be placed, used or stored on any Lot. All Owners using any such materials shall strictly comply with all instructions provided with such materials and shall take proper precautions in placing, using and storing such materials so that such materials are contained at all times and do not result in the unnecessary discharge thereof into Lake Austin or onto any other Lot.

2.18 Vehicles; Unsightly Articles; Temporary Structures.

(a) Passenger vehicles, motorcycles and scooters owned or used by an Owner shall not be parked or left on any portion of the Property other than such Owner's garage or driveway for longer than twelve (12) hours at a time. No mobile homes, boats, buses, trucks (other than passenger vehicle trucks), boat trailers, graders, tractors or wagons shall be parked or placed on any Lot at any time unless in an enclosed garage; provided, however, construction equipment may be left on a Lot during construction on such Lot, but shall be removed as soon as such equipment is no longer needed in such construction. No travel trailers or recreational vehicles shall be parked on or near any Lot so as to be visible from adjoining property or public or private rights-of-way for longer than forty-eight (48) hours at a time. Service and

delivery vehicles may be parked on the Property during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery.

(b) No junk vehicles or equipment, spare vehicle or equipment parts or other article deemed to be unsightly by the Board shall be permitted to remain on any Lot so as to be visible from adjoining property or public or private rights-of-way. All garden maintenance equipment shall be kept at all times, except when in actual use, in an enclosed structure or screened from view of adjoining property and public and private rights-of-way. No recreational equipment, including, but not limited to, swing sets, playscapes, skate boards, bicycles, skate board or bicycle ramps, or badminton nets, shall be permitted in the front yard of any residence on the Property without the express approval of the Architectural Committee. Vegetable gardens shall be permitted for household use only and shall not be permitted in the front yards of residences. No repair or maintenance work shall be done on any garden maintenance equipment or on any vehicle (other than minor emergency repairs) except in an enclosed garage or other structure. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household materials shall be appropriately screened from view and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials or scrap or refuse of trash shall be kept, stored or allowed to accumulate on any portion of the Property except within an enclosed structure or appropriately screened from view.

(c) No tent, shack, barn or other temporary Improvement shall be placed upon any portion of the Property; provided, however, that temporary structures necessary for storage of tools and equipment and for office space for architects, builders and foremen during actual construction may be maintained with the prior written approval of the Architectural Committee, such approval to include the nature, size, duration and location of such structure.

2.19 Animals. No kennel or other facility for raising or boarding dogs or other animals for commercial purposes shall be kept on any Lot. Only the keeping of ordinary household pets such as dogs and cats, not to exceed two (2) each in number, is allowed; however, no breeding, raising, or boarding of such pets is permitted on any Lot. No pit bull terriers or other dangerous breed of dogs as determined by the Board in its sole discretion may be kept on any Lot for any period of time. All pets permitted by this Declaration to be kept on a Lot shall at all times be properly vaccinated, neutered or spayed, and cared for. No poultry or livestock of any kind may be kept on any Lot for any period of time. All dogs shall be kept on the Owner's Lot and shall not be allowed to leave the Owner's Lot unless kept on a leash at all times. Owners having dogs shall keep their Lot and all Lots, Common Areas and other areas of the Subdivision free of accumulations of waste from their dog. The foregoing provisions and restrictions of this Section 2.19 shall not apply to Lot Thirty-seven (37), **THE SUMMIT AT WEST RIM ON MOUNT LARSON BLOCK A.**

2.20 Fences.

(a) Lower Lots. Chain link and other open mesh, wire type fences may not be constructed or maintained on any Lower Lot unless they are used to enclose a dog run no larger than eight feet (8') by sixteen feet (16'). All dog runs shall be screened from view from all streets, driveways and residences to the maximum extent practicable. No animal wastes shall be permitted to escape any such dog runs. No wooden fences may be constructed or maintained on any Lower Lot. Fencing and walls will not be allowed to extend beyond the front of any dwelling located on a Lower Lot (i.e., no enclosed front yards will be allowed). The Architectural Committee may, in its discretion, prohibit the construction of any proposed fence or wall, or specify the materials of which any proposed fence or wall must be constructed, or require that any proposed fence or wall be screened by vegetation or otherwise so as not to be visible from other portions of the Property. No fence or wall may obstruct, or be located within, any Conservation or Drainage Easement. Lot Thirty-seven (37), **THE SUMMIT AT WEST RIM ON MOUNT LARSON BLOCK A** shall be exempt from the fencing and wall restrictions of this Section 2.20(a).

(b) Upper Lots. Chain link and other open mesh, wire type fences may not be constructed or maintained on any Upper Lot unless they are used to enclose a dog run no larger than eight feet (8') by sixteen feet (16'). All dog runs shall be screened from view from all streets, driveways and residences to the maximum extent practicable. No animal wastes shall be permitted to escape any such dog runs. No wooden fences or walls may be constructed or maintained on any Upper Lot. Masonry walls (not to exceed eight feet [8'] in height) and private gates may be constructed along the Lot lines of each Upper Lot. The Architectural Committee may, in its discretion, prohibit the construction of any proposed fence or wall, or specify the materials of which any proposed fence or wall must be constructed, or require that any proposed fence or wall be screened by vegetation or otherwise so as not to be visible from other portions of the Property. No fence or wall may obstruct, or be located within, any Conservation or Drainage Easement.

2.21 Carports; Garages. No carports shall be erected or permitted to remain on any Lot. Each residence constructed on a Lot shall have either attached, or adjacent, to it an enclosed garage that shall be large enough to accommodate at least two (2) full size passenger automobiles. Garages may also contain appropriately sized storage rooms, recreational workshops and tool rooms as approved by the Architectural Committee. All garages must have garage doors that are operated by electric door openers kept in operable condition, and all garage doors shall remain closed at all times; *save and except* for the temporary opening of same in connection with the ingress and egress of vehicles and the loading or placement and unloading or removal of items customarily kept or stored in garages. All garages shall be side

entry garages, so that the front of the garage shall not be visible from the street on which the residence fronts.

2.22 Underground Utility Lines. No utility lines or wires, including, but not limited to, wires or other devices for the communication or transmission of telephone, electric current or power or cable television, shall be erected, placed or maintained in or upon any Lot unless the same shall be contained in conduit or cables that are installed and maintained underground or that are concealed in, under or on Buildings; provided, however, that no provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of Improvements which have been previously approved in writing by the Architectural Committee. The installation method, including, but not limited to, location, type of installation equipment, trenching method and other aspects of installation for both temporary and permanent utility lines and wires shall be included in the Plans and Specifications for all Improvements.

2.23 Exterior Lighting. Exterior lighting or illumination of Buildings, yards, landscaping and parking areas shall be designed and installed with adequate top and side shielding to avoid visible glare (direct or reflected) onto streets, Common Areas, private joint use driveways, rights-of-way and/or other Lots. All exterior lighting must be approved by the Architectural Committee; provided, however, Christmas and other holiday lights shall be permitted without the prior approval of the Architectural Committee during the month of December of each year. All Christmas and other holiday lights must be removed by January 15th of the next year. No lighting shall be permitted that constitutes a nuisance or hazard to any Owner or occupant of any Lot. The Architectural Committee, in its sole discretion, shall determine whether the provisions of this Section 2.23 have been satisfied.

2.24 Antennae; Satellites. No exterior satellites or antennae shall be permitted except for satellite dishes with diameters of eighteen inches (18") or smaller.

2.25 Exterior Air Conditioning Equipment. All air conditioning compressors and other equipment located outside of residential dwellings shall be screened from the view of all streets, driveways and other Lots by opaque walls attached to and made a part of each Residence or otherwise approved by the Architectural Committee. Absolutely no window or roof mounted air conditioning units are permitted in the Subdivision without the approval of the Architectural Committee and provided no such window or roof mounted air conditioning units are visible from any other Lot.

2.26 Garbage Containers. The Architectural Committee shall have the right to require each Owner to specify a specific location for enclosure of all trash can(s) and to require each Owner to construct a permanent enclosure at an approved location

for the placement of garbage containers for collection purposes. Such enclosure shall not be visible from the public or private streets or driveways in the Subdivision.

2.27 Conservation Easement. No Improvements, "invisible" fences or electronic deterrence devices for pets may be constructed or maintained within any Conservation Easement. All plants, trees, vegetation, rocks, soil and other geological features on the Conservation Easement shall not be disturbed in any way and shall be left in their natural state.

2.28 Landscaping and Irrigation Plans. Complete landscape plans showing all existing trees with a diameter of four inches (4") or greater within limits of disturbed areas of the Lot and all proposed removal of existing vegetation shall be submitted together with Resident Plans and Specifications and shall be subject to the approval of the Architectural Committee. The Architectural Committee's approval of Plans and Specifications containing such landscape plans shall be required prior to any disruption, cutting or clearing of existing vegetation. The following guidelines shall apply to all landscaping and irrigation within the Subdivision:

(a) Landscape and underground sprinkler system plans shall be designed to be in conformance with the requirements of the restrictive covenants contained in this Declaration and shall be submitted to the Architectural Committee for consideration at least thirty (30) days prior to installation. Each Owner of a Lot shall landscape his yard pursuant to the landscape plan approved by the Architectural Committee. Yards shall be landscaped and irrigation systems shall be completely installed prior to or simultaneously with the completion of a residence on a Lot. Completion of a residence on a Lot shall be deemed to be the date such residence is ready and available for occupancy.

(b) All landscape construction plans submitted to the Architectural Committee for consideration shall be prepared in a manner (i) to provide the location of all existing trees with a diameter of four inches (4") or greater within limits of disturbed areas of the Lot, (ii) sufficient in detail to depict the species, size, quality, spacing and location of all new plant material, sod area and material, and (iii) to provide explicit planting specifications. The landscape plans shall also set forth the exterior lighting plan in accordance with Section 2.23 above. All portions of the Lot which are disturbed during the construction process must either be landscaped or restored to a natural state. The minimum container size for foundation plants shall be five (5) gallons and spaced not more than three feet (3') apart. All irrigation plans shall be prepared by a licensed irrigation contractor and shall detail the location and areas covered by all sprinkler and/or irrigation devices. A backflow prevention device which meets the City of Austin's requirements is required for the irrigation system.

(c) Existing trees having a diameter of four inches (4") or greater shall be preserved and protected to the maximum extent possible. The diameters of all trees shall be measured four feet (4') above the surface of the ground. Existing trees that are to be preserved shall be protected during construction consistent with guidelines established by the City of Austin and the Architectural Committee. To the extent that any protected trees as described above must be removed in order to reasonably construct a residential dwelling on a Lot, the Owner of such Lot may be required by the Architectural Committee, in the Architectural Committee's sole discretion, to replace any such removed tree with a replacement tree either on the Lot or on a Common Area at such Owner's expense. The size and type of replacement tree will be designated by the Architectural Committee, in its sole discretion. To the extent that any protected trees as described above are removed without the consent of the Architectural Committee, the Architectural Committee, in the Architectural Committee's sole discretion, may require the Owner of such Lot to replace any such removed tree with three (3) replacement trees either on the Lot or on a Common Area at such Owner's expense. The size and type of such replacement trees will be designated by the Architectural Committee, in its sole discretion.

(d) Xeriscape landscaping utilizing trees, shrubs and other vegetation that are native to Central Texas and having low water requirements is encouraged for all development within the Subdivision. For purposes of this Section 2.28(d), xeriscape landscaping means a method of landscaping which conserves water through the use of specific principles of design, plant selection, installation and design, such as soil improvement, use of mulch, use of native plants with low water requirements, efficient irrigation and effective maintenance.

(e) All new planting shall utilize trees, shrubs, vines, ground covers, seasonal flowers and turf grasses that are commonly used in and appropriate for Central Texas landscaping. Fruit and vegetable bearing plants shall not be used for landscaping.

(f) Either permanent turf grass sod or winter rye shall be established in all turf areas upon completion of construction; provided, however, winter rye shall only be used as a temporary ground cover to reduce soil erosion in the winter season and shall be replaced with permanent turf grass by no later than June 1st of the year in which construction is completed or the following year if construction is completed after May 15th of a year.

2.29 General Restrictions.

(a) All Buildings constructed on the Property shall be built in place on the Lot.

(b) There shall be no interference with the established drainage patterns over any of the Property, except by Declarant, unless adequate provision is made for proper drainage and the prior written approval of the Architectural Committee is obtained.

(c) All Building foundations shall utilize design and construction practices certified by a registered professional engineer qualified to practice in such field and such design shall be delivered to the Architectural Committee with the Plans and Specifications.

(d) All restrictions and plat notes on the recorded plats of the Subdivision shall be complied with.

(e) Once commenced, construction of all Buildings shall be diligently pursued to completion. All residences must be completed within eighteen (18) months after commencement of construction. No construction shall be left in a partially completed condition. All construction materials and debris shall promptly be cleared from each Lot upon completion of construction thereon.

2.30 Lot Twenty-nine (29) Protection Provisions. The special provisions pertaining to Lot Twenty-nine (29), **THE SUMMIT AT WEST RIM ON MOUNT LARSON BLOCK A**, set forth on Exhibit "A" attached hereto and made a part hereof shall be complied with. No waiver or exceptions may be made to such provisions without the prior written consent of the Owner of Lot Twenty-nine (29), **THE SUMMIT AT WEST RIM ON MOUNT LARSON BLOCK A**. Also, prior to April 10, 1999, no waiver or exceptions may be made to such provisions without the prior written consent of Gary G. Hendrix and wife, Eugenia G. Hendrix.

2.31 Compliance with Provisions of this Declaration. Each Owner shall comply strictly with the provisions of this Declaration. Failure to comply with any provision of this Declaration shall constitute a violation of this Declaration, and shall give rise to a cause of action to recover the sums due for damages or injunctive relief or both, maintainable by the Board on behalf of the Association or by an aggrieved Owner. The Board shall determine, in its sole discretion, whether the provisions of this Declaration have been satisfied.

ARTICLE 3 ARCHITECTURAL COMMITTEE

3.1 Membership and Duties of Architectural Committee.

(a) The Architectural Committee shall be composed of not more than three (3) persons. Members of the Architectural Committee need not be Members of

the Association. The following persons are hereby designated as the initial members of the Architectural Committee: Leslie L. Canter and Barbara Casey.

(b) The Architectural Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration and perform such other duties assigned to it by this Declaration or as from time to time shall be assigned to it by the Board. The Architectural Committee shall review Plans and Specifications submitted for its review and such other information as it may require relating to the question of whether any proposed Improvement would unreasonably obstruct the view from other portions of the Property. The Architectural Committee shall have the authority to disapprove any proposed Improvement based upon the restrictions set forth herein and the decision of the Architectural Committee shall be final and binding so long as it is made in good faith. The Architectural Committee shall not be responsible for inspecting any proposed Improvement, nor shall its approval of any Plans or Specifications be deemed approval of any Improvement as to structural safety, engineering soundness or conformance with any building or other codes.

3.2 Term. Each member of the Architectural Committee shall hold office until such time as he or she has resigned or has been removed and his or her successor has been appointed.

3.3 Declarant's Rights of Appointment. Declarant, its successors and assigns, shall have the right to appoint and remove all members of the Architectural Committee. Declarant may delegate this right to the Board by written instrument. Thereafter, the Board shall have the right to appoint and remove all members of the Architectural Committee.

3.4 Review of Construction, Alteration or Removal of Improvements.

(a) Whenever in this Declaration the approval of the Architectural Committee is required, the Architectural Committee shall have the right to consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts, materials, construction samples and other information which it considers, in its sole discretion, to be relevant. Prior to commencement of any construction, alteration or removal of any Improvement on any Lot, the Plans and Specifications therefor shall be submitted to the Architectural Committee, and construction, alteration or removal thereof may not commence unless and until the Architectural Committee has approved such Plans and Specifications in writing. All such construction, alteration or removal shall conform to the approved Plans and Specifications. All Owners are encouraged to contact the Architectural Committee as soon as possible in the design process. Before engaging an architect to prepare Plans and Specifications for any Improvement, each Owner should consult with the Architectural Committee about such Owner's general plans for the Improvement.

(b) An Owner, other than Declarant, proposing to construct, alter or remove an Improvement on any Lot shall submit an application to the Architectural Committee together with two (2) sets of the Plans and Specifications, together with such renderings, samples, and other information as the Architectural Committee may reasonably require. Any application submitted other than by an Owner must attach the Owner's written consent to the approval requested. The application must include the Owner's complete, current street address. Any application for the approval of construction of any Building or other permanent structure must include all Plans and Specifications required by the Architectural Committee, including, but not necessarily limited to, the following plans: (i) landscape plans pursuant to Section 2.28; (ii) irrigation plans pursuant to Section 2.28, (iii) drainage and grading plans, (iv) utility plans, (v) plot plans showing location and placement on the Lot of all Improvements, (vi) detailed construction plans with descriptions and samples of materials of all construction of all Improvements, and (vii) exterior lighting plans. Any costs of filing and processing an application pursuant to this Article 3, including the application fees described below, must be paid by the applicant. Within thirty (30) days after receipt by the Architectural Committee of such Plans and Specifications, it shall act on the Plans and Specifications as follows:

(i) The Architectural Committee may request in writing that the Owner submit to it such additional materials, construction samples and information that the Architectural Committee considers relevant in reviewing the Plans and Specifications for compliance with this Declaration. Until receipt by the Architectural Committee of all information requested by it, it may postpone review of such Plans and Specifications. Upon receipt of all such information requested by it, the Architectural Committee shall act upon such Plans and Specifications within thirty (30) days. The written request of the Architectural Committee for additional information shall be binding upon the Architectural Committee as a complete list of such information if the additional information is received by it within sixty (60) days of its request. The Architectural Committee may request the additional information described herein at any time it receives revised Plans and Specifications; provided, however, such request shall be limited to the additional or revised items therein and not to items previously reviewed by the Architectural Committee unless such items are affected by such revision.

(ii) If the Architectural Committee approves such Plans and Specifications, it shall mark both sets of the Plans and Specifications "Approved" with the date thereof, and retain one set for its records and return one set to the Owner. The Owner must commence construction of the Improvements shown in approved Plans and Specifications within ninety (90) days of the Architectural

Committee's approval thereof or such approval shall lapse. Upon written request of an Owner, the Architectural Committee shall grant up to two (2) thirty (30) day extensions of such approval.

(iii) If the Architectural Committee disapproves such Plans and Specifications, it shall mark both sets of the Plans and Specifications "Disapproved" with the date thereof, and retain one set for its records and return one set to the Owner, with a written statement of all of the items that were found not to comply with this Declaration. Thereafter, the Owner shall submit to the Architectural Committee two (2) revised sets of Plans and Specifications, with notations thereon sufficient to identify the revised portions, and the Architectural Committee shall act on such revised Plans and Specifications within thirty (30) days after receipt by it of such revised Plans and Specifications. The written statement of non-complying items shall be binding upon the Architectural Committee as a complete list of such items if revised Plans and Specifications with changes conforming to such statement are received by it within sixty (60) days of the date of such statement. The Architectural Committee may disapprove revised Plans and Specifications submitted to it according to the provisions hereof; provided, however, the Architectural Committee shall only disapprove the revised Plans and Specifications based on the revised or additional items therein and not based on items previously reviewed by the Architectural Committee.

(iv) If the Architectural Committee fails to act on any Plans and Specifications submitted to it within thirty (30) days after receipt by the Architectural Committee of all information requested by it in connection with such Plans and Specifications, approval of the matters submitted to it shall be presumed.

(c) The Board shall establish and may thereafter amend from time to time an application fee that shall be paid by each Owner at the time of submittal of any application and Plans and Specifications to the Architectural Committee. Such fee shall not exceed the reasonable costs and expenses of the Board and the Architectural Committee (including costs of hiring third party architects and other consultants) for the processing and review of Plans and Specifications.

3.5 Actions of the Architectural Committee. The Architectural Committee may, by resolution unanimously adopted in writing, designate one (1) or two (2) of its members or an agent acting on its behalf to take any action or perform any duties for and on behalf of the Architectural Committee. In the absence of such designation, the vote of a majority of all of the members of the Architectural Committee taken at a meeting shall constitute an act of the Architectural Committee. In the event that the

members of the Architectural Committee cannot agree by majority vote on any matter submitted to them, the matter may be raised at any meeting of the Members of the Association and decided by a majority of those present, provided that a quorum is present.

3.6 No Waiver of Future Approvals. The approval or consent of the Architectural Committee to any Plans or Specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the Architectural Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans and Specifications, or other matter whatsoever, subsequently or additionally submitted for approval or consent by the same or a different Owner.

3.7 Waiver. The Architectural Committee may grant such waivers of any of the restrictions contained in this Declaration as it considers appropriate based upon the quality and design of a proposed Improvement; provided, however, it shall not grant a waiver of the restrictions set forth in Section 2.30 above and on Exhibit "A" attached hereto.

3.8 Nonconforming or Unapproved Improvements. The Architectural Committee, at its option, may inspect all work in progress to ensure compliance with approved Plans and Specifications. The Architectural Committee may require any Owner to restore such Owner's Lot to the condition existing prior to construction, alteration or removal of any Improvement thereon, including, without limitation, the demolition and removal of any unapproved or nonconforming Improvement, if such Improvement was constructed or altered in violation of this Article 3. In addition, the Architectural Committee may, but has no obligation to, cause such restoration, demolition and removal of any such Improvement, and levy the amount of the cost thereof as a special individual assessment against the Lot upon which such unapproved or nonconforming Improvement was constructed or altered.

3.9 Nonliability of Architectural Committee and Board Members. Notwithstanding anything to the contrary in this Declaration, neither the Declarant, nor the Architectural Committee nor the members thereof, nor the Board nor the members thereof, shall be liable in any way to any Owner or any other third party due to the construction of any Improvement within the Property, the creation thereby of an obstruction to the view from such Owner's Lot or Lots or any other act or omission of the Architectural Committee, the Declarant or the Board in connection with this Declaration, the Lots or the Subdivision.

3.10 Address. Plans and Specifications shall be submitted to the Architectural Committee in care of Mr. Leslie L. Canter, 1011 Westlake Drive, Austin, Texas 78746, or such other address as may be designated from time to time in writing by the Architectural Committee.

ARTICLE 4

THE SUMMIT AT WEST RIM ON MOUNT LARSON OWNERS ASSOCIATION, INC.

4.1 Organization. The Association is a non-profit corporation created by Declarant for the purposes, and charged with the duties and vested with the powers, prescribed by law and set forth in its Articles and Bylaws or in this Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

4.2 Membership. Any person or entity upon becoming an Owner shall automatically become a Member of the Association. Membership shall be appurtenant to and shall run with the property interest which qualifies the Owner thereof for membership, and membership may not be severed from, or in any way transferred, pledged, mortgaged, or alienated except together with the title to such property interest.

4.3 Voting Rights. The right to cast votes, and the number of votes which may be cast, for election of Members to the Board of Directors of the Association and on all other matters to be voted on by the Members shall be calculated as follows:

(a) The Owner (excluding Declarant) of each Lot shall have one (1) vote for each Lot so owned.

(b) Declarant shall have five (5) votes for each Lot owned by Declarant.

4.4 Duties of the Association. Subject to and in accordance with this Declaration, the Association, acting through the Board, shall have and perform each of the following duties:

(a) To accept conveyance of title to the Common Area from Declarant.

(b) To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to the Common Area and any other property owned by or leased to the Association, to the extent that such taxes and assessments are not levied directly upon the Members. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.

(c) To obtain and maintain in effect policies of insurance which, in the Board's judgment, are reasonably necessary or appropriate to carry out the Association functions.

(d) To make, establish and promulgate, and in its discretion to amend or repeal and re-enact, such Association Bylaws, not in conflict with this Declaration, as it deems proper covering any and all aspects of its functions.

(e) To keep books and records of the Association's affairs.

(f) To improve, maintain, repair, replace, clean, inspect and protect the Common Area, Conservation Easements, landscape easements, private gate areas, sign easements, postal easements, the Private Improvements (hereinafter defined) including all improvements, landscaping and equipment located therein or thereon.

(g) To maintain, repair, replace and protect the entrance sign to the Subdivision.

(h) To pay all utilities provided to the Common Area and/or the entrance to the Subdivision.

(i) To carry out and enforce all duties of the Association set forth in this Declaration.

(j) To maintain, repair, replace and protect any private streets and gated entrances to such private streets located in the Subdivision.

(k) To promulgate, enforce and amend rules and regulations governing the use of the Common Area and Conservation Easements.

4.5 Powers and Authority of the Association. The Association shall have the powers of a Texas non-profit corporation, subject only to such limitations upon the exercise of such power as are expressly set forth in this Declaration. It shall further have the power to do and perform any and all acts which may be necessary or proper, for or incidental to, the exercise of any of the express powers granted to it by the laws of Texas or by this Declaration. Without in any way limiting the generality of the two preceding sentences, the Association and the Board acting on behalf of the Association, shall have the power and authority at all times as follows:

(a) To levy Assessments as provided in Article 5 below.

(b) To enter at any time in an emergency, or in a non-emergency after twenty-four (24) hours written notice, without being liable to any Owner, upon any Lot or into any Improvement thereon, for the purpose of enforcing this Declaration or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to this Declaration, and the expense incurred by the Association in connection with the entry upon any Lot or Improvement and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot

entered upon, shall be secured immediately by a lien upon the Lot entered upon and the Improvements thereon, and shall be enforced in the same manner and to the same extent as provided in Article 5 hereof for regular and special Assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of this Declaration. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce this Declaration; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its agents, contractors, successors or assigns.

(c) To retain and pay for the services of a Manager to manage and operate the Association, to the extent deemed advisable by the Board. To the extent permitted by law, the Association and the Board may delegate any duties, powers and functions to the Manager. The Members hereby release the Association and the members of the Board from liability for any omission or improper exercise by the Manager of any such duty, power or function so delegated.

(d) To retain and pay for legal and accounting services necessary or proper in the operation of the Association.

(e) To obtain and pay for any other property and services, and to pay any other taxes or assessments which the Association or the Board is required to secure or to pay for pursuant to applicable law or the terms of this Declaration.

(f) To enter into contracts with Declarant and with other persons on such terms and provisions as the Board shall determine, and to acquire and own, and to dispose of all manner of real and personal property, whether by grant, lease, gift or otherwise.

4.6 Power to Indemnify and to Purchase Indemnity Insurance. The Association shall indemnify and may reimburse and/or advance expenses and/or purchase and maintain insurance or any other arrangement on behalf of any person who is or was a director or officer of the Association against any liability asserted against such person and incurred by such person in such a capacity or arising out of his status as such a person to the maximum extent permitted by Article 1396 §2.22A of the Texas Non-Profit Corporation Act, as such Act may from time to time be amended (without regard, however, to Section Q of such Article with respect to officers of the Association who are not directors of the Association). Further, the Association may indemnify and/or reimburse and/or advance expenses and/or purchase and maintain insurance or any other arrangement on behalf of any person, other than any person who is a director of the Association, who is or was an officer,

employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another corporation, partnership, joint venture, sole proprietorship, trustee, employee benefit plan or other enterprise, against any liability asserted against such person and incurred by such person in such a capacity or arising out of his status as such a person, to such extent (or, in the case of officers of the Association, to such further extent), consistent with applicable law, as the Board may from time to time determine. The provisions of this Section 4.6 shall not be deemed exclusive of any other rights to which any such person may be entitled under any Bylaw, agreement, insurance policy, vote of Members or otherwise.

ARTICLE 5 ASSESSMENTS

5.1 Assessments.

(a) The Association may from time to time levy Assessments against each Lot, whether or not such Lot is improved. The amount of Assessments shall be equal and uniform among all Lots.

(b) Where an Owner's obligation to pay Assessments first arises after the commencement of the year or other period for which an Assessment was levied, such Assessment shall be in a prorated amount proportionate to the fraction of the year or other period remaining after said date.

(c) Each purchaser of any Lot, by acceptance of a deed therefor, shall be deemed to covenant to pay to the Association each Assessment levied hereunder against such Lot, whether or not such covenant shall be expressed in any such deed or other conveyance. Each unpaid Assessment together with interest thereon and costs and expenses of collection thereof, including, without limitation, reasonable attorneys' fees, as hereinafter provided, shall be the personal obligation and debt of the Owner of the Lot against which the Assessment was levied.

(d) The obligation to pay Assessments levied by the Association hereunder is part of the purchase price of each Lot when sold to an Owner. An express vendor's lien is hereby retained to secure the payment of each and every Assessment levied hereunder, and each such vendor's lien is hereby transferred and assigned to the Association, each such vendor's lien to be superior and paramount to any homestead or other exemption provided by law. The Association may enforce the payment of Assessments in accordance with the provisions of this Article 5.

(e) The Assessments shall be used exclusively for the purpose of promoting the comfort, health, safety and welfare of the Owners, the maintenance and improvement of the Lots, and for carrying out the purposes of the Association as stated herein or as otherwise provided in the Articles of the Association.

5.2 Regular Annual Assessments. Prior to the beginning of each fiscal year for the Association, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under this Declaration, including a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses shall then be levied by the Association as herein provided, and the amount of such Assessments as determined by the Board shall be final and binding so long as such determination is made in good faith. All such regular Assessments shall be due and payable to the Association at the beginning of the fiscal year for the Association for which such Assessments are payable, or during such fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion.

5.3 Special Assessments. In addition to the regular Assessments provided for above, the Association may levy special Assessments whenever in the Board's sole opinion such special Assessments are necessary to enable the Board to carry out the functions of the Association under this Declaration. The amount of any special Assessments shall be determined by the Board in its sole discretion and shall be due and payable in any manner as the Board may designate.

5.4 Owner's Personal Obligation for Payment of Assessments. Each regular and special Assessment provided for herein shall be the personal and individual debt of the Owner of the Lot against which such Assessment was levied. No Owner, other than Declarant, may exempt himself from personal liability for such Assessments. In the event of default in the payment of any Assessment, the Owner of the Lot against which such Assessment was levied shall be obligated to pay interest at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date thereof (or if there is no such highest rate, then at the rate of two percent [2%] per month) together with all costs and expenses of collection, including, without limitation, reasonable attorneys' fees.

5.5 Private Improvements Maintained by the Association.

(a) The Association shall assess all Lots for the costs and expenses to maintain, repair, replace and protect (i) Lot Forty-three (43), **THE SUMMIT AT WEST RIM ON MOUNT LARSON BLOCK A**, which will be privately owned by the Association as a private street and not publicly maintained by Travis County or any other governmental authority, (ii) the private joint use driveways as shown on the recorded

plat of the Subdivision, and (iii) the private security gates and related improvements which are, or may be, installed at the entrance to the Subdivision (collectively, (i)-(iii) above are referred to herein as the "Private Improvements").

(b) The Private Improvements will not be dedicated to or maintained by the City of Austin or Travis County. However, an express easement is hereby granted across the Private Improvements for the use of the surface thereof for all governmental functions, vehicular and non-vehicular, including fire and police protection, solid and other waste material pick up and any other purpose any governmental authority deems necessary. The Association does further agree that all governmental entities, their agents or employees, shall not be responsible or liable for any damage occurring to the surface of the Private Improvements as a result of governmental vehicles traversing over same. The maintenance and payment of real property taxes on such private streets are the responsibility of the owner(s) of the Subdivision or the Association under this Declaration.

5.6 Assessment Lien and Foreclosure.

(a) The payment of each unpaid Assessment levied hereunder together with interest thereon as provided in Section 5.4 hereof and the costs and expenses of collection, including reasonable attorneys' fees, as herein provided, is secured by a continuing lien and charge on the Lot against which such Assessment was levied. Such lien for payment of Assessments shall bind such Lot in the hands of the Owner, and such Owner's heirs, devisees, personal representatives, successors or assigns, and shall be superior to all other liens and charges against such Lot, except only for tax liens, and all sums unpaid on any first lien Mortgage securing sums borrowed for the purchase or improvement of such Lot, provided such Mortgage was recorded in the Real Property Records of Travis County, Texas, before such Assessment was due. The Association shall have the power, in the Board's sole and absolute discretion, to subordinate the aforesaid lien for payment of Assessments to any other lien. Any such subordination shall be signed by an officer of the Association and recorded in the Real Property Records of Travis County, Texas. Upon the written request of any Beneficiary holding a lien on any Lot that is superior to the lien for payment of Assessments as provided herein, the Association shall report to said Beneficiary the amount of any Assessments levied against such Lot remaining unpaid for a period of more than thirty (30) days after the same are due.

(b) To evidence the aforesaid lien for payment of Assessments, the Association may prepare a written notice of assessment lien setting forth the amount of the unpaid indebtedness, a description of the Lot encumbered by the lien and the name of the Owner of such Lot. Such notice shall be signed by one of the officers of the Association and shall be recorded in the Real Property Records of Travis County, Texas. The aforesaid lien for payment of Assessments shall attach with the priority set forth above from the date the payment of such Assessments becomes delinquent.

The Association may enforce such lien by the foreclosure sale of the defaulting Owner's Lot in like manner as a foreclosure of a mortgage or contractual lien on real property as provided in Section 51.002 of the Texas Property Code, as the same may be amended or modified, or the Association may institute suit against the Owner personally obligated to pay the Assessment for monetary damages and/or for the judicial foreclosure of the aforesaid lien. The Owner of the effected Lot shall be required to pay all costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the Association in connection with any foreclosure proceeding, whether judicial or non-judicial. The Association shall have the power to bid on any Lot at any foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same.

(c) The liens for payment of Assessments provided for herein shall not be affected or extinguished by the sale or transfer of any Lot, whether by judicial or non-judicial foreclosure sale or otherwise; provided, however, that in the event of foreclosure of any first lien Mortgage superior to the lien for the delinquent Assessment, the lien for the delinquent Assessment will be extinguished, and the delinquent Assessment shall be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the first lien Mortgage. The extinguishing of any lien for payment of Assessments as herein provided will not relieve any Owner from the obligation to pay Assessments subsequently becoming due and payable.

ARTICLE 6 MISCELLANEOUS

6.1 Term. This Declaration, including all of the covenants, conditions and restrictions hereof, shall continue in force and effect until January 1, 2050, unless amended as herein provided. After January 1, 2050, this Declaration, including all such covenants, conditions and restrictions, shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by the Owners of at least three-fourths (3/4) of the Lots. Notwithstanding the foregoing, this Declaration shall remain in force and effect and shall not terminate for so long as Declarant owns any portion of the Property.

6.2 Amendment.

(a) This Declaration may be amended by Declarant so long as Declarant holds a majority of the votes of the Association. No amendment by Declarant shall be effective until there has been recorded in the Real Property Records of Travis County, Texas, an instrument executed and acknowledged by Declarant and setting forth the amendment, and an instrument executed and acknowledged by the President and Secretary of the Board certifying that Declarant had the requisite number of votes.

(b) In addition to the method provided in Section 6.2(a), this Declaration may be amended by the recording in the Real Property Records of Travis County, Texas, of an instrument executed and acknowledged by the President and Secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by Owners entitled to cast at least eighty percent (80%) of the number of votes entitled to be cast pursuant to Section 4.3.

6.3 No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants or other terms and provisions contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms or provisions. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, terms or provisions shall assume all risks of the validity and enforceability thereof and by acquiring the Lot agrees to hold Declarant harmless therefrom.

6.4 Notices. Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the person at the address given by such person to the Association for the purposes of service of notices, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing given by such person to the Association.

6.5 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the Subdivision and of promoting and effectuating the fundamental concepts of the Subdivision set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas.

6.6 Exemption of Declarant; Utility Easements.

(a) Notwithstanding anything in this Declaration to the contrary, neither Declarant nor any of Declarant's activities shall in any way be subject to the control of or under the jurisdiction of the Board, the Association or the Architectural Committee. Without in any way limiting the generality of the preceding sentence, this Declaration shall not prevent or limit the right of Declarant to excavate and grade, to construct and alter drainage patterns and facilities, to construct any and all other types of Improvements, sales and leasing offices and similar facilities, and to post signs incidental to construction, sales and leasing anywhere within the Property.

(b) Declarant reserves the right to locate, construct, erect and maintain or cause to be located, constructed, erected and maintained in and on any areas owned by Declarant sewer and other pipelines, conduits, wires and any Improvement relating to a public utility function, subject to Section 2.22 hereof, with the right of access to the same at any time for the purposes of repair and maintenance.

6.7 Assignment of Declarant. Notwithstanding anything in this Declaration to the contrary, Declarant may assign, in whole or in part, any of its privileges, exemptions, rights and duties under this Declaration to any other person or entity and may permit the participation, in whole or in part, by any other person or entity in any of its privileges, exemptions, rights and duties hereunder. Such assignment shall be evidenced by a written instrument, executed by Declarant and the assignee, recorded in the Real Property Records of Travis County, Texas. In the event of any partial assignment by Declarant of any of its privileges, exemptions, rights and duties under this Declaration, Declarant shall continue to remain responsible and liable for all its obligations and duties under this Declaration until such time as Declarant has completed a full assignment of all of its privileges, exemptions, rights and duties under this Declaration to any other person or entity.

6.8 Enforcement and Nonwaiver.

(a) Except as otherwise provided herein, any Owner at his own expense, Declarant or the Board shall have the right to enforce the provisions of this Declaration. Such right of enforcement shall include both damages for, and injunctive relief against, the breach or threatened breach of any such provision.

(b) Every act of omission whereby any provision of this Declaration is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined by any Owner (at his own expense), Declarant or the Board.

(c) Any violation of any federal, state or local law, ordinance or regulation pertaining to the ownership, occupancy or use of any portion of the Property is hereby declared to be a violation of this Declaration and subject to all of the enforcement procedures set forth herein.

(d) The failure to enforce any provision of this Declaration at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of this Declaration.

(e) The Association shall have the right, when appropriate in its judgment, to claim and impose a lien upon any Lot or Improvement constructed thereon in order to enforce any right under, or effect compliance with, this Declaration.

6.9 Alternative Dispute Resolution. In the event of any dispute, controversy or claim between or among Declarant, any Owner or Owners, the Association and/or the Architectural Committee relating to or arising out of any provision of this Declaration, the parties to the dispute shall meet in a good faith effort to resolve the dispute through negotiations. In the event the parties are unable to resolve the dispute through negotiations, such matter shall be submitted to and settled by such form of extra-judicial dispute resolution as the parties may mutually agree. To the fullest extent allowed by law, this clause shall be specifically enforceable under applicable laws to mandate the parties' use of a means of resolving disputes other than formal judicial proceedings. In the event the parties are unable to agree on another such form of dispute resolution, any dispute, controversy or claim arising out of any provision of this Declaration shall be submitted to binding arbitration following these procedures:

(a) The arbitration shall take place in the City of Austin, Travis County, Texas.

(b) Pending the outcome of arbitration, there shall be no changes made in the language of this Declaration.

(c) The arbitration shall be initiated by any party to the dispute, claim or controversy giving written notice requesting arbitration to the other party or parties thereto, which notice shall include a precise statement of the matter to be arbitrated.

(d) Within five (5) days of receiving notice of the written request for arbitration, the receiving party or parties shall designate in writing to the initiating party the name of an arbitrator who meets the requirements set forth hereinbelow. The initiating party shall have five (5) days to object to the named arbitrator by designating in writing to the receiving party the name of another arbitrator who meets the requirements set forth hereinbelow. The receiving party shall have five (5) days to object to the named arbitrator by giving written notice to the initiating party, in which case within five (5) days after receipt of the written objection the two previously nominated arbitrators shall designate an arbitrator by giving written notice of their choice to the receiving and initiating parties.

(e) The arbitrator shall designate the time and place of the hearing which must occur within thirty (30) days of the arbitrator's selection. The arbitrator shall give twenty (20) days' written notice of the hearing to the parties to the dispute, claim or controversy. The parties may be represented by attorneys at the hearing. The arbitrator shall make a decision within seven (7) days after the hearing and communicate that decision in writing to each party who participated in the hearing.

(f) The request for arbitration must be made within a reasonable time after the dispute, claim or controversy has arisen. In no event may the request for arbitration be made after the date when institution of legal or equitable proceedings based on such dispute, claim or controversy would be barred by the applicable statute of limitations.

(g) Anyone designated as an arbitrator (i) must be an impartial third party who has the training or qualifications required by the laws of the State of Texas and (ii) must not be personally acquainted with any of the parties to the dispute, claim or controversy.

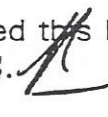
(h) The parties to the dispute, claim or controversy shall share equally the arbitrator's fees and other costs of the arbitration unless the arbitrator assesses such costs against the party or parties who do not prevail.

6.10 Construction.

(a) The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof.

(b) Unless the context requires a contrary construction, the singular shall include the plural and the plural, the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

(c) All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise effect that which is set forth in any of the paragraphs, sections or articles hereof.

IN WITNESS WHEREOF, Declarant has executed this Declaration effective as of this the 26 day of April, 1998. 

PENTA DEVELOPMENT CORPORATION, a
Texas corporation

By: 
Leslie L. Canter, President

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 26th day of April, 1998 by **LESLIE L. CANTER**, President of **PENTA DEVELOPMENT CORPORATION**, a Texas corporation, on behalf of said corporation.

Susan R. Benkendorfer
NOTARY PUBLIC, State of Texas

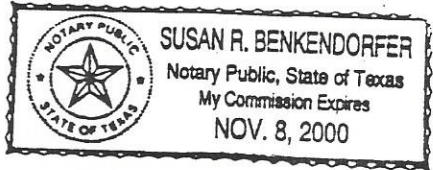


EXHIBIT "A"

**SPECIAL RESTRICTIONS FOR PROTECTION
OF LOT TWENTY-NINE (29), OF
THE SUMMIT AT WEST RIM ON MOUNT LARSON BLOCK A**

1. The roofs of all structures allowed within the Subdivision that are constructed within the view of Lot 29 shall be made of roofing materials generally accepted within the building industry as providing low reflectivity.

2. No outside lights, other than the lights on Lot 29, including omnidirectional lights, shall be allowed to be directed toward the building site on Lot 29.

3. Lot 29 shall be entitled to an impervious cover allotment equal to the greater of:

- (i) the maximum percentage of impervious cover allowed to any other Lot; or
- (ii) fifteen percent (15%) of the total gross area of Lot 29.

Notwithstanding the foregoing, such impervious cover allotment is subject to, and may be decreased by, governmentally imposed restrictions; provided that no Owner nor Declarant shall act in any way so as to diminish the allowed impervious cover to Lot 29 and Declarant shall, to the extent possible, shift impervious cover to Lot 29 to attempt to achieve the greater of (i) and (ii) as set out in this paragraph.

4. No subdivision plat shall be presented that increases the density of Lots within the Subdivision without the prior written consent of the Owner of Lot 29.

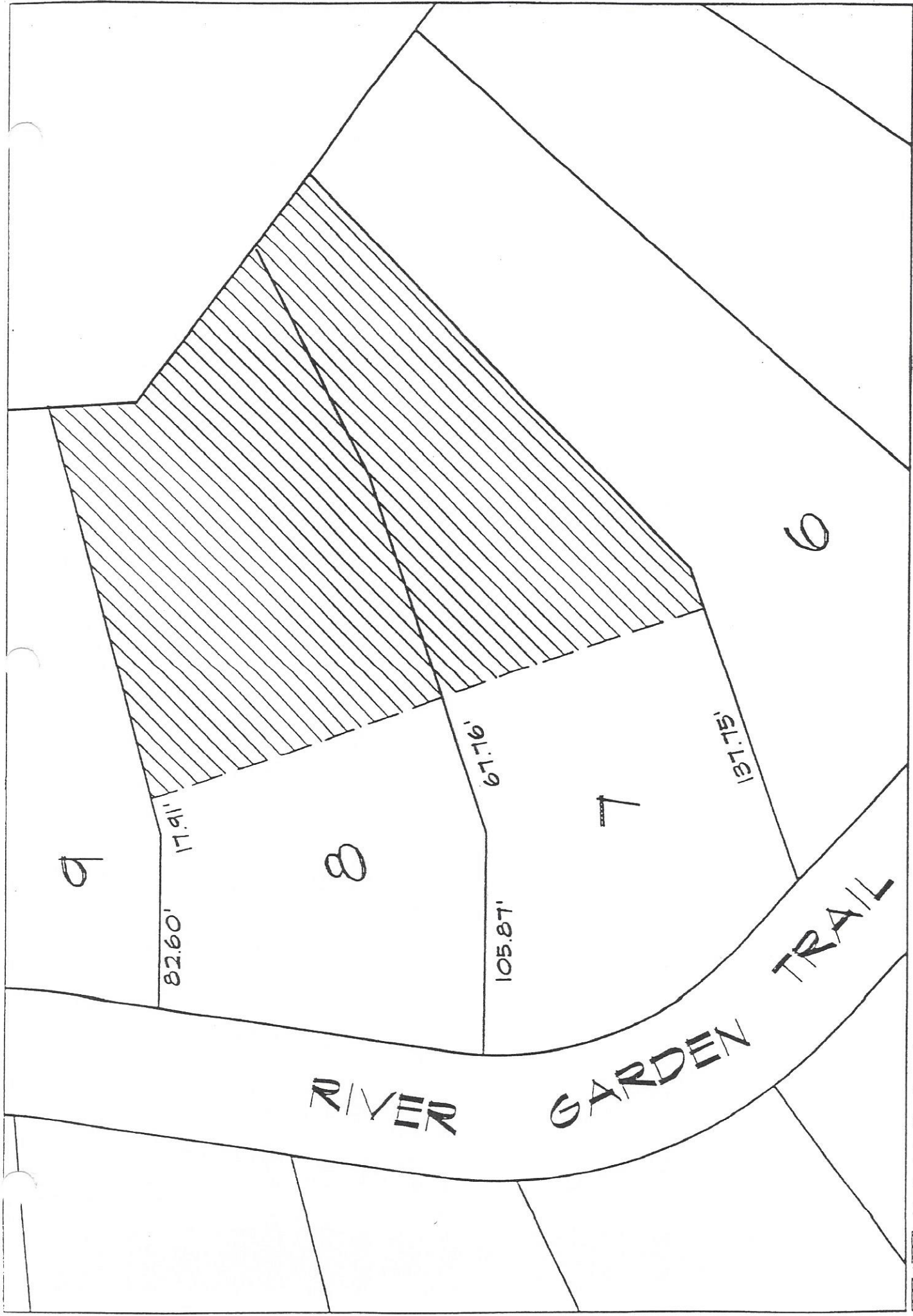
5. No waivers from the requirements of this Declaration shall be granted by the Architectural Committee which would unnecessarily obstruct the view from Lot 29 without the prior written consent of the Owner of Lot 29.


6. Lot 29 shall have (i) front and side setbacks of no more than the lesser of thirty feet (30') or the setbacks applicable to other Lots; (ii) a rear build line no more restrictive than an arc having at least two hundred seventy-five foot (275') dimension from the front property line of Lot 29; and (iii) a Conservation Easement of no more than one hundred feet (100') from the rear property line of Lot 29.

7. Improvements constructed on Lot Thirty (30) shall not exceed ten feet (10') in height nor be closer than fifty feet (50') to Lot 29 without the prior written consent of the Owner of Lot 29.

EXHIBIT "B"

BUILDING SETBACK REQUIREMENTS



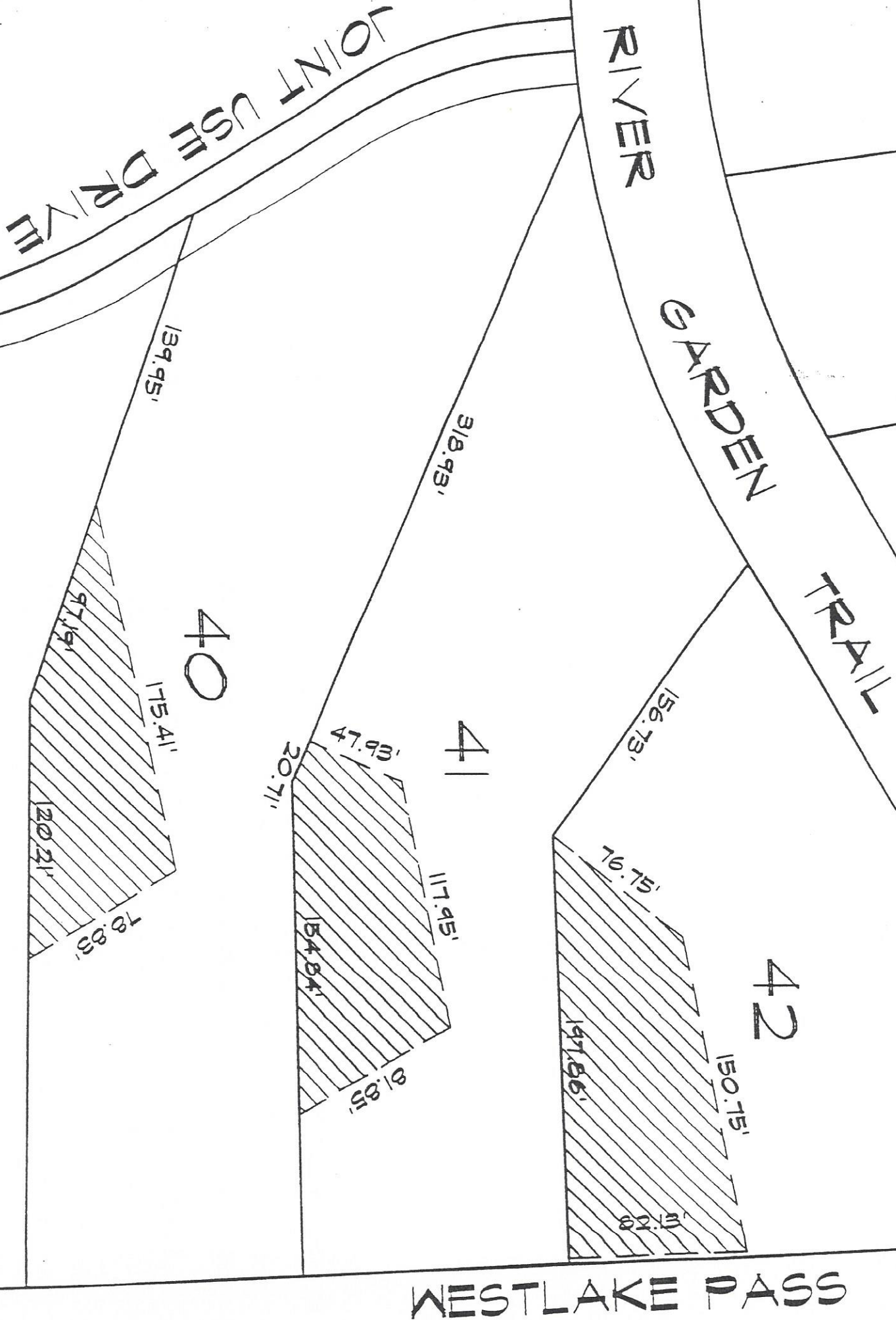

 Height limited area
 Height of structures in these zones shall not be higher than the highest natural ground elevation within this zone.



SCALE: 1"=60'



EXHIBIT B-1



Height limited area
 Height of structures in these zones shall not be higher than the highest natural ground elevation within this zone.



SCALE: 1"=60'

EXHIBIT B-2

FILED AND RECORDED

Dana DeBeauvoir

05-03-1999 04:00 PM 1999019724
GUERRAY \$93.00
Dana DeBeauvoir, COUNTY CLERK
TRAVIS COUNTY, TEXAS

RECORDERS MEMORANDUM-At the time of recordation this instrument was found to be inadequate for the best photographic reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.