



**Restating Amendment to the**

**Declaration of Protective Covenants**

**BENT TREE III**

THIS RESTATING AMENDMENT is made effective as of the date on which it is recorded in the real property records of El Paso County, Colorado by the undersigned owners of Lots in Bent Tree, Filing III (hereinafter called the "Community") and the Bent Tree Property Owners' Association, Inc., a Colorado non-profit corporation (hereinafter called the "Association").

**WITNESSETH:**

WHEREAS, Arrowwood Development Corporation (the "Declarant"), recorded a Declaration of Protective Covenants on September 9, 1993, in Book 6255 beginning at Page 1222, Reception No. 882350702 of the Real Property Records of El Paso County, Colorado (hereinafter called the "Declaration"); and

WHEREAS, Section 24 of the Declaration provides that the covenants may be amended at any time by a three-fourths (3/4) majority vote of all property owners (one vote per tract) in Bent Tree, Filing III (the "Filing");

WHEREAS, the percentage stated above has been declared void as contrary to public policy and is now deemed to specify a percentage of sixty-seven (67%) by virtue of C.R.S. §38-33.3-217(1)(a); and

WHEREAS, the Community no longer wants to be subject to the Colorado Common Interest Ownership Act (C.R.S. § 38-33.3-10-101, et seq., hereinafter called "CCIOA"), and C.R.S. § 38-33.3-116(1) of CCIOA specifically provides that if a planned community provides, in its declaration, that the annual average common expense liability of each unit restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, may not exceed four hundred dollars, as adjusted pursuant to subsection (3) of that statute; the Community will therefore be subject to only to three sections of CCIOA and the Owners desire to correct the Declaration to provide that the Community is a planned community

created under the exemption of C.R.S. § 38-33.3-116(1); and

WHEREAS, the Declarant's rights have expired under the Declaration, and the Community wants to remove all unnecessary references to the Declarant;

WHEREAS, pursuant to C.R.S. § 7-127-109, on \_\_\_\_\_, 2018, a written ballot was delivered by first class U.S. mail to every property owner in said Filing, as members of Bent Tree Property Owners' Association, Inc., a Colorado non-profit corporation (the "Association");

WHEREAS, the wording of the written ballot stated the proposed amendment to the Declaration as set forth below, and provided all members with the opportunity to vote for or against the proposed amendment; and advised the owners that:

- (a) 49 affirmative responses were needed to approve the amendment;
- (b) 24 negative responses would defeat the amendment;
- (c) the ballots had to be received by \_\_\_\_\_, 2018, to be counted; and
- (d) provided sufficient written information to permit each member casting such ballot to reach an informed decision;

WHEREAS, prior to \_\_\_\_\_, 2018, the Board received \_\_\_\_ affirmative votes of the 72 possible votes in said Filing, thereby meeting the required approval of sixty-seven percent (67%) of all property owners (one vote per tract) in said Filing; and

NOW, THEREFORE, as the duly elected representatives of those members, the Board of Directors (the "Board") hereby submits the real property described in the Declaration and all improvements thereon to the provisions of the Declaration and this Amendment and do hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, limitations and obligations shall be deemed to run with the land and shall be a benefit and burden to the Declarant, its successors and assigns and to any person acquiring or owning an interest in the above described real property and improvements, their grantees, successors, heirs, executors, administrators, devisees, personal representatives and assigns, and that the following Amendment shall be incorporated into the Declaration by this reference as if initially set forth therein:

**I. VARIOUS SECTIONS OF THE DECLARATION THAT GAVE SPECIAL POWERS TO THE DECLARANT ARE HEREBY DELETED IN THEIR ENTIRETY; SECTION 22 OF THE DECLARATION IS HEREBY AMENDED IN ITS ENTIRETY; AND ALL OUTDATED REFERENCES TO THE DECLARANT ARE HEREBY AMENDED, AS FOLLOWS:**

Section 22. Declarant Control Ended. Since the Declarant has sold all of the property it owned in the Association, Section 27 of the Declaration is deleted and any references to the Declarant in Sections 4A, 6, 7, 9-13, 16, 20 and 25 of the Declaration are hereby deleted. Any remaining provisions or references to the Declarant that are not deleted shall only be viewed as historical references, except to the extent that they confer authority that has been assigned to the Board.

**II. THE FOLLOWING IS ADDED TO SECTION 1 OF THE DECLARATION TO EXEMPT THE COMMUNITY AND THE ASSOCIATION FROM MOST OF THE COLORADO COMMON INTEREST OWNERSHIP ACT:**

Notwithstanding any provision of the Declaration, the Association's Articles of Incorporation, Bylaws or Rules (hereinafter called the "Association's Governing Documents"), the Association, the Owners, the Lots, the Tracts and the Community created thereon shall be exempt from the provisions of the Colorado Common Interest Ownership Act ("CCIOA") in that the Declaration hereby provides that the annual average common expense liability of each unit restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the Association, may not exceed Four Hundred Dollars (\$400.00), as adjusted pursuant to Section 7 below. Any references to CCIOA provisions are only for purposes of describing similar actions, reports or rights as set forth in CCIOA.

**III. THE FOLLOWING PROVISIONS ARE HEREBY AMENDED IN THEIR ENTIRETY OR ADDED TO THE DECLARATION TO INCORPORATE CERTAIN PROVISIONS OF THE CCIOA:**

7. PROPERTY OWNERS' ASSOCIATION: Owners in BENT TREE shall automatically become members of the Bent Tree Property Owners' Association ("BTPOA"); said membership is mandatory and is a condition of purchasing their lot(s). Dues shall be required in accordance with the Bylaws thereof, which Owners agree to pay promptly when due. This Association shall operate as a non-profit corporation, according to the provisions of its Articles of Incorporation and Bylaws. Each Tract shall have one (1) vote.

As noted above, the dues (also described both here and in the CCIOA as "assessments" are limited to \$400.00 *per annum* as of July 1, 1998, in accordance with C.R.S. §38-33.3-116(3). Said dollar limitation shall be increased annually on July 1, 1999, and on July 1 of each succeeding year in accordance with any increase in the United States department of labor bureau of labor statistics final consumer price index for the Denver-Boulder consolidated metropolitan statistical area for the preceding calendar year. The limitation shall not be increased if the final consumer price index for the preceding calendar year did not increase and shall not be decreased if the final consumer price index for the preceding calendar

year decreased.

The property owners' association shall have a lien against all Lots and/or Tracts, the Owners of which are delinquent, for non-payment of dues and assessments levied by the property owners' association, where such dues and assessments are in arrears by thirty (30) days or more. The property owners' association is empowered to file such lien with the El Paso County Clerk and Recorder, and such lien shall run with the land. Continued failure to pay such liens may result in foreclosure on the entire property/Tract in order to enforce payment.

Notwithstanding any provision of the Association's Governing Documents, the Association's continuing lien upon a Lot for unpaid assessments and other sums, including without limitation, costs of collection, late charges, attorney's fees, fines and interest shall be prior and superior to the lien and encumbrance of a First Mortgagee in an amount equal to such sums which would be due during the six (6) months immediately preceding the institution of any foreclosure by the First Mortgagee or any foreclosure by the Association of its lien. Any First Mortgagee acquiring title to a Lot through foreclosure shall be liable for any assessments, sums and other charges from the date of the institution of the foreclosure until the First Mortgagee conveys title to the Lot. Notwithstanding any provision of the Association's Governing Documents, the Association's lien shall not be terminated, invalidated or rendered null and void solely for the failure to provide written statements setting forth the amount of unpaid assessments currently levied against the Lot. The recording of the Declaration constitutes record, notice and perfection of the Association's lien, and no further recording of any lien for assessments is required, but the Association may record a notice of lien at its discretion. In any action by the Association to collect assessments or to a foreclose a lien for unpaid assessments, the Court shall appoint a receiver of the Lot to collect all sums alleged to be due prior to or during the pendency of any action; the Court shall order the receiver to pay all such sums to the Association to the extent of the Association's unpaid assessment and expenses, and shall not require a bond or any notice to any other lien holder prior to appointment of the receiver or payment by the receiver.

Section 27. Partial Incorporation of CCIOA. By virtue of Section I above, the Community, the Lots, the Association and the Owners/Members shall be exempt from CCIOA as provided by C.R.S. § 38-33.3-116(2), except for C.R.S. § 38-33.3-105 to 107. As a result, any provision of the Association's Governing Documents, which refers to or makes applicable any section of CCIOA, is hereby deleted and declared null and void, provided however, the following sections of the CCIOA are verbatim incorporated by the following reference into this Amendment as if set forth in the Declaration, but such incorporation by reference shall not cause the CCIOA to apply to the Association, the Lots, the Community or the Owners/Members: C.R.S. § 38-33.3-202 (unit boundaries); C.R.S. § 38-

