

THE STATE OF TEXAS \*  
\*  
COUNTY OF MCLENNAN \*

KNOW ALL MEN BY THESE PRESENTS:

AMENDED ENABLING DECLARATION  
FOR ESTABLISHMENT OF A CONDOMINIUM FOR  
BENT TREE PLACE CONDOMINIUMS

BHD CORPORATION, a Texas Corporation, (hereinafter referred to as "Declarant"), the former owner of the fee simple title to the property hereinafter described, for itself, its successors, grantees and assigns, having previously submitted said property to condominium ownership pursuant to the Texas Condominium Act, Article 1301a of the Texas Revised Civil Statutes (hereinafter called "the Act" or the Condominium Act"), and established by the original enabling declaration plan for the individual and exclusive ownership of the separate real property freehold estates created thereunder, consisting of the area of space enclosed within the boundaries, as herein defined, of each Unit in the multiple unit buildings, and the co-ownership, as tenants in common, of all the remaining real property which is hereinafter defined as the "Common Elements" of the property.

In furtherance of said plan of condominium ownership and the purposes and intents hereof, Declarant and the undersigned Unit Owners make the following declarations as to the divisions, descriptions, definitions, restrictions, covenants, limitations, conditions, rights, privileges, obligations and liabilities which shall apply to govern, control and regulate the sale, resale or other disposition, acquisitions, ownership, use and enjoyment of said property and improvements and the real property freehold estates hereby established, hereby specifying and agreeing that said declarations and the provisions hereof shall be and constitute covenants running with the land or equitable servitude upon the land, as the case may be, and shall rule perpetually unless terminated as provided herein, and shall be binding upon all Unit Owners as hereinafter defined. In consideration of receiving and by acceptance of a grant, devise or mortgage, all grantees, devisees of mortgagees, their heirs, personal representatives, successors and assigns, and all parties claiming by, through or under such persons, agree to be bound by the provisions hereof, the Articles of Incorporation and the Bylaws of the Association hereinafter defined. Both the burdens imposed and the benefits provided shall run with each Unit and the interests in Common Elements as defined herein.

1. DEFINITIONS. As used in this declaration, in the Articles of Incorporation and in the Bylaws attached hereto, and in all amendments thereto, unless the context requires otherwise:

(a) "Assessment" means a share of the funds required for the payment of Common Expenses which from time to time are assessed against any Unit Owner.

(b) "Association" or "Corporation" means BENT TREE PLACE ASSOCIATION, INC., a non-profit corporation organized pursuant to the Texas Non-Profit Corporation Act in which all Unit Owners shall be members, along with owners of single residence units of the planned unit development, which corporation shall administer the operation and management of BENT TREE PLACE CONDOMINIUMS and units of the planned unit development, as a Condominium and shall have the same meaning as the term "Council of Co-Owners" as defined in the Act.

(c) "Articles" and "Bylaws" means the Articles of Incorporation and the Bylaws of the Association as they exist from time to time.

THIS AGREEMENT IS SUBJECT TO THE TEXAS GENERAL ARBITRATION ACT

(d) "Common Elements" means that portion of the Condominium Property not included in the Units. Common Elements shall include the tangible personal property required for the maintenance of the Common Elements and Limited Common Elements even though owned by the Association.

(e) "Common Expenses" means the expenses of administration, maintenance, operation, repair and replacement of the Condominium Property, the Common Elements and Limited Common Elements, other expenses declared to be Common Expenses herein or by the Bylaws and any other valid expenses against the Condominium as a whole for which the Unit Owners are liable to the Association.

(f) "Common Surplus" means the excess of all receipts of the Association, from whatever source, over the amount of Common Expenses.

(g) "Condominium" is that form of ownership of Condominium Property under which Units in the Condominium Buildings are subject to ownership by different owners, and there is appurtenant to each Unit as part thereof an undivided share in the Common Elements.

(h) "Condominium Buildings" means the multiple Unit buildings which are those parts of the Condominium Property within which the Units are or will be located being depicted on Exhibit "B" as Building A through K.

(i) "Condominium Parcel" means a Unit together with the undivided share in the Common Elements which is appurtenant to the Unit.

(j) "Condominium Property" or "Condominium Project" means and includes the land in the Condominium and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

(k) "Declaration" or "Declaration of Condominium" means this instrument, including all Exhibits attached hereto, and all plats which are hereinafter from time to time dedicated hereto and incorporated herein by declarant, whether or not otherwise referred to or incorporated herein by this reference as it may from time to time be amended.

(l) "Limited Common Elements" means and includes those Common Elements which are agreed by all of the Unit Owners to be reserved for the use of a certain Unit or Units to the exclusion of other Units.

(m) "Mortgagee" means a bank, savings and loan association, insurance company, mortgage company, or other lending institution, whether public or private, corporate or non-corporate, or any person, which owns or holds a mortgage encumbering a Condominium Parcel.

(n) "Operation" or "Operation of the condominium" means and includes the administration and management of the Condominium Property.

(o) "Unit" or "Apartment" means a part of the Condominium Property which is to be subject to private ownership, being an enclosed space consisting of one or more rooms occupying all or part of one or more floors in a Condominium Building, as depicted in Exhibit "B" hereto.

(p) "Unit Owner" or "Owner of a Unit" means a person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof who or which owns one or more Condominium Parcels.

(q) "Utility Service", as used in this Declaration, the Articles and the Bylaws shall include, but not be limited to, electric power, gas, hot and cold water, heating, refrigeration, air-conditioning, garbage, and sewage disposal.

2. CONDOMINIUM NAME, CONDOMINIUM PARCELS, APPURTENANCES, POSSESSION AND ENJOYMENT.

(a) The name of this Condominium is BENT TREE PLACE CONDOMINIUMS.

(b) There shall pass with each Unit as appurtenance thereto:

- (1) An undivided share in the Common Elements.
- (2) An exclusive easement for the use of air space encompassed by the Unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time.
- (3) An undivided share in the Common Surplus.
- (4) Membership of the Unit Owner in the Association.
- (5) The use of such parking space(s) as may have been assigned for a Unit Owner's exclusive use.
- (6) The use of such Limited Common Elements as may have been reserved for use by the respective Unit Owner.

(c) Each Unit Owner is entitled to the exclusive possession of his Unit. He shall be entitled to the use of the Common Elements in accordance with the purposes for which they are intended, but no such use shall hinder or encroach upon the lawful rights of other Unit Owners. There shall be a joint use of the Common Elements and a mutual easement for that purpose is hereby created. The right to use the Common elements shall extend to each Unit Owner and/or the authorized occupant thereof, the members of his immediate family, and his guests and visitors. The right to use the Common Elements shall be subject to and be governed by the provisions of the Act, this declaration and the Bylaws, and the rules, regulations and resolutions lawfully made or adopted by the Association.

(d) Each Unit Owner shall not own the undecorated or unfinished surfaces of the perimeter walls, floors and ceilings surrounding his Unit, nor shall he own pipes, wires, conduits or other public utility lines running through his Unit which are utilized for or serve more than one Unit which items are hereby made a part of the Common Elements. Said Unit Owner, however, shall own the walls and partitions which are contained within his Unit and inner decorated or finished surfaces of the perimeter walls, floors and ceilings, including plaster, paint and wallpaper, and the exterior surfaces of any balconies or terraces constituting a part of his Unit.

3. RESTRAINT UPON SEPARATION AND PARTITION OF COMMON ELEMENTS.

(a) The undivided share in the Common Elements which is appurtenant to a Unit shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately described.

(b) A share in the Common Elements appurtenant to Units cannot be conveyed or encumbered except together with the Unit.

(c) The shares in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common elements shall be actionable.

4. COMMON ELEMENTS. Common Elements include the following items:

(a) The land on which the improvements are located and any other land included in the Condominium Property.

(b) All parts of the improvements are located and any other land included in the Condominium Property.

(c) Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services to Units and the common Elements.

(d) An easement of support in every portion of a Unit which contributes to the support of the Condominium Buildings. the foundations, bearing walls and columns (including chimneys therein), roofs, ceilings and floors, entrances, exits or communication ways of the Condominium Buildings.

(e) The Compartments or installations of central services such as central air-conditioning and heating, power, light, electricity, telephone, cold and hot water, plumbing, reservoirs, water tanks and pumps, incinerators and the like, and all similar devices and installations existing for common use or for the furnishing of utility services to more than one Unit other than the Unit containing the installation.

(f) The property and installation in connection therewith required for furnishings of services, maintenance and repair to more than one Unit or the Common Elements.

(g) All common recreational facilities such as game rooms, swimming pools, restrooms and the grounds, yards and walkways; and

(h) All other elements desirable or rationally of common use for necessary to the existence, upkeep and safety of the Condominium Property.

(i) Parking spaces and storage areas, the use of which may be assigned to Unit Owners and which shall constitute a portion of the Limited Common Elements.

(j) All areas and elements not contained within a Unit and not defined or depicted elsewhere herein or in the Exhibits hereto as Limited Common Elements shall be Common Elements.

5. DESCRIPTION OF PROPERTY SUBMITTED TO CONDOMINIUM OWNERSHIP

(a) The legal description of the land hereby submitted to Condominium ownership is set forth in Exhibit "A" attached hereto and made a part thereof.

(b) Exhibit "B" attached hereto and made a part hereof as amended on September 15, 1985, is a survey of said land and a graphic description of the improvements which will or may be constructed thereon and in which Units will be located, a plat plan thereof and the parking areas. The identification, location and dimensions of each Unit and the Common elements appear on Exhibit "B" and Exhibit "B" includes sufficient detail to identify the Common Elements, the Units and their relative locations and approximate dimensions.

6. PERCENTAGE OF OWNERSHIP IN COMMON ELEMENTS AND VOTING RIGHTS.

(a) The Condominium Property will contain forty-four (44) Units which will be constructed upon the Condominium Property. The Declarant shall construct all such Units but shall not be obligated to start or complete the construction thereof within any specified period of time, it being understood that such shall be constructed as, when and to the extent that Declarant deems it to be commercially reasonable to do so.

(b) Exhibit "C" attached hereto and made a part hereof defines the Condominium Property, as amended on September 15, 1985, and herein to contain forty-four (44) Units when completed. To facilitate better parking for the Units to be contained in Building D, Building D shall actually be two (2) buildings, with Building D-1 to contain Units 1 and 2 and to be located next to Building C, and Building D-2 to contain Units 3 and 4 and to be located next to Building E. Due to the uncertainty of knowing the square footage for the unconstructed units, and in order to simplify matters with respect to the maintenance and management of the Condominium Property, the original Declaration was amended to provide that the percentage of undivided interests owned by each Unit Owner and the Common Elements appurtenant to his Unit and the percentage of sharing Common Expenses and owning Common Surplus shall be determined by dividing a total of one hundred percent (100%) by the forty-four (44) Condominium Units with the results being that each Unit shall have the same percentage interest. The undivided interest as set forth in Exhibit "C" cannot be changed, altered or amended without the written agreement of all unit owners and/or mortgagees affected thereby.

7. AMENDMENT OF DECLARATION.

(a) This Declaration may be amended by the affirmative vote of Unit Owners owning at least seventy-five (75%) percent interest in the Common Elements. All amendments shall be executed as may be required by the Condominium Act, and recorded among the Condominium Records of McLennan County, Texas provided, however, that:

- (1) No amendment shall change any Condominium Parcel or a Unit Owner's proportionate share of the Common Expenses or Common Surplus, or the voting rights appurtenant to any Unit, unless the record owner(s) there and all record owners of mortgages or other voluntarily placed liens thereon shall join in the execution of the amendment; and
- (2) No amendment shall be passed which shall impair or prejudice the rights and priorities of any Mortgagee.

