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**CLERK & RECORDER - PLEASE RECORD THIS DOCUMENT IN THE FOLLOWING INDEXES: PROPERTY INDEX; GRANTOR INDEX - BENT TREE PROPERTY OWNERS ASSOCIATION, INC.; GRANTEE INDEX - BENT TREE PROPERTY OWNERS ASSOCIATION, INC.**

**AMENDED AND CONSOLIDATED  
DECLARATION OF PROTECTIVE  
COVENANTS FOR  
BENT TREE  
Filings 1, 2, 3, 4 & 5**

State of Colorado )  
County of El Paso )

**THE OWNERS HEREBY AGREE THAT THIS AMENDED AND CONSOLIDATED DECLARATION OF PROTECTIVE COVENANTS FOR BENT TREE HEREBY REPLACES AND SUPERSEDES THE RECORDINGS DESCRIBED BELOW TO UPDATE AND CONSOLIDATE SAME SO THAT FUTURE AMENDMENTS WILL ONLY REQUIRE ONE DECLARATION TO BE AMENDED.**

WHEREAS, the following property was developed in three (3) Phases, and during each Phase one or more Filings were made subject to one of three (3) different sets of recordings:

- **Phase I: Filing 1**, Tracts 1 through 63 inclusive; and **Filing 2**, Tracts 64 through 124 inclusive (1985 and 1987 recordings);
- **Phase II: Filing 3**, Tracts 125 through 196 inclusive (1988 recording); and
- **Phase III: Filing 4**, Tracts 197 through 251 inclusive; and **Filing 5**, Tracts 252 through 257 inclusive (1999 recording)

(hereinafter collectively known as "Bent Tree"). All of the "Tracts" therein (which may also be referred to as "Lots" in the recordings described below) are part of the Bent Tree Property Owners' Association ("BTPOA" and/or the "Association"), and the terms "Tracts" and "Lots" are interchangeable herein.

WHEREAS, the effect of the three (3) different sets

of recordings is that even though there is a single Association for all of Bent Tree, whenever amendments need to be made to add or change a provision, three (3) different amendments to the three (3) different Declarations must be prepared, executed, recorded and certified on behalf of the Association;

WHEREAS, the Board of Directors of the Association (the "Board") has concluded that it is necessary to amend and consolidate all three (3) different sets of recordings in order to:

- (a) remove all unnecessary references to the Declarant;
- (b) comply with statutory changes to Colorado law; and
- (c) to allow future amendment of a single Declaration by a consolidated vote.

**RECITALS**

- A. Arrowwood Development Corporation, as the owner of the above-described property, recorded a series of protective covenants for all Tracts in Filing No. 1, said covenants having been recorded in El Paso County, Colorado on August 1, 1985 at Reception No. 1281854, Book 5042, Pages 780 through 791; as amended on March 10, 1987 at Reception No. 1534526, Book 5328, Page 359, and extended same to cover all Tracts in Filing No. 2 by way of protective covenants recorded on July 29, 1988 at Reception No. 01730126, Book 5537, Page 602, all in those same records; and thereafter recorded protective covenants for Filing No. 3 on September 9, 1993 at Reception No. 082350702, Book 6255, Page 1222; and for Filing Nos. 4 and 5 on February 3, 1999 at Reception No. 099017536 of those same records (hereinafter collectively referred to as the "Covenants" and/or as the "Declaration") to create and establish certain covenants and restrictions to help maintain the authenticity and natural beauty of Bent Tree for the



mutual benefit and enjoyment of purchasers and residents of Lots within Bent Tree;

- B. In each case the separate recordings appear to be largely due to differing augmentation plans for the water rights of the different Filings, but all the recordings provided that in order to ensure that the purposes of the Declarations were carried out, all Bent Tree owners became mandatory members of the BTPOA organized under the laws of Colorado;
- C. In every case, the Declaration provided that same could be amended by a three-fourths (3/4) majority vote of all property owners (one vote per Tract);
- D. 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;
- E. Voting by written ballot was conducted by the Association in accordance with C.R.S. §7-127-109, and sixty-seven percent (67%) of the property owners in each of the three (3) Phases have separately agreed to this Amendment, and to have this recording replace and supersede the above-described recordings, all of which shall run with Bent Tree and shall be binding upon all parties having or acquiring any rights, title or interest in it or any part thereof, and shall inure to the benefit of each owner thereof.

NOW, THEREFORE, it is hereby declared that all of the real property described above is and shall be used, held, transferred, sold, conveyed, occupied, developed, and redeveloped subject to the following restrictions and protective covenants, and it is intended that these covenants, conditions and restrictions will bind and benefit not only the Association and other purchasers, but also their respective heirs, successors, and assigns, and that the property will be held, used, leased, sold and conveyed subject to the covenants, conditions and restrictions set forth in this Declaration, which shall run with the land and shall be binding on all parties having any right, title, or interest in said property or any part thereof, their heirs, successors, and assigns, and inure to the benefit of each owner thereof, to wit:

1. INTENT: The intent of these covenants is to preserve Bent Tree as an exclusive, high quality residential area of lasting value, and the covenants have been designed to that end. Property owners in Bent Tree should be people who value quality, who will respect, uphold and observe the letter, spirit and

intent of these covenants, and who will insist upon their strict enforcement. The intent of these covenants also applies to real estate agents and builders involved in selling Bent Tree properties and building homes for sale or for owners.

2. BUILDING TYPE AND USE: All Tracts shall be known and described as residential Tracts and shall be used only for custom-built residential homes and country estates. No structure shall be erected, altered, converted, placed or permitted to remain on any Tract other than one single-family dwelling not to exceed 2 ½ stories in height, a private garage, and guest house or servants quarters, all in keeping with the architecture, style, trim details and construction materials of the principal residence, provided that such are not used for any commercial purpose, and subject to approval by the Architectural Control Committee, hereinafter referred to as ACC, and the appropriate governmental building department. No structure may be erected prior to construction of the main dwelling. Bent Tree is intended only for custom-built homes of harmonious design to complement the natural terrain and other homes constructed in the subdivision.

No mobile homes, premanufactured homes with appearance of mobile homes or "double wides", or domes shall be approved.

3. DWELLING SIZE: The minimum size of the dwellings is not the only criteria used in the decision to approve or disapprove plans. Plans which meet the minimum size requirement may be disapproved based on other criteria. The size of the dwelling is established primarily to reflect the quality of the Bent Tree development and to maintain property values for all residents in Bent Tree. Recognizing that size is not necessarily indicative of the quality the ACC may grant reasonable requests for variances to size criteria or give credit for special construction amenities when, in its opinion, such variances and credits enhance the quality and compatibility of the structure and the Bent Tree development.

(a) In Filings 1 and 2 the finished enclosed living area of any dwelling structure exclusive of garages and porches shall not be less than 2200 square feet, the ground floor enclosed living area of the main structure, exclusive of the garage and porches, shall not be less than 2200 square feet for a one-story dwelling, nor less than 1500 square feet for a dwelling of more than one story, nor less than 1850 square feet on the upper two of three levels of a tri-level. In Filing 3 the finished enclosed living area of any dwelling structure exclusive of garages and porches shall not be less than 2500 square feet, including one story dwellings, the ground floor finished enclosed living area for a dwelling of more than one story shall be not less than 1600 square feet nor less than 2000 square feet on the



upper two of three levels of a tri-level. In Filings 4 and 5 the finished enclosed living area of any dwelling structure exclusive of garages and porches shall not be less than 2500 square feet for a one-story dwelling, for a dwelling of more than one story, the ground floor finished enclosed living area shall be not less than 1850 square feet nor less than 3000 square feet total, allowing for finished living area on the upper floors added to the main living area.

(b) Homes with basement windows above ground level, houses with garden/terrace/basement entrances on one side (and homes with an upper story of lesser square footage than the ground floor level) will normally be considered as one-story homes for the purposes of this covenant.

(c) In its sole discretion, the ACC may treat a bi-level as a single or multi-story building, depending upon its appearance, size, location and amount of finished interior space.

(d) Attached Garages are required for all houses, shall be of size to accommodate not less than two full-sized cars in Filings 1 and 2, and not less than three full-sized cars in Filings 3, 4 and 5; and doors shall be kept closed.

(e) All garage doors shall be equipped with automatic remote control openers. No carport or other open, unenclosed structure intended as a storage or parking for vehicles shall be constructed or used on any Tract.

(f) If visible from any street, garages shall normally be required to open either to the side or rear of a house.

(g) Automobiles and small boats will not habitually be parked overnight outside of garages.

#### 4. BUILDING LOCATION AND SETBACKS:

A. Location: When the house plans are submitted, there shall be submitted to the ACC a separate plot plan showing the planned location of all improvements contemplated upon the Lot, and the ACC may alter the site location or deny construction if, in the opinion of the ACC, the proposed site location would unduly interfere with adjoining Lots as to view, proximity of construction, the natural growth of terrain, or cause other potential interference with existing or proposed construction on adjoining Lots. Buildings should be located on Lots in such a way as to minimize damage to existing foliage and natural growth. No trees may be removed other than under the provisions of Paragraph 10 hereof, and the Lots shall be maintained in their natural state as nearly as possible, except that a reasonably sized lawn and garden, not to exceed 2000 square feet may be planted around the house.

B. Setbacks: No building shall be erected, placed or altered on any Lot nearer than 90 feet to any Lot line fronting a road, nor nearer than 35 feet to any other Lot line. Fences, if any, along any Lot line fronting a road shall be set back a minimum of 10 feet for **Filings 1 & 2**, 15 feet from said Lot line for **Filings 3, 4 & 5**. Exceptions to the setback requirements are sometimes logical and may be made by the ACC in cases where extenuating circumstances exist, provided however, that any such exceptions must be requested in writing and granted by the ACC in writing. For the purposes of this covenant, eaves, steps and open porches shall be considered as part of the building. (See Notes and Setbacks on recorded plat.) BTPOA and/or Architectural Control Committee may designate additional setbacks and/or designate no build areas on Lots to protect views of the mountains for adjacent Tracts, which views in their sole discretion they deem reasonable; however, they do not have the obligation to do so.

5. TEMPORARY RESIDENCES: No structure of temporary character, trailer, basement, tent or accessory building shall be used on any Lot as a residence, temporarily or permanently.

#### 6. TIME OF CONSTRUCTION AND BUILDERS COMPLIANCE FEE:

A Time and Fee: No construction shall be permitted on any Lot unless the Assessments charged to said Lot are paid in full for said Lot. Once construction shall have been initiated on any structure, including walls, fences, residences, ancillary buildings or any other structure which has been previously approved by the ACC, construction of that particular structure, including landscaping, shall be completed within 9 months of the time such construction was initiated. The ACC may extend the time for completion under unusual circumstances, and any such time extension shall be in writing. In no event, other than inclement weather, shall final grading and cleanup (debris, stumps, limbs, left over building items, etc.) be delayed more than 30 days after completion of a home. A refundable builders compliance fee, in an amount set by the ACC, shall be paid to the ACC at time of approval of house plans and shall be refunded upon satisfactory completion of the dwelling structure and compliance with the clean up and final grading provisions of this paragraph.

B. Abandonment: If any structure be abandoned, the ACC shall have the authority to remove or complete all or portions of such structures so as to prevent its being unsightly and a detriment to the area. Notice of intent to remove or complete will be mailed to the owner at his last known address, and shall be posted on the Lot 10 days prior to such action and, in the event that such removal becomes



necessary, the owner of the Lot shall be liable for all costs of such work, which costs shall constitute a lien which shall be recorded against said property, and shall be due and payable immediately and bear interest at the rate of 18% per annum.

#### 7. PROPERTY OWNERS' ASSOCIATION:

A. Membership: 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) or home(s). Dues shall be required in accordance with the By-laws 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 By-laws. Each Tract shall have one vote.

B. Dues, Fees, Assessments and Lien Authority: Assessments shall be levied and collected in accordance with the provisions of the statute formally known as the Colorado Common Interest Ownership Act (the "CCIOA") as amended hereafter. Pursuant thereto, C.R.S. §§ 38-33.3-315 and 316 are hereby adopted in their entirety, except that:

(a) in addition to the collection remedies set forth in the CCIOA, the Board shall automatically revoke the voting rights of any owner who is delinquent in the payment of assessments for more than thirty (30) days, in which case that owner shall not be allowed to vote until his/her assessments are current; and

(b) the appointment of a receiver under Section 316(9) shall be mandatory in any case where owners who lease their property are delinquent in their payment of assessments.

#### 8. WATER AUGMENTATION PLAN REQUIREMENTS:

##### A. Court Decree.

(1) **Filings 1, 2 & 3:** All Lots in Bent Tree shall be subject to the decree for the Northgate Co. augmentation plan entered by the District Court for Water Division No. 2 in Case Nos. 82CW372 (Water Division No. 1) and 82CW180 (Water Division No. 2) (the "augmentation plan"), which provides for an augmentation plan for Bent Tree and certain other property, described in Exhibit A hereto.

(2) **Filings 4 & 5:** Lots 233 through 251 in Bent Tree shall be subject to the decree for the Northgate Co. augmentation plan entered by the District Court for Water Division No. 2 in Case Nos. 82CW370 (Water Division No. 1) and 82CW180 (Water Division No. 2) (the "original augmentation

plan"), (Recorded at Reception No. 098163645 of the records of the Clerk and Recorder of El Paso County, Colorado). Lots 197 through 232 in Bent Tree shall be subject to the decree for the Northgate Co. augmentation plan entered by the District Court for Water Division No. 2 (Water Division No. 1) (the "supplemental augmentation plan"). (Recorded El Paso County 5/8/98 Reception No. 098061311).

B. Wells: Each owner shall be responsible for obtaining a permit for a well to provide a water supply to his dwelling and for constructing and operating such well. Well permits for each Lot must be submitted to the Division of Water Resources, Office of the State Engineer, for approval. Normally, well drilling companies furnish the required well application form, assist in its preparation and can provide information on types of casing, pumps, etc. Lot owners may contact a ground water consultant of their choice for specific recommendations as to depth, casing, casing diameter and pumping equipment. All wells shall be constructed and operated in compliance with the augmentation plan and the permits for such wells. Each owner will submit to the Bent Tree Property Owners' Association a copy of the completed well log made by the well driller, so as to provide information necessary to the augmentation plans.

C. Swimming Pools: Pursuant to the said augmentation plan, 11 swimming pools are permitted in Bent Tree, all filings. Tract owners shall make written application to the ACC for a permit to construct a swimming pool, designating the size, the amount of water to be impounded and the date of construction. On a first-come, first-served basis, the ACC shall review the submission and approve or disapprove the pool. Construction of an approved pool must be commenced within 9 months of approval and must be completed within 12 months. Approvals shall automatically expire 1 year from the date thereof. Each pool must be individually metered to enable annual determination of the actual number of gallons of water used. After approval and construction of 11 swimming pools, the ACC shall deny any further applications, unless and until an amended augmentation plan is approved allowing the construction of more than 11 pools. No swimming pools are provided for on Lots 197 through 232.

D. Enforcement and Reporting: The ACC is hereby authorized to administer and enforce, or to contract for administration and enforcement of, the augmentation plan for Bent Tree under the terms of said plan and shall be reimbursed by the BTPOA for the costs thereof. Among other things, the decree requires that an annual survey be made of the actual irrigated acreage upon each Lot in Bent Tree, as permitted in paragraph 4, hereof, and that annual reports be made to the Division Engineers of Water Divisions 1 and 2. Each owner shall provide to the



appropriate administering authority the information necessary to enable the reports to be filed in a timely manner.

E. BTPOA Responsibilities: The BTPOA has full rights and responsibilities under the original augmentation plan in the Assignment of Rights and Responsibilities Under Plan for Augmentation Decree (1984 Decree) recorded at Reception No. 099004296 of the records of the Clerk and Recorder of El Paso County, Colorado, and under the supplemental augmentation plan in the Assignment of Rights and Responsibilities Under Plan for Augmentation Decree (1998 Decree) recorded at Reception No. 099004297 of the records of the Clerk and Recorder of El Paso County, Colorado. The Northgate Company, in the Agreement recorded at Reception No. 099004295 of the records of the Clerk and Recorder of El Paso County, Colorado, deeded to the BTPOA, 933 acre-feet of Laramie-Fox Hills Aquifer groundwater decreed by the District Court for Water Division No. 1 in Case Nos. 82CW295 and 87CW193 to be used by the BTPOA for replacing post-pumping depletions under the supplemental augmentation plan. The BTPOA shall be responsible for all costs associated with drilling, equipping, operating and maintaining any well or wells, and associated infrastructure that may be required to deliver the reserved ground water to the Arkansas River and South Platte River Basins. Such Assignments and Agreement are to provide a water supply sufficient for the operation of the wells for Bent Tree under the augmentation plans. Under the Assignments and Agreement, the BTPOA holds such interest in the augmentation plans and the augmentation water supplies for the benefit of all Lot owners. The BTPOA is responsible for the administration, enforcement of the augmentation plans and, the operation of the augmentation water supply. The BTPOA shall assume responsibility for administering and enforcing the augmentation plans, and shall take all necessary actions to ensure the protection of water and well rights for all Lot owners pursuant to the augmentation plans, including pursuing and maintaining all further actions required under the augmentation plans.

F. Augmentation Well(s): Two augmentation wells have been drilled, one in the area next to the Fire Station in **Filing 4** and one on the Lot line between Lots 158 and 159 in **Filing 3**. These wells augment both the Platte and Arkansas drainages providing the basis for the State Engineer granting individual Dawson Aquifer wells to all Lots in Bent Tree subdivision. Portions of the water rights from these wells have been deeded to the Bent Tree Property Owners' Association (BTPOA) by Special Warranty Deed recorded at Reception Nos. 099001540 and 099001542 of the records of the Clerk and Recorder of El Paso County, Colorado, to assure continuing authorization by the State Engineer

for individual Lot owners to use water from their wells. Necessary easements for the maintenance of these wells are as shown on the recorded plats and as reserved in these covenants.

The BTPOA is tasked with administration and enforcement of water augmentation plans for Bent Tree. For that reason, as well as the many benefits a property owners association can provide, every Lot owner must belong to the BTPOA with its concomitant financial obligations and participate as a cohesive group. Membership is not optional, it is obligatory and runs with the land.

(1) BTPOA and Lot Owner Responsibilities: The owners of all Lots in all filings of Bent Tree comprise the BTPOA. Said individual Lot owners and the BTPOA are responsible for carrying out the requirements of the water augmentation decrees, including the possible replacement of post pumping depletions from the subject wells, including all costs associated with drilling, equipping, operating, and maintaining any well or wells, and associated infrastructure, that may be required to deliver the reserved ground water to the Arkansas River and South Platte River Basins. The failure of the BTPOA or the individual Lot owners to comply with the terms of the water augmentation decree may result in an order of the State water administration officials to curtail or eliminate pumping from individual wells.

(2) Annual Inventory: Special rules apply to 36 Lots in **Filing 4**, Lots 197 through 232 inclusive, under the supplemental augmentation plan. The BTPOA shall complete an annual inventory of homes on the Lots above described, and the total area of turf grass or equivalent vegetation being irrigated. There are other required actions as spelled out in the aforesaid Augmentation Plans which provide a complete description of the State Engineer's requirements of all Lot owners. Said Augmentation Plans are of public record in El Paso County and shall be made available to all property owners in Bent Tree.

G. Changes: No changes or deletions to this Paragraph 8 may be made which may alter or in any manner compromise the water augmentation plans or the water rights of either BTPOA or the Bent Tree Lot owners, except by order of the applicable Water Court.

H. Meters: Water Meters with an accessible exterior read-out shall be required on each water well installed on Lots 197 through 232. It is the responsibility of such well owners to read their meters and submit the amount of water used in form and frequency (normally annually) in compliance with the supplemental augmentation plan.



I. Water Rights: Each Lot has sufficient water rights in the Dawson Aquifer (underlying each Lot) to satisfy El Paso County's 300 year water supply requirement, and to enable individual Lot owners to obtain well permits from the State Engineer.

- **Filings 1, 2 & 3:** that amount shall be as follows: for Lots 1-196, 0.404 acre-feet per year (0.404 acre-feet x 325,851 gal/acre-foot = 131,634 gal/yr). Lots with swimming pools are allowed an additional 0.045 acre-foot (0.045 acre-foot x 325,851 gal/acre-ft = approx 15,000 gal/yr). No effort will be made by the BTPOA to sever the rights to the Dawson-Arkose aquifer from the individual Lot owner.
- **Filing 4,** that amount shall be as follows: for Lots 197-232, 0.383 acre-feet per year (0.383 acre-foot x 325,851 gal/acre-foot = 124,800 gal/yr) for a 300 year supply. For Lots 233-251, 0.404 acre-feet per year (0.404 acre-foot x 325,851 gal/acre-foot = 131,634 gal/yr) for a 300 year supply (for Lots with swimming pools, the amount shall be 0.449 acre-feet per year (0.449 acre-foot x 325,851 gal/acre-ft = 146,307 gal/yr) for a 300 year supply);
- **Filing 5,** the 300 year water supply requirement does not apply, and the conveyed amount shall be 0.404 acre-feet per year (0.404 acre-foot x 325,851 gal/acre-foot = 131,634 gal/yr).

#### 9. DRAINAGE DETENTION:

(a) **Filing 3:** A detention structure exists on Lots 158, 159, and 161 in the area shown as a "drainage easement" on the plat. An additional drainage easement exists on a portion of Lots 146, 157, and 181 as shown on the recorded plat of Bent Tree III. The purpose of this facility is to maintain historic drainage flows on Bent Tree property, all filings, since home and road construction slightly increase drainage flow. No structures, landscaping or other materials shall be placed or permitted to remain within any easement area which may rechannel, obstruct or retard the flow of water to detention areas. The easement area of each Lot and any structures on it shall be maintained by the owner of said Lots, except for the detention structure which shall be the responsibility of the Bent Tree Property Owners' Association (BTPOA) to inspect and maintain. Approaches to the structure if ever severely eroded by water would also be repaired by the BTPOA. Said structure and easement area shall also be used for water augmentation purposes and the BTPOA, and their successors and assigns reserve the right to enter upon said easements periodically for purposes of

inspection, maintenance and repairs, if needed. Once constructed, very little activity is contemplated.

(b) **Filings 4 & 5:** On some Lots within Filings 4 & 5, drainage considerations mandated construction of small terrace like basins to slow water runoff onto adjacent properties. These detention structures are shown on the recorded plats of Filings 4 & 5. In addition, ditchouts along the side ditches of the subdivision roads are constructed to carry water away from the roads. Such detention structures and ditchouts will not be altered or changed by any Lot owners. Further, maintenance of said drainage and water runoff control facilities are the responsibility of the Bent Tree Property Owners' Association (BTPOA) in cooperation with the owners of Lots on which the detention structures exist. Perpetual easements exist for the BTPOA to enter upon such Lots to effect maintenance of said structures. The BTPOA which represents all filings and Lot owners in Bent Tree will be responsible for drainage matters within Bent Tree in compliance with the requirements of the El Paso County Department of Transportation.

#### 10. ARCHITECTURAL CONTROL AND DESIGN REVIEW:

A. Purpose: The purpose of this covenant is to assure through intelligent architectural control of building design, placement, materials, colors and construction, that Bent Tree shall become and remain an attractive residential community, and to uphold and enhance property values. A freedom of architectural design is encouraged, so long as each dwelling design is in harmony with the character of the developing community. Unconventional designs, inconsistent with this purpose, will not be permitted.

#### B. Architectural Control Committee (ACC):

(1) Composition: The ACC is a 3 person committee, each member of which will serve for a 3 year term. Any elected member of the ACC whose performance is found objectionable by other owner-occupants may be removed by a vote of a 2/3rds majority of the then owner-occupants. In the event of the death or resignation of any elected member of the ACC, the remaining members thereof shall have full authority to designate a successor elected member to fill the remaining term.

(2) Liability of ACC: The ACC, nor any persons acting therefor, shall be liable in damages to any person submitting requests for approval or to any Lot owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such requests, or with regard to any other actions taken by the ACC under authorization of the provisions hereof, provided that they have acted in good faith and without negligence.



(3) Records retained by ACC: The ACC shall maintain records of election of its members. It shall retain a complete file of applications, home plans, and locations sketches until all structures applied for thereunder have been completed and for 5 years thereafter. If requests for additions are made, both the original plans and plans for said additions will be kept until said additions are completed.

(4) Compensation: A non-refundable architectural review fee of \$100 shall be submitted along with each submittal of plans to the ACC to defray the administrative costs of the review process. Any unused portions thereof shall be deposited into the Enforcement Fund (See paragraph 25.B.). No compensation other than reimbursement of expenses, shall be received by members of the ACC for services performed pursuant to this covenant.

C. Procedure for Obtaining Approval of Plans:

(1) Consolidated Application: Application and plans shall be submitted with review fee to the ACC.

(2) Optional Preliminary Review: If the owner believes that his plans may encounter serious objections, he should submit preliminary drawings and/or a preliminary sketch and request, in writing, preliminary review prior to incurring the expense of having detailed architectural working plans drawn. Such preliminary review shall not constitute final action. Resolution of any view concerns a purchaser might have should be resolved with the ACC prior to purchasing a Lot; once purchased such concerns shall be deemed satisfied.

(3) Owner Responsibilities: Owner (not builder) shall make written application on a form provided by and obtained from the ACC, which shall be submitted with the following attachments:

(a) One copy of a site plan, drawn to scale, showing the exact location on the Tract of all proposed improvements (house, well, septic, leach field and other buildings, even if only contemplated for the future). Exact proposed setbacks from Lot lines must be delineated. Access routes (driveways) to proposed structures and any clearing, plantings, outside lighting plans, or fencing must be included. Topographic maps showing terrain lines are recommended. (See also paragraph 4.)

(b) In **Filings 1 & 2**: One complete set of construction plans for building(s) detailing the floor plan, elevations, site location, and exterior building materials. **Filing 3**: One complete set of construction plans for building(s) detailing the floor plan, elevations, site location, and exterior building

materials. Garages must open to the side or rear of the house away from the street. **Filings 4 & 5**: One complete set of construction plans for building(s) detailing the floor plan, elevations, site location, and exterior building materials. Garage entrances, set at an angle to the main house on the street side, are permitted, if part of a well designed home, so long as the angle is not less than 30 degrees. Houses on corner Lots shall comply with the above, at least on one street side.

(c) Color samples and, if deemed necessary by the ACC, material samples of siding, roofing, etc.

(d) A letter of commitment from a lender, guaranteeing approval of construction financing and/or permanent financing upon completion of construction, if and when requested by the ACC. Job specifications and price estimate (construction take-off sheet) for improvements intended may be required at the sole discretion of the ACC. The intent of this section is to ensure that the applicant is financially capable of completing the proposed improvements, thus reducing the possibility of an abandoned or partially finished structure on a Lot.

(e) A copy of the well permit application in the form to be submitted to the Office of the State Engineer.

(4) ACC Responsibilities.

(a) ACC shall examine and consider plans, make field trips to the site (owner shall stake out the proposed location of buildings prior to submission of plans), and approve or disapprove all submissions in writing. ACC shall return a copy of the submission form with its determination and comments, as appropriate. The set of plans, site plan and material/color samples shall be kept in the files of the ACC. The ACC may require the owner to make other submissions, to include material samples, prior to considering any application.

(b) The ACC may take up to 30 days to approve or disapprove submissions, and, if disapproved, may take an additional 30 days to consider any resubmitted plans. Normally, submissions will be resolved in less time, but owners should plan sufficiently in advance to give the ACC time to thoroughly examine plans, make on-site inspections and make well considered decisions. In the event that the ACC fails to approve or disapprove within 30 days after receipt of any written submission, or in any event, if no suit has been filed to enjoin the construction prior to its completion, approval shall not be required, and the related covenants requiring ACC approval shall be deemed to have been fully complied with, provided that all



Other covenants herein have been properly observed and complied with. The foregoing notwithstanding, no plans shall be approved nor shall the above 30 day automatic approval pertain, unless the owner is current on his dues to the Bent Tree Property Owners' Association (BTPOA).

(c) A simple majority vote (2/3rds) of the ACC shall determine approval or disapproval; however, unless all 3 members of the ACC have been given the opportunity to vote and all 3 have signed the submission form, the approval or disapproval is not valid. The ACC will coordinate and work in concert with each other and report their decisions as a group and not individually.

#### D. Authority of the ACC:

(1) Scope: The ACC is empowered to approve or disapprove in writing all plans for construction, site locations, clearing, plantings, fencing additions to existing structures, remodeling that alters the exterior, replacement of roofs, changing of house colors and any other changes in the natural environment of Lots or appearance of homes in Bent Tree. Disapproval of submissions by the ACC may be based on any grounds, including purely aesthetic grounds. If such submissions are disapproved, the ACC shall give written reason for said disapproval to applicant. The ACC may make other reasonable requirements of the applicant, including, but not limited to submission of additional plans, specifications, and material samples, and may require such changes as it deems necessary to conform to the overall intent as herein expressed.

(2) Site Location: The ACC shall have the right to alter site locations as shown on the submitted site plan, or deny construction if, in the opinion of the ACC, the proposed site locations will unduly interfere with adjoining Lots as to view, intrusions of sound or light, sanitation, proximity or type of construction, actual or proposed, or unduly damage the natural growth and terrain.

(3) Authority to Review: The ACC may prohibit the construction of fences, houses or any other improvements to any Lot, and is empowered to order their removal if written application was not made by the owner, if approval was not granted in accordance with these covenants, or if actual construction is different from the approved plans.

(4) Deviation: The ACC may recommend that the Board of Directors enter into agreements with the purchaser of any Lot or Lots (without the consent of the purchasers of other Lots or adjoining or adjacent property) to deviate from those conditions, restrictions, limitations and agreements herein set forth, upon written request,

provided that such variances from the provisions of this Declaration of Protective Covenants must be granted in writing by the Board of Directors in accordance with:

(a) a written procedure to be adopted by said Board;

(b) to be granted only in cases such as irregularly shaped Lots, unusual terrain, highly desirable building sites near Lot lines, or other conditions wherein the strict enforcement of these covenants would result in unusual hardship; and

(c) the Board shall be the sole and exclusive judge of whether or not such hardship exists.

(5) Discretion: It is the intent of these declarations that the ACC shall exercise broad discretionary powers hereunder, but its decisions shall be subject to appeal to the Board, whose decision shall be final and conclusive. The Board shall resolve all questions of interpretation, and these covenants shall be interpreted in accordance with their general purpose and intent as herein expressed.

(6) Filings 1 & 2: The ACC shall determine whether each well permit application is in conformity with the augmentation plan, described in paragraph 8 above, and shall approve the filling of each application with the Office of the State Engineer upon a determination that the application does comply with the augmentation plan. The ACC may require that well logs be performed on particular wells as they are constructed, the cost of which logs shall be paid by the BTPOA.

E. Architectural Design and Requirements: In addition to the other requirements hereof, the following pertain:

(1) Construction: No building, accessory building, structure, walls, gates, hedges, fences, mailboxes, driveways, windbreaks, swimming pools, flagpoles, windmills, pump houses, water tanks, gas tanks, exterior lighting or other improvements shall be commenced, erected, converted, placed, added to, maintained or altered on any Lot until the construction plans and specifications, to include design, height, material and color samples to be used, and a site plan showing the exact location of the structure(s), have been approved by the ACC in writing as to quality of workmanship and materials, harmony of external design with existing structure(s), location with respect to other structures planned, and as to topography and finished grade elevation. This requirement applies both to new construction and to subsequent changes, additions, repainting, and major repairs or renovations. No construction of any such



improvement shall be commenced until ACC approvals required by these covenants are obtained.

(2) Facing/Siding:

- **Filings 1, 2 & 3:** Exposed concrete on buildings shall be stuccoed, or covered with brick or stone or other material meeting the approval of the ACC. If brick or stone is used as facing, other than decoratively, it must be used on all sides of a building seen from any road. Natural wood sidings must be treated and periodically maintained with some type of preservative or stain, and color samples shall be submitted with plans.
- **Filings 4 & 5:** To minimize fire propagation and hazards, facing and sidings of non-combustible materials are encouraged. This includes the use of masonry construction (brick, stone, stucco, cultured stone, etc.). Wood siding should be kept to a minimum but not exceeding 50% of the exterior area of the walls. Wood trim is permitted, but should be either covered with stucco, or kept to a minimum. Wood windows should be metal clad.

(3) Roofing & Overhang:

- **Filings 1, 2 & 3:** Roof materials and color shall be consistent with the architecture, color, and exterior wall material of any structure. Cedar shake shingles, tile or slate will normally be required; however, the ACC may allow variations from this requirement in those cases where such variation would be harmonious with the surrounding area and where such roofing materials would not be practical for a particular design or structure. New and modern materials with shake appearance will be considered. No asphalt or asbestos shingles will be permitted. The overhang of the roof on a structure shall be at least 24 inches.
- **Filings 4 & 5:** Roof materials that are non-combustible or fire retardant are the only ones permitted. This includes concrete tile, slate, certain type metal, and

synthetic cement shingles with a shake appearance. On roofs with pitches of eight or twelve or greater, class "A" fire rated super heavyweight, triple laminated premium asphalt shingles exceeding ASTM spec D 3462 such as O.C. Grand Manor, Celotex Presidential, Elk Premium Choice, etc. will be considered. Not permitted are lightweight or middleweight asphalt shingles on any roof pitch, cedar shakes, pine shakes, or Masonite type wood shakes. The overhang of the roof on ranch style homes shall normally be at least 24 inches.

(4) Color:

- **Filings 1 & 2:** Structural color schemes shall be compatible with the natural environment of the subdivisions. Subdued, unobtrusive natural or earth colors will normally be required, and color samples must be submitted with plans.
- **Filing 3:** Structural color schemes shall be compatible with the natural environment of the subdivisions. Subdued, unobtrusive colors will normally be required, and color samples must be submitted with plans.
- **Filings 4 & 5:** The colors of roofing, siding, and trim shall be coordinated and shall be organic in nature and be compatible with the natural environment. No harsh or bright colors are permitted. Color samples must be submitted with plans and application.

(5) Chimneys: Spark arresters shall be required on all chimneys, and open fires in Bent Tree are prohibited.

(6) Energy Conservation and unusual features: Roof mounted solar collectors, skylights and other unusual or energy conservation features should be custom designed and must be approved by the ACC. Roof mounted solar collectors shall match the slope of the roof to which they are attached.

(7) Energy features: Energy efficiency is encouraged through well sealed and insulated construction and the use of passive solar design techniques. Solar collectors shall be located or



screened so that reflections do not unreasonably defeat the intent of these covenants to maintain a natural environment. Tall wind-powered electrical generators are prohibited.

(8) Extreme Designs: Homes of extreme design are not approved, it being the intent of these covenants to establish an area of quiet, unobtrusive dignity and quality consistent with other homes in Bent Tree.

(9) Materials: All materials used in the construction, alteration or remodeling of any building shall be new and of good quality and design. Used materials of good quality may be used, provided they are first approved in writing by the ACC.

(10) Driveways: In addition to obtaining approval from the ACC, purchasers must obtain a written driveway permit from the El Paso County Department of Transportation prior to connection of any driveway to a public road. Owners of Lots are advised that the County has no responsibility for and will not snowplow or otherwise maintain driveways whether on flag Lots or other Lots; such responsibility is solely that of the Lot owner.

- **Filings 1 & 2:** Flared end extensions are required on all driveway culverts, or else concrete, masonry or stone headwalls to prevent bent culvert pipes and a consequently unattractive approach to a home.
- **Filing 3:** Metal flared end extensions are required on all driveway culverts, or else concrete or masonry headwalls to prevent bent culvert pipes and a consequently unattractive approach to a home.
- **Filings 4 & 5:** Metal flared end extensions with additional stone, rock, brick or other masonry treatment are required on all driveway culverts, or else concrete or masonry headwalls to prevent bent and exposed ends of culvert pipes and a consequently unattractive approach to a home. In all Filings: Plans submitted to the ACC must include the manner in which the driveway shall be constructed, and approval must be obtained from the ACC.

(11) Mailboxes and their support structures:

- **Filings 1 & 2:** Must be approved by the ACC. Colored plastic or metal newspaper boxes are not permitted; therefore, mailbox designs should incorporate a separate space for newspapers, as the U.S. Postal Service

rules prohibit placing newspapers or anything other than U.S. mail in a mailbox.

- **Filing 3:** Should be of a quality to enhance the home and must be approved by the ACC. Normally support structures for mailboxes will be of masonry construction (for example, stone, brick, concrete, stucco, cultured stone, etc.) though a combination of masonry and wood compatible with the colors and materials used on the home will be considered. The box itself, if made of metal shall be painted to cover raw or galvanized metal which is deemed unattractive. The masonry materials used in the support structure shall be the same or similar to the masonry portion of the home in texture and color. The street address numbers on the mailbox structure shall be made of brass, other metal, or ceramic. Wooden numbers will not be approved. Colored plastic or metal newspaper boxes are not permitted; therefore, mailbox designs should incorporate a separate space for newspapers, as the U.S. Postal Service rules prohibit placing newspapers or anything other than U.S. mail in a mailbox.
- **Filings 4 & 5:** Homeowners and or builders will provide support structures for homeowner's markings, newspaper delivery, lighting, and property entrances with design and materials compatible with the dwelling design. These structures shall be located on either side of the driveway entrances and in from the street on the homeowner's property and not within the street easements.
- **Filings 3, 4 & 5:** Maintenance of the mailbox and post system in good, attractive painted (if appropriate) condition shall be the responsibility of the individual homeowners and the BTPOA shall pay half the reasonable cost of said maintenance, providing a cost projection to include materials, labor, etc. is approved by the Architectural Control Committee prior to commencing work.

(12) Fences and Antennas:

(A) Fences: Barbed wire fencing within the subdivision is prohibited. Existing fencing on the boundary of Bent Tree shall not be removed, but may be replaced by new fencing and/or reset to conform to staked property lines. The BTPOA shall not be responsible for or defend against adverse possession suits based on external boundary survey differences. Fencing along streets, if any, will be of finished straight rails or poles, finished wood, wrought iron or masonry construction, or some



combination thereof, and shall be extended a minimum of 25 feet along side or rear Lot lines away from the street, before other fencing may be used. Unstripped bark posts and rails shall not be permitted. Fences must be approved in writing by the ACC as to location and materials prior to construction thereof. (See also paragraph 4.A. Setbacks and 21. Animals.) In **Filings 3, 4 & 5**, perimeter fences and chain link normally will not be approved. Fencing and hedges will be permitted but shall normally be no higher than 6 feet and normally shall not exceed beyond the front corner of the house. Consideration shall be given as to the types of fence in relation to the architectural design of the dwellings and the overall appearance in the community.

(B) Antennas: Attic antennas inside the house (as opposed to roof antennas) are effective, are less vulnerable to damage and are encouraged. Owners seeking to use a different location are encouraged (but not required) to submit an intent to install in advance of installation of any antenna, because the ACC will have more information as to whether an acceptable quality of signal can be received wholly inside a unit, as well as additional information about locations that are shielded from view to the maximum extent possible from neighboring properties or streets without unreasonably increasing the cost of an antenna. **If the owner proceeds with installation without approval, in a location other than an attic, said owner does so at his/her own risk, if it is later determined that said device was larger or more obtrusive than necessary to receive an acceptable quality signal** as per the standards of the Telecommunications Act of 1996 and the rules and regulations promulgated by the Federal Communications Commission ("FCC"). Notwithstanding any provision set forth above, this section is not intended to unreasonably delay or prevent installation, maintenance or use of, or unreasonably increase the cost of installation, maintenance or use of permitted devices, or preclude reception of an acceptable quality signal. In the event that any portion of this section is found to violate such Telecommunications Act or any rule or regulation of the FCC, the portion of this section that is found to be in violation shall be stricken and the remaining provisions of this section shall remain in full force and effect, or this section shall otherwise be deemed modified to so comply.

(13) Lighting: In **Filings 3, 4 & 5**, Outdoor lighting will be permitted to the extent it does not create a visual nuisance to neighboring property (except reasonable landscape lighting that has approval of the ACC). Outdoor lights will be focused. Lighted entry pylon and/or driveway lights will be of a type that can be turned on and off by the property owner, and sited so as not to annoy nearby Lot owners. Normally such lights shall be turned off

when not needed.

(14) Landscaping: In **Filings 3, 4 & 5**, new plantings and growth will be controlled so as not to unreasonably obstruct mountain views from adjoining Lots. The ACC is authorized, but not obligated, to enforce removal, thinning or topping of new view obstructions, and in their sole discretion to determine the validity of any complaints. Remedies of the ACC include all within these covenants for other violations including liens and foreclosure if violators will not cooperate in removing such view obstructions.

F. Penalty Fee for Violation: Written application for approval of plans shall be made and signed by the owner of the Tract (not the builder) and the owner shall be held responsible for any violations of the covenants which are committed by the builder or other persons engaged by the owner. If any excavation, cutting of trees or construction is commenced by owner, or owner's representatives, prior to receipt of written approval by the ACC, then the owner agrees to pay immediately a penalty of \$300 to the enforcement trust fund (see paragraph 25.B), which shall utilize said funds to further enforce the Bent Tree covenants as necessary. Purchasers of Tracts in Bent Tree agree to make such payment, and understand that a lien shall be filed against their property if they do not (see paragraph 25.C.). Further, if any attorney fees or costs are incurred to enforce this covenant, violators must pay all expenses, to include reasonable legal fees, incurred by the ACC in collection of said penalty. Payment of said penalty does not preclude further action by the ACC or by the Association.

#### 11. CLEARING OF TREES:

A. Approval: Approval shall be obtained from the ACC, to cut down or clear any trees on any Tract, except dead trees, reasonable thinning of trees of 4 inches diameter or less, or for infestation control. Owners of Lots shall dispose of such cleared trees in a way to prevent accumulations of brush, stumps, trash, or other materials which may constitute a fire hazard or render a Tract unsightly, provided, however, that this shall not operate to restrict purchasers from storing fireplace wood in neat stacks on their Tracts. Owners are responsible for prompt treatment or removal of trees infected by pine beetle or other insects which can kill trees within a year and might spread to adjacent trees and Lots, and to reasonably contain any trees with slow parasitic growth such as mistletoe. In addition, owners are responsible for controlling and removing weeds declared noxious by governmental authorities and in accordance with El Paso County weed control rules and regulations.



B. Wildfire Hazard Reduction: All buildings should have a 30 foot defensible area or "safety zone" in all directions. All brush within 10 feet of the building should be removed and replaced with an irrigated greenbelt (grass, flowers or shrubs) or noncombustible materials, such as rock, brick pavers or gravel. Trees within the 30 foot safety zone should be thinned to eliminate overlapping crowns. Dead limbs should be pruned from trees within two tree heights of the building. All branches which extend over or under the eaves of the roof should be trimmed. Dead limbs, leaves and grass clippings should be removed from all areas. Firewood should be stacked uphill and at least 10 feet from structures. Homes should be equipped with smoke detectors and at least one 2.5 pound fire extinguisher maintained in accordance with the manufacturer's recommendations.

12. EASEMENTS: Easements for installation, operation and maintenance of utilities, roadways, water lines, drainage facilities and such other purposes as may be designated by BTPOA and/or governmental authorities are reserved on, over and under a strip of land as follows:

- **Filings 1 & 2:**

- Front: Along all front Lot lines, 20 feet wide
- Sides and Rear: Along all side and rear Lot lines, 10 feet and along all Bent Tree exterior boundaries, 20 feet or as otherwise shown on the recorded plat.

- **Filing 3:**

- Front: Along all front Lot lines, 15 feet wide
- Sides and Rear: Ten feet along all side and rear lot lines, and 20 feet along all Filing 3 exterior boundaries which do not adjoin Filings 1 or 2, and/or as otherwise shown on the recorded plat.

- **Filings 4 & 5:**

- Front: Along all front Lot lines, 20 feet wide
- Sides and Rear: Along all side and rear Lot lines, 10 feet and along all Bent Tree exterior boundaries, 20 feet or as otherwise shown on the recorded plat.

If purchaser buys contiguous Lots, easements and setbacks shall apply unless the purchaser formally vacates the common Lot line through the appropriate government agencies.

Tract owners are responsible for providing access to utility companies and other government agencies who have reason to use said easements, and if damage is done to fences, shrubbery or plantings in said easements, Tract owners have no recourse against said agencies, BTPOA or ACC. No building or similar structure may be placed within the easements unless vacated by agencies involved, and approved by the ACC. It is recommended that they be kept open and unfenced.

13. OBSTRUCTION TO VISION AT INTERSECTIONS: No fence, wall, hedge, tree, shrub planting or other structure which unduly obstructs lines-of-sight shall be placed or permitted to remain on any corner formed by the intersections of streets. The ACC shall be the sole and exclusive judge of whether said lines-of-sight are unduly obstructed so as to create a possible safety hazard.

14. REDIVISION: Further subdivision of Lots in Bent Tree is not permitted; however, the intent of this covenant is not to preclude minor Lot line adjustments to resolve building hardships, provided that such variations meet all legal requirements including compliance with all zoning and subdivision requirements of El Paso County, Colorado, and are approved by BTPOA and the ACC in writing. If a Lot line has been vacated, the affected property may not be again redivided into separate Lots without the prior written approval of BTPOA, in addition to meeting all of the requirements of any government entities.

15. NUISANCE:

A. General: Nothing shall be done or permitted on any Lot which may be or become an annoyance or nuisance to the neighborhood. No noxious, noise polluting or otherwise offensive activities or commercial businesses or trades shall be carried on upon any Tract. Any exterior lighting on any Lot shall either be indirect or of such controlled focus and intensity as not to unduly disturb residents of adjacent or nearby property.

B. Sound: No trail bikes, minibikes, motorcycles, all-terrain vehicles, snowmobiles, or other such noise causing vehicles shall be operated within Bent Tree other than on County roads and going to and from residences. No activity shall be permitted which will generate a noise level sufficient to interfere with the reasonable quiet enjoyment of the persons on any adjoining or nearby Lots.

C. Hunting: No hunting of any kind, nor the discharge of firearms shall be permitted in Bent Tree.

16. REFUSE AND RUBBISH: Rubbish, garbage and other waste shall be kept and disposed of



in a sanitary manner. Containers or other equipment for the storage or disposal of garbage, trash, rubbish or other refuse shall be kept in a clean, sanitary condition. All garbage or trash containers shall be kept at all times in a closed garage or placed in walled-in areas designed to blend in with the house, so that they shall not be visible from other Tracts or from public streets. Bottled gas tanks, if any, must be underground, or concealed behind walled-in areas designed to blend in with the house, and may be subject to the approval of the Fire Department. No trash, litter, junk, equipment, boxes or other such items shall be permitted to remain exposed upon the premises and visible from public streets or from other Tracts within the subdivision.

17. SIGNS: All signs displayed must be first approved in writing by the ACC. This covenant does not preclude the display of customary 18" x 24" builder or real estate signs. The ACC reserves the right to make exceptions to size requirements, or to require modification or removal of any signs deemed not in keeping with the area and subdivision decor; however, the ACC shall not require real estate signs to be smaller than provided herein, and this restriction shall run with the land and may only be changed by the ACC. The BTPOA reserves the right to erect and maintain an entrance sign on Tracts at either side of the street at each entry point into Bent Tree, along with gateways, posts, walls, signs and other structures both to permanently identify Bent Tree and to market it. In addition, the BTPOA reserves the right to place signs on any Lot in the subdivision as they deem necessary for safety or traffic guidance, and purchasers of Tracts in Bent Tree agree thereto. Notwithstanding the foregoing, except to the extent restricted by city, town or county ordinance, an owner or occupant may have one political sign per political office or ballot issue that is contested in a pending election, as defined by the statute, to be located within the boundaries of the Lot or in a window of the home, with a maximum dimension of 36 inches by 48 inches. Such political signs may only be displayed no earlier than forty-five (45) days prior to the election day to which the sign pertains and no later than seven (7) days after said election day.

18. DRILLING: No oil drilling, oil development operations, oil refining, quarry or mining operations of any kind shall be permitted on or in any Tract, nor shall gas or oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Tract. No derrick or other structure designated for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Tract.

19. CLOTHES DRYING AREA: Clothesline(s) must be screened from view from roads and adjoining Lots.

## 20. VEHICLE PARKING AND EQUIPMENT:

No vehicles shall be stored or parked within the subdivision except in a closed garage; however, recreation vehicles to include travel trailers, horse trailers, campers, boats or a motorhome and various equipment may be kept in an organized manner to the rear of a house if not readily visible from public streets nor reasonably from other Lots within the subdivision. Screening such vehicles from public view with proper garaging or fencing, approved by the ACC, is required. The intent of this covenant is to prevent clutter and enhance natural appearance. Notwithstanding the foregoing, emergency motor vehicles are permitted in a home occupant's driveway or in the Association's streets if the emergency motor vehicle meets each of the following requirements:

(1) The emergency motor vehicle is required by the home occupant's employer as a condition of employment;

(2) the emergency motor vehicle weighs ten thousand pounds or less;

(3) the home occupant is a bona fide member of a volunteer fire department or is employed by a primary provider of emergency fire fighting, law enforcement, ambulance, or emergency medical services;

(4) the emergency motor vehicle has some visible emblem or marking designating it as an emergency vehicle; and

(5) the parked emergency motor vehicle does not block emergency access or interfere with the reasonable needs of other owners or occupants to use the streets and driveways within the subdivision.

## 21. UTILITIES:

A. Lines. All utility lines, including service lines of whatsoever kind or nature, shall be underground on all Tracts within Bent Tree.

B. Wells. The water supply for Bent Tree shall be provided by means of wells, to be constructed and operated in accordance with the augmentation plan described in paragraph 8 preceding. Each owner shall be responsible for the construction and maintenance of their own well and for the connection of the well to their house. No owner may construct a well or initiate any water right at Bent Tree except through a well approved by the ACC, pursuant to the augmentation plan. In **Filings 1 & 2**, under the ruling of the augmentation plan, up to five owners may agree to construct a single well to serve up to five houses, in which case such owners shall agree as to the location of the well, and allocation of construction, maintenance and



connection costs among themselves.

C. Sewer. Sewer services for Bent Tree will be provided by means of individual septic tanks and leach fields, to be constructed and maintained by each owner. No systems of the evapotranspiration type shall be permitted unless required by the El Paso County Health Department or other governmental agency or proper jurisdiction and approved under the water augmentation plan by the authority managing said augmentation plan (BTPOA, or ACC, as appropriate).

## 22. ANIMALS:

A. General. No animals or livestock of any kind shall be housed, raised or kept on any Tract or property either temporarily or permanently, except that commonly accepted domestic household pets may be kept provided that they are not kept or maintained for any commercial purposes.

B. Dogs. Dogs shall not be permitted to run loose and shall be kept under control of owners at all times. Kennels for the commercial raising, breeding and boarding of animals are prohibited. Barking dogs are considered a nuisance and owners will act to restrain them.

C. Fencing. Fences for animals will be at least 5 feet high of solid wood or masonry. Colors will be compatible with the main dwelling. Proper maintenance is required. Such fences must be pre-approved in writing by the ACC which will be highly sensitive to the ambiance of the neighborhood to include appearance from the streets and adjacent Lots. Under no circumstances will dogs be allowed to run loose in the neighborhood. The use of electronic pet containment (invisible) fences in lieu of conventional fencing is strongly recommended.

23. TERM OF COVENANTS: These covenants and restrictions are to run with the land and shall be automatically extended for successive periods of 10 years unless an instrument amending this instrument has been recorded, changing said covenants in whole or part in accordance with this provision. Except as provided below, these covenants may be amended at any time by a 67% majority vote of all property owners (one vote per each Tract in the five combined Filings). Notwithstanding the foregoing, any provisions that apply solely to one of the three (3) original recordings, such as the provisions of Paragraph 8 above (Water Augmentation Plan Requirements) shall neither terminate nor be amended except by vote of the owners in the applicable Filing(s). Further, in the case of Paragraph 8 itself, any change may also need to be made by order of the applicable Water Court, which may amend, modify or change such provisions by judicial order. In any case, all changes shall be

legally drawn and formally recorded in El Paso County.

## 24. ENFORCEMENT:

A. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation or to recover damages. Covenants are for the use, convenience and protection of all property owners. The ACC, BTPOA, or any individual Lot owner may act to enforce the covenants; none of the foregoing, however, are obligated to do so. The ACC or BTPOA, together or separately, or through authorized agents or employees further reserve the right, whenever there shall have been an apparent violation of one or more of the provisions of these covenants and after 10 days' notice to owner, to enter upon the property where such violation exists and summarily abate or remove the same at the expense of the owner and such entry and abatement or removal shall not be deemed a trespass. Property owners in Bent Tree expressly agree to abide by injunctions without necessity of bond, in order to simplify judicial proceedings to remedy covenant violations. In addition, if attorney fees or costs are incurred to prohibit a covenant violation and a violation is established, the violator(s) shall pay and agree to pay all costs of the enforcement effort, including reasonable attorney's fees. The failure to enforce any right, reservation, restriction, or condition contained herein, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to a breach occurring prior to or subsequent thereto and shall not bar or affect its enforcement. The invalidation by any court of any restriction herein contained shall not in any way affect any of the other restrictions, but they shall remain in full force and effect.

B. LIENS: Non-payment of fees incurred by BTPOA and/or ACC in enforcing correction of a bona fide violation of these covenants or in abatement or removal as covered herein and per paragraphs 6 and 9.F. hereof, shall result in a recorded lien being placed on the Lots and/or Lot interest owned by the violator(s), including improvements thereon, said lien to bear interest at eighteen percent (18%) per annum from the date filed. BTPOA and/or ACC is empowered to file such lien if within 30 days of written notification to owner of amount due, owner has not made payment in full. Such lien shall run with the land unless said property is repossessed by BTPOA, in which case the lien shall become null and void and shall be hereby released at that time. Continued failure to pay such liens may result in foreclosure on the entire property in order to enforce payment.

25. NOTICES: Any notice required to be given