(b) Invalidation of any part of this Declaration, any provision contained in the plat of the Condominium Property, or in a conveyance of a Unit in the Condominium by judgment, court order or law shall not affect any of the other provisions hereof, which shall remain in full force and effect.

8. BYLAWS.

The operation of the Condominium Property shall be governed by the Bylaws of the Association. No amendment to said Bylaws shall be adopted which would affect or impair the validity or priority of any mortgage covering any Condominium Parcel without joinder therein by the Mortgagee affected by the change.

9. THE ASSOCIATION, ITS POWERS AND RESPONSIBILITIES.

(a) The operation of the Condominium shall be vested in the Association. The management and maintenance of the Condominium and the administration of the affairs of the Association shall be conducted by the Board of Directors of the Association, as more specifically set out in the Bylaws or Amended Bylaws of the Association.

(b) No Unit Owner, except an officer of the Association, shall have any authority to act for the association.

(c) The Board of Directors shall have all of the powers, duties and responsibilities as are now or may hereafter be provided by the Condominium Act, this Declaration and the Amended Bylaws of Bent Tree Place Association, Inc.

(d) Members of the Board of Directors and officers of the Association (i) shall not be liable to the Unit Owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith; (ii) shall have no personal liability in contract to any Unit Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such; (iii) shall have no personal liability in tort to any Unit Owner or any person or entity, direct or imputed, by virtue of acts performed by them, except for their own willful misconduct or bad faith, nor for acts performed for them in their capacity as such and (iv) shall have no personal liability arising out of the use, misuses or condition of the Condominium Property, which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such, except for their own willful misconduct or bad faith.

(e) The Association and/or Unit Owners shall indemnify and hold harmless any person his heirs and personal representatives, from and against all personal liability and all expenses, including attorney's fees, incurred or imposed, or arising out of or in settlement of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, instituted by any one or more Unit Owners, or any other person or entities, to which he shall be or shall be threatened to be made a party by reason of the fact that he is or was a member of the Board of Directors or an officer of the Association, other than to the extent, if any, that such liability or expense shall be attributable to his willful misconduct or bad faith, provided that in the cases of any settlement the Board of Directors shall have approved the settlement, which approval is not to be unreasonably withheld. Such right of indemnification shall not be deemed exclusive of any other rights to which such person may be entitled as a matter of law or agreement, vote of unit Owners or the Board of Directors or otherwise. The indemnification by the Association and/or Unit Owners as contained herein shall be paid by the Association on behalf of the Unit Owners and shall constitute a Common Expense and shall be assessed and collectable as such.

10. MAINTENANCE; LIMITATION UPON IMPROVEMENT.

(a) The maintenance, replacement and repair of the common elements and Limited Common Elements shall be a Common Expense, except as to patios and balconies which are enjoying exclusive use and control of each such patio or balcony, all doors and windows of each unit. The Unit Owners shall have the responsibility to maintain, repair, replace and keep in a clear and sanitary condition, at the Unit Owner's expense, all portions of the Unit Owner's Unit, except those portions to be maintained, replaced and repaired by the Association.

(b) There shall be no material alteration or substantial additions to the Common Elements or Limited Common Elements, except in a manner provided in this Declaration, the Articles or the Bylaws.

(c) No Unit Owner shall make any alterations in the portions of the improvements of the Condominium Property which are to be maintained by the Association, remove any portion thereof, make any additions thereto, do any work which would jeopardize the safety or soundness of the building containing his Unit or impair any easement.

11. COMMON EXPENSES AND COMMON SURPLUS.

(a) Funds for the payment of Common Expenses shall be assessed against Unit Owners in proportion to the sharing of Common Expenses as provided for in this Declaration.

(b) The Common Surplus shall be owned by Unit Owners in the shares provided in this Declaration.

12. ASSESSMENTS: LIABILITY, LIENS AND PRIORITY, INTEREST, COLLECTIONS.

(a) The Association, through its Board of Directors, shall have the power to determine and fix the sums necessary to provide for the Common Expenses, including the expense allocable to services being rendered by a management company with whom the Association may contract. Unless specifically waived by the Association, the Assessments shall include premiums for hazard and liability insurance on the Condominium Property. A Unit Owner, regardless of how his title was acquired, shall be liable for a proportionate share of all Assessments coming due while he is the Owner of a Unit, such share being the same as the percentage of undivided interest in the Common Elements for his respective Unit as set forth in Exhibit "C". In a voluntary conveyance of a Unit, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the latter for his share of the Common Expenses up to the time of such voluntary conveyance.

(b) The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements, services or facilities, or by abandonment of the Unit against which the Assessment was made.

(c) Assessments not paid when due shall bear interest from the due date at such lawful rate of interest as may be set by the Board of Directors until paid. All payments on account shall be first applied to interest and then to the Assessment payment due.

(d) The Assessment shall include payments to an adequate general operation reserve and a reserve fund for the replacement of or additions to capital items or improvements of common facilities and equipment, including but not limited to roof and periodic redecoration of Common and Limited Common Elements. In assessing the Unit Owners for such capital improvements and additions to the Common Elements and Limited Common Elements, there shall be no single improvement or addition exceeding the sum of \$10,000.00 made by the Board of Directors of the association without the same having been first voted on and approved by Unit Owners owning two-thirds (2/3) or more interest in the Common Elements of those present in person or by proxy at a meeting of the Association duly called for that purpose. The foregoing shall not apply in connection with damage or destruction referred to in Paragraph 22 hereof or to such structural alterations of capital additions to or capital improvements of the Common Elements as are necessary in the Board of Directors' reasonable judgment to preserve or maintain the integrity of the Common Elements or Limited Common Elements of the Condominium Property.

(e) The Association shall have a lien upon each Condominium Parcel to secure the personal obligation of each Unit Owner for any unpaid Assessment and interest thereon. Such lien shall also secure reasonable attorney's fees incurred by the Association incident to the collection of such Assessment or enforcement of such lien. Assessments shall become due and payable within ten (10) days from the date each Assessment is made unless otherwise specified in the Bylaws, and such Assessment shall become liens against the respective Condominium Parcels for their pro rata share thereof at the time such Assessments become due and payable unless otherwise specified in the Bylaws. All liens for assessments made by the Association or by the Board of Directors, when authorized to do so, shall be prior to other liens, except that such liens for said Assessment shall be subordinate, secondary and inferior to (1) all liens for taxes or special Assessments levied by the city, county, and state governments or any political subdivision or special district thereof, and (2) liens securing amounts due or to become due under any mortgage, vendor's lien or deed of trust filed for record prior to the date of payment of such Assessment for Common Expense becoming due. All other lienholders acquiring liens on any Condominium parcel after this Declaration shall have been recorded in said records shall be deemed to consent that such liens shall be inferior to future liens for Assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.

(f) To evidence a lien for sums assessed pursuant to this Article, the Board of Directors of the Association or such officers of the Association as its Board of Directors may designate, shall prepare a written notice of a lien setting forth the amount of the Assessment, the date due, the amount remaining unpaid, the name of the Owner of the Condominium Parcel and a description of the condominium Parcel. Such notice shall be signed on behalf of the Association by such officer or officers of the Association as its Board of Directors shall designate and may be recorded in the office of the County Clerk of McLennan County, Texas. No notice of lien shall be recorded until there is a delinquency in the payment of the Assessment. Such lien for unpaid Assessments shall attach from the date of the failure of payment of the Assessment.

(g) Liens for Assessments may be foreclosed (i) by suit brought in the name of the Association in a like manner as a foreclosure of a mortgage on real property without prejudice and subject to the aforesaid prior liens, as in the case of a vendor's lien, or (ii) as is provided for foreclosure of a contractual deed of trust lien on real property under Vernon's Annotated Civil Statutes of Texas, Art. 3810 and in this regard each Unit Owner hereby appoints and designates any trustee appointed by the Association to so act on behalf of the association and acknowledges and authorizes that such trustee shall be vested with all powers afforded trustees pursuant to Art. 3810 and agrees that to the extent necessary, this Declaration shall constitute a contractual deed of trust lien on his Unit to secure the timely payment of all Assessments and other obligations of each Unit Owner set forth herein. No such foreclosure shall affect or impair any such prior liens. In any such foreclosure, the Unit Owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of filing the notice of lien and all reasonable attorney's fees. All such costs and expenses shall be secured by the lien being foreclosed. The Unit Owner shall also be required to pay to the Association any Assessments against the Condominium Parcel which shall become due during the period of foreclosure, and the Association shall be entitled to secure the appointment of a Receiver to collect same. The Association shall have the right and power to bid on the Condominium Parcel at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Unit Owner thereof, and apply as a cash credit against its bid all sums due the Associations to secure the timely payment of the Assessments.



(h) The Association, acting by and through its Board of Directors, shall have the right to assign its claim for any unpaid Assessments, and the lien securing said claim to any Unit Owner or group of Unit Owners, or to any third party.

(i) Nothing contained herein shall abridge or limit the rights or responsibilities of Mortgagees of Units as set out in the Condominium Act.

13. TERMINATION OF CONDOMINIUM.

(a) If all the Unit Owners and the holders of all liens and mortgages upon any of the Condominium Parcels execute and duly record an instrument terminating the Condominium Property, or if "major damage" occurs as defined in the insurance clauses hereunder, said Condominium Property shall be deemed to be subject to termination of Condominium ownership and thereafter owned in common by the Unit Owners. The undivided interest in the Condominium Property owned in common by each Unit Owner shall then become the percentage of the undivided interest previously owned by such Unit Owner in the Common Elements.

(b) If the Unit Owners of at least seventy-five (75%) percent of the common Elements elect to terminate, they shall have the option to buy the Units of the other Unit Owners for a period of sixty (60) days from the date of the meeting wherein the action to terminate was resolved. The purchase price shall be the fair market value of the Units as agreed by the parties but if there be no agreement then as determined by arbitration as provided for hereafter. The price shall be paid in cash within thirty (30) days of the determination of same. Failure to so purchase said other Units shall prevent the electing Unit Owners from terminating the Condominium Property.

(c) After removal of the Condominium Property from the Act, the Unit Owners shall own the property and all assets of the Association as tenants in common and the respective Mortgagees shall have mortgages and liens upon the respective undivided interest of the respective Unit Owners. Such undivided interest of the Unit Owners shall be the same as the percentage of undivided interest of the Unit Owners shall be the same as the percentage of undivided interest in the Common Elements appurtenant to each respective Owner of a Unit prior to removal from the Act.

(d) This Paragraph 13 cannot be amended without consent of all record Unit Owners and all record Mortgagees on the Units.

14. LIMITATION OF LIABILITY.

(a) The liability of each Unit Owner for Common Expenses shall be limited to the amounts assessed against him in accordance with this Declaration.

(b) A Unit Owner shall not be personally liable for any damages caused by the Association or in connection with the use of the Common Elements. A Unit Owner shall be liable for injuries or damages resulting from an accident in his own Unit to the same extent and degree that the owner of a house would be liable for such an occurrence.

15. LIENS.

(a) With the exception of liens which may have resulted from the initial construction of this Condominium, no liens of any nature may be created subsequent the recording of this Declaration against the Condominium Property (as distinguished from individual Units) without the consent of Unit Owners owning at least seventy-five (75%) percent of the interests in the Common Elements.

(b) Unless a Unit Owner has expressly request or consented to work being performed or materials being furnished to his Unit, such labor or materials may not be the basis for the filing of a lien against same. No labor performed or material furnished to the Common Elements shall be the basis for a lien thereon unless authorized by the Association, in which event the same may be the basis for the filing of a lien against all Condominium Parcels in the proportions for which the Unit Owners thereof are liable for Common Expenses.

(c) In the event a lien against one or more Condominium Parcels become effective, each Unit Owner thereof may release his Condominium Parcel from the lien by paying the proportionate amount attributable to his Condominium Parcel. Upon such payment, it shall be the duty of the lienholder to release the lien of record for such Condominium Parcel.

#### 16. EASEMENTS.

(a) Unit Owners shall have as an appurtenance to their Units a perpetual easement for ingress and egress to and from their Units over and upon stairs, terraces, walks and other Common Elements.

(b) All Condominium Property shall be subject to perpetual easements for encroachments presently existing or which may hereafter be caused by settlement or movement of the Condominium Buildings or minor inaccuracies in construction, which easements shall continue until such encroachment no longer exists. If the Condominium Property is destroyed and then rebuilt, encroachments due to construction shall be permitted and a valid easement for said encroachments shall exist.

(c) Easements are reserved throughout the Condominium Property as may be required to provide utility service in order to adequately serve the Condominium Property, including, but not limited to, the installation, maintenance, repair, replacement or removal of any and all services and/or utility lines, pipes, wires, conduits, facilities and equipment.

(d) To the extent that any equipment, facilities or fixtures within any Unit shall be connected to similar equipment, facilities or fixtures serving or affecting other Units or the Common Elements, then reciprocal easements for the maintenance of same shall exist, and the use thereof shall be subject to such rules or regulations as the Association may adopt in respect thereto. All workmen and other persons authorized by the Association or any other managing agent, shall be entitled to reasonable access and entry to the individual Units as may be required in connection with the maintenance, repair or replacement of or to the Common Elements or any equipment, facility or fixtures affecting or serving other Units or the Common Elements.

(e) An easement is created for pedestrian traffic over, through and across sidewalks, paths, walks and lanes as the same may from time to time exist upon the Common Elements, and for the vehicular traffic over, through and across such portion of the common Elements as may be from time to time paved and intended for such purposes, but the same shall not give or create in any person the right to park upon any portions of the Condominium Property except those areas specifically assigned for same.

#### 17. MEMBERSHIP IN ASSOCIATION.

(a) THE BENT TREE PLACE ASSOCIATION, INC., a non-profit Texas Corporation, the Association, was chartered to perform the acts and duties in connection with the management of the Units and Common Elements and to levy and enforce collection of Assessments necessary to perform said acts and duties.

(b) All Unit Owners shall automatically be members of the Association, and said membership shall terminate when they no longer own said Units.

(c) Each Unit Owners(s) shall collectively be entitled to vote in accordance with voting privileges set forth in the Bylaws.

18. OBLIGATIONS OF MEMBERS. In addition to other obligations and duties heretofore set out in this Declaration, every Unit Owner shall:

(a) Promptly pay the Assessments levied by the Association.

(b) Maintain his Unit in good condition and repair (including all interior surfaces within or surrounding his Unit such as the surface of the walls, ceilings, floors), whether or not a part of the Unit or Common Elements, maintain and repair the fixtures therein and pay for any utilities which are separately metered to his Unit. Specifically, but without limitation, each Unit Owner shall repair and/or replace his own individual cooking range, oven, refrigerator, kitchen appliances, individual lighting and electrical fixtures, air conditioning and heating units, all glass in any window or door and all other elements and contents of the Unit which are not part of the Common Elements.

(c) Not use or permit the use of his Unit for any purchase other than as a single family residence for himself, members of his family and social guests or approved tenants, nor alter, subdivide or convert his Unit into more than one dwelling unit.

(d) Keep only those pets, birds or other animals in his Unit which do not violate regulations established by the Association. Small pets and small caged birds are permitted but only in the individual Units or when pets are leashed and they shall not be permitted in any area of recreation facilities. The Association shall have the power to change these regulations from time to time, but if pets have been permitted prior to the change in regulations, such change shall not affect the rights of Unit Owners to keep such previously permitted pets.

(e) Not permit or suffer anything to be done or kept in his Unit which will increase the insurance rates on his Unit or Common Elements, or which will obstruct or interfere with the rights of other Unit Owners or disturb them by unreasonable noises or otherwise permit any nuisance, immoral or illegal act in his Unit or the Common Elements.

(f) Conform to and abide by the Bylaws and uniform rules and regulations in regard to the use of his Unit and Common Elements which may be adopted in writing from time to time by the Board of Directors of the Association.

(g) Make no alteration, decoration, repair, replacement or change of the Common Elements or to any outside or exterior portion of the Condominium Buildings without permission of the Board of Directors.

(h) Allow the Board of Directors or the agents and employees of the Association or the management company, if any, to enter any Unit for the purpose of maintenance, inspection, repair, or replacement of the improvements within Units or the Common Elements, or to determine whether any violation of this Declaration is being committed.

(i) Display no sign, advertisement or notice of any type upon the Common Elements or his Unit, except as provided in uniform regulations promulgated by the Association.

✓ (j) Erect no antennas, aerial, shutters, awning, etc.

(k) Make or permit no repairs to any plumbing or electrical wiring within a Unit except by a licensed plumber or electrician. Plumbing and electrical repairs within a Unit shall be the obligation of and shall be paid for each Unit Owner. The Association shall pay for and be responsible for plumbing repairs and electrical wiring within the Common Elements.

(l) Render his Condominium Parcel for the purpose of ad valorem taxes to the respect taxing authorities having jurisdiction for separate Assessment against his Condominium Parcel, it being understood that all ad valorem taxes on each Unit and each Unit Owner's undivided interest in the Common Elements and Limited Common Elements shall be paid by said Unit Owner and the same shall not constitute a Common Expense or be payable by Assessment.

(m) Not place screens, jalousies or other enclosures on balconies or other parts of the condominium Buildings, even though such areas may be Limited Common Elements without permission of the Board of Directors.

19. ENFORCEMENT.

Each Unit Owner shall strictly comply, be governed by and conform to the provisions of this Declaration and the Bylaws. Failure to do so shall entitle the Association or any other Unit Owner to recover damages or obtain injunctive relief or both, but such relief shall not be exclusive of other remedies provided by law.

20. LIMITED COMMON ELEMENTS.

There may be Limited Common Elements appurtenant to units of this Condominium, as reflected by the Condominium survey, which shall include, but no be limited to, patios and balconies, parking and storage spaces in the garage which will be specifically designated and delineated. These Limited Common Elements are reserved for the use of the Units to which they are appurtenant or assigned to the exclusion of other Units to which they are appurtenant or assigned to the exclusion of other Units, and there shall pass with a Unit as appurtenant thereto the exclusive right to use the Limited Common Elements so appurtenant or assigned. Patios and balconies shall be maintained and repaired by the Unit Owner to which each patio or balcony is appurtenant. Other Limited Common Elements including parking spaces shall be maintained by the Association and the cost of maintenance shall be a Common Expense to be paid out of Assessments. ✓ Exterior surfaces of patios and balconies shall be treated as Common Elements.

21. INSURANCE.

(a) Purchase of Insurance. The Association shall obtain fire and extended coverage insurance, vandalism and malicious mischief insurance insuring all of the insurable improvements within the Condominium Property, together with such other insurance as the Association deems necessary in a company with an "A" rating or better, in an amount which shall be equal to the insurable replacement value as determined annually. The premiums for such coverage and other expenses in connection with said insurance shall be assessed against the Unit Owners as part of the Common Expenses. The named insured shall be the Association, individually and as Agent for the Unit Owners, without naming them, and as Agent for their Mortgagees. Provision shall be made for the issuance of Mortgagee endorsements and memoranda of insurance to the Mortgagees of Unit Owners, Such policies shall provide that payments for losses thereunder by the insurer shall be made to the Insurance Trustee hereinafter designated, and all policies and endorsements thereon shall be deposited with the Insurance Trustee. Unit Owners may obtain insurance coverage upon their personal property, fixtures

and improvements, and for their personal liability at their own expense.

(b) Coverage.

(1) Casualty. All buildings and improvements upon the Condominium Property shall be insured in an amount equal to the insurable replacement value, excluding foundation and excavation costs, and all personal property included in the Common Elements shall be insured for its insurable replacement value, said value to be determined annually by the Board of Directors of the Association. Such coverage shall afford protection against:

(i) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement and vandalism and malicious mischief; and

(ii) Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the Condominium Buildings including but not limited to special risk endorsement.

(2) Public Liability. Insurance shall be obtained by the Association which shall insure the Association, its Board of Directors, and the Unit Owners against any liability to the public or to the Unit Owners and their respective invitees or tenants arising out of and incident to the ownership and/or use of the Property. The limits and coverage of said liability policy or policies shall be reviewed at least annually by the Board of Directors and increased or decreased at its discretion. Said policy or policies shall be issued on a comprehensive.

(3) Workmen's compensation insurance meeting all the requirements of the laws of Texas if such insurance is required.

(4) Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

(c) Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense.

(d) Insurance Trustee, Share of Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, the Unit Owners and their Mortgagees, as their interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Insurance Trustee, which shall be designated by the Board of Directors and which shall be a bank or trust company in Texas with trust powers. The Insurance Trustee shall not be liable for payment of premiums, the renewal or the sufficiency or policies or the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein and for the benefit of the Unit Owners and their Mortgagees in the following shares, which shares need not be set forth on the records of the Insurance Trustee:

- (1) Common Elements. Proceeds on account of damage to Common Elements shall be held in undivided shares for each Unit Owner, such share being the same as the undivided share in the Common Elements appurtenant to his Unit.
  - (2) Units. Proceeds on account of damage to Units shall be held in the following undivided shares:
    - (i) When the Condominium Building(s) is/are to be restored, then for the Owners of damaged Units contained within such damaged Condominium Building(s) in proportion to the cost of repairing the damage suffered by each Unit Owner to his respective Unit, which cost shall be determined by the Association.
    - (ii) When the Condominium Building(s) are not to be restored, then an undivided share for each Unit Owner, such share being the same as the undivided share in the Common Elements appurtenant to his Unit.
  - (3) Mortgages. In the event a mortgage endorsement has been issued as to a Unit, the share of that Unit Owner shall be held in trust for the Mortgagee and the Unit Owner as their interests may appear; provided, however, that no Mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no Mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt and insurance proceeds except those proceeds paid to the Unit Owner and Mortgagee pursuant to the provisions of this Declaration.
- (e) Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed in the following manner:
- (1) Expense of the Trust. All expenses of the Insurance Trustee shall be first paid or provision made therefor.
  - (2) Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided in paragraph 22 hereof. any proceeds remaining after defraying such cost of reconstruction or repair shall be distributed to the beneficial owners, with any remittance to Unit Owners and their Mortgagees being payable jointly to them, as their interests may appear. This is a covenant for the benefit of any Mortgagee of any Unit and may be enforced by such Mortgagee.
  - (3) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided in Paragraph 22 hereof that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, with any remittances to Unit Owners and their Mortgagees being payable

jointly to them as their interests may appear. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

- (4) Certificate. In making distributions to Unit Owners and their Mortgagees, the Insurance Trustee may rely upon a certificate of the Association, executed by its President and Secretary, as to the names of the Unit Owners and their respective shares of the distribution.

(f) Association as Agent. The Association is hereby irrevocably appointed agent for each Unit Owner and, for each holder of a mortgage or other lien upon a Unit and for each owner of any other interest in the Condominium Property with power to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

(g) Unit Owner's Obligation. Each Unit Owner shall be required to notify the Association of all improvements made by the Unit Owner to his Unit, the value of which is in excess of \$1,000.00 and shall be liable for any increased insurance premium for insurance maintained by the Association occasioned thereby. Each Unit Owner shall bear the risk of loss for all improvements made to his Unit that were not the subjects of notice to the Association against claims due to accidents within his Unit and shall provide his own casualty insurance on the contents within said Unit.

## 22. RECONSTRUCTION OR REPAIR AFTER CASUALTY.

(a) Determination to Reconstruct or Repair. If any part of the Condominium Property is damaged by casualty, whether it shall be reconstructed or repaired shall be determined in the following manner:

- (1) Common Element. If the damaged improvement is a Common Element, the damaged property shall be reconstructed or repaired, unless it is determined in the manner elsewhere provided that the Condominium shall be terminated.

(2) Condominium Buildings.

(i) Lesser Damage. If the damaged improvements are less than sixty-six and two-thirds (66 2/3%) percent of the Units of any one or more Condominium Buildings as found by the Board of Directors of the Association, the damaged property shall be reconstructed or repaired unless within sixty (60) days after the casualty, it is determined by agreement in the manner elsewhere provided that the Condominium shall be terminated.

(ii) Major Damage. If the damaged improvements are more than sixty-six and two-thirds (66 2/3%) percent of the Units of any one or more Condominium Buildings, as found by the Board of Directors, then, the Board of Directors shall, within one hundred (100) days after the destruction or damage, call a special meeting of the Unit Owners thereof for the purpose of deciding whether or not the so damaged Condominium Buildings shall be repaired and restored. If all of the Unit Owners

of the Units contained within said damaged Condominium Buildings, in person or by proxy, vote to repair or restore the condominium Buildings, the Board of Directors shall promptly arrange for the reconstruction of the damaged Condominium Buildings. If less than all of the Unit Owners of the Units contained within said damaged Condominium Buildings do not vote either in person or by proxy to make provision for reconstruction, the Board of Directors shall record with Clerk of McLennan County, a notice setting forth such facts, and upon the recording of such notice (1) the damaged Condominium Buildings shall be deemed terminated and no longer part of the condominium Property, to be owned in common by the Unit Owners as tenants in common, with each Unit Owner owing an undivided interest therein equal to that percentage that his ownership in the Common Elements as set forth in Exhibit "C" bears to the total undivided interest in the Common Elements of all the Unit Owners of the damaged Condominium Buildings; (2) any liens affecting any of the Units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Unit Owner in the property; and (3) the property or portions thereof shall be subject to an action for partition and sale at the suit of any Unit Owner, in which event the net proceeds of any sale, together with the net proceeds of the insurance on said property being sold, shall be considered as one fund and shall be divided among all Unit Owners having their Units sold in an amount that the percentage of undivided interests owned by each such Unit Owner in the property being sold, bears to the total undivided interests of all Unit Owners of the property being sold, after first paying out of the respective shares of the Unit Owners, to the extent sufficient for such purposes, all sums necessary to satisfy liens on the undivided interest in the property owned by each Unit Owner.

(b) Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original Condominium Building(s); or, if not, then in accordance with plans and specifications approved by the Board of Directors of the Association and, if the damaged property is the Condominium Building(s), by the Unit Owners within said damaged Condominium Building(s) owning not less than seventy-five (75%) percent of the Common Elements owned by the Unit Owners of all damaged Units, whose approval shall not be unreasonably withheld.

(c) Responsibility. If the damage is only to those portions of a Unit for which the responsibility of maintenance and repair is that of the Unit Owner, then the Unit Owner shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility for reconstruction and repair after casualty shall be the Association's.



(d) Estimate of Costs. Immediately after a determination is made to rebuild or repair damage to property for which the Association has the responsibility for reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

(e) Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction or repair, the funds for the payment of the costs thereof are insufficient, Assessments shall be made against the Unit Owners who own the damaged Units and against all Unit Owners in the case of damage to Common Elements, in sufficient amounts to provide funds for the payment of such costs. Such Assessment against Unit Owners for damage to Units shall be in proportion to the costs of reconstruction and repair of their Units. Such Assessments on account of damage to Common Elements shall be in proportion to the Owner's share in the Common Elements. Should it develop that a deficiency in insurance proceeds under the Master Policy results in whole or in part due to overlapping coverage of the Master Policy and a Unit Owner's individual policy, a special Assessment shall be made against such Unit Owner equal to the amount received by such Owner applicable to his interest in the Condominium Building(s) and the other Common Elements, such Assessment to be in addition to that Assessment outlined in the first part of this paragraph.

(f) Construction Funds. The funds for payment of costs of reconstruction and repair after casualty, which shall consist of insurance proceeds held by the Endurance Trustee and funds collected by the Association from Assessments against Unit Owners, shall be disbursed in payment of such costs in the following manner:

(1) Association. If the total Assessments made by the Association in order to provide funds for the payment of costs or reconstruction and repair which is the responsibility of the Association exceed \$10,000.00, the sums paid upon such Assessments shall be deposited by the Association with the Insurance Trustee. In all other cases, the Association shall hold the sums paid upon such Assessments and disburse the same in payment of the costs of reconstruction and repair.

(2) Insurance Trustee. The proceeds of insurance collected on account of a casualty and the sums deposited with the Insurance Trustee by the Association from collections of Assessments against Unit Owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

(i) Association-Lesser Damage. If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is less than \$10,000.00, then the construction fund shall be disbursed in payment of such costs upon the order of the Association; provided, however, that upon request to the Insurance Trustee by a Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner hereafter provided for the reconstruction and

repair of major damage.

- (ii) Association-Major Damage. If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is more than \$10,000.00, then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Associating and upon approval of an architect qualified to practice in Texas and employed by the Association to supervise the work.
- (iii) Unit Owner. The portion of the insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with a Unit Owner shall be paid by the Insurance Trustee to the Unit Owner and if there is a mortgagee endorsement as to such Unit, then to the Unit Owner and the Mortgagee jointly, as their interests may appear, or at the direction of the Board of Directors, the Insurance Trustee shall wait to make such distribution until all such repair and reconstruction has been completed at which time payment shall be made for the work with balance, if any, to be paid to the Unit Owner and the Mortgagee, jointly, as their interest may appear.
- (iv) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that the part of a distribution to a beneficial owner which represents Assessments paid by such Owner into the construction fund shall not be payable to any Mortgagee.
- (v) Certificate. Notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine whether or not sums paid by Unit Owners upon Assessments shall be deposited by the Association with the Insurance Trustee, whether the disbursements from the construction fund are to be made upon the order of the Association, or upon approval of an architect or otherwise, whether a disbursement is to be made from the construction fund, or whether surplus funds to be distributed are less than the Assessments paid by Owners. Instead, the Insurance Trustee may rely upon a certificate of the Association, executed by its President and Secretary, as to any or all of such matters and stating that the sums to be paid are due and properly payable, the name of the payee and the amount to be paid; provided that when a Mortgagee is herein required to be named

as payee, the Insurance Trustee shall also name the Mortgagee as payee of any distribution of insurance proceeds to a Unit Owner; and further provided that when the Association or a Mortgagee which the proceeds of which are included in the construction fund so requires the approval of an architect name by the Association the same shall first be so obtained by the Association prior to disbursements in repayment of costs of reconstruction and repair.

23. EMINENT DOMAIN.

(a) Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury or destruction of all or part of the common Elements or one or more Units or portions thereof by the exercise of the power of or power in the nature of eminent domain or by an actio or deed in lieu of condemnation, the Board of Directors and each Unit Owner affected thereby shall be entitled to notice thereof and the Board of Directors shall and such Unit Owners at their respective expense may participate in the proceedings incident thereto.

(b) With respect to Common Elements, any damages or awards shall be determined for such taking, injury or destruction as a whole and not for each Unit Owner's interest therein. After such determination, each Unit Owner shall be entitled to share in the damages in the same proportion as his percentage of undivided interest of the Common Elements. This provision does not prohibit a majority of Unit Owners from authorizing the Board of Directors to use such damages or awards for replacing or restoring the Common Elements so taken on the remaining land or on other acquired land, provided that this Declaration and plat are duly amended.

(c) With respect to one or more units or portions thereof, the damages or awards for such taking shall be deemed to be proceeds from insurance on account of damage or destruction pursuant to Paragraph 21 above and shall be deposited with and disbursed by the Insurance Trustee as set forth therein. Even though the damage or awards may be payable to one or more Unit Owners, the Unit Owners shall deposit the damages or awards with the Trustee. In the event a Unit Owner refuses to so deposit his award with the Trustee, then at the option of the Board of Directors, either a special Assessment shall be made against the defaulting Unit Owner and his Unit in the amount of this award or the amount of such award shall be set off against the sums hereafter made payable to such Unit Owner.

(d) In the event the taking affects more than sixty-six and two-thirds (66-2/3%) percent of the units of a Condominium Building(s), the same shall constitute "major damage" as defined in Paragraph 22 hereof entitling the Unit Owners all rights, remedies and courses of action as described therein. In such event, if the property is removed from the provisions of the Act pursuant to Paragraphs 13 and 22 above, the proceeds of the damages or awards shall be distributed or use din accordance with and the Unit Owners so affected shall have the rights provided in Paragraph 22 above.

(e) If one or more Units are taken, in whole or in part, and the property is not removed from the provisions of the Act, the taking shall have the following effects:

- (1) If the taking reduces the size of a Unit and the remaining portion of the unit may be made tenantable, the Unit shall be made tenantable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the Owner of the Unit.

The balance of the award, if any, shall be distributed to the Mortgagee to the extent of the unpaid balance of its mortgage and the excess, if any, shall be distributed to one Unit Owner. If there is a reduction in the size of a Unit and as a result there is a balance of the award distributed to the Unit Owner or a Mortgagee, the Unit Owner's percentage of undivided interest in the Common Elements shall be equitably reduced. This shall be done by reducing such interest in the proportion by which the floor area of the Unit is reduced by the taking, and then re-computing the percentage of undivided interest of all Unit Owners in the Common Elements.

- (2) If the taking destroys or so reduces the size of a Unit that it cannot be made tenable, the award shall be distributed to the Mortgagee of the Unit to the extent of the unpaid balance of its mortgage and the excess, if any, shall be distributed to the Unit Owner. The remaining portion of such Unit, if any, shall become a part of the Common Elements and shall be placed in condition for use by all Unit Owners in the manner approved by the Board of Directors. The percentages of undivided interests in the Common Elements appurtenant to the Units that continue as a part of the property shall be equitably adjusted to distribute the ownership of the Common Elements among the reduced number of Unit Owners.

(f) Changes in Units, in the common elements and in the ownership of the Common Elements that are affected by the taking referred to in this Paragraph 23 shall be evidenced by an amendment to this Declaration and plat, which need not be approved by the Unit Owners.

#### 24. VOTING.

At any meeting of the Association, each Unit Owner, including Declarant, either in person or by proxy, shall be entitled to the same number of votes as the percentage of undivided interest of the Common Elements assigned to his Unit in Exhibit "C" to this Declaration. If there is more than one Unit Owner with respect to a particular Unit, any or all of such Unit Owners may attend any meeting of the Association, but it shall be necessary for all such Unit Owners present, in person or by proxy, to act unanimously in order to cast the votes appertaining to their Unit.

#### 25. ARBITRATION.

Upon the occurrence of a dispute relative to any provision of this Declaration or the application of any provision of Paragraph 13, which remains unresolved after fifteen (15) days from written notice thereof by one disputing party to the other(s), the same shall automatically thereby be submitted to arbitration under the terms and conditions of the "Texas General Arbitration Act" and as provided in said Act the following shall apply:

- A. Within ten (10) days after the dispute is deemed submitted to arbitration, one arbitrator shall be chosen by each adverse party hereto, or if one or more adverse parties are not living at the time of such appointment, then the Executors or Administrators of such adverse party's estate shall appoint an arbitrator, and in turn, the arbitrators so appointed shall within five (5) days after their appointment jointly appoint one other

- arbitrator. All such arbitrators shall be residents of McLennan County, Texas, and all decisions and awards shall be by the majority decision of the arbitrators.
- B. All hearings before the arbitrators shall be held in McLennan County, Texas, and shall commence within fifteen (15) days after the appointment of all arbitrators.
  - C. All motions filed, of a judicial nature, in connection with the arbitration shall be filed in the courts of McLennan County, Texas.
  - D. Each party to any arbitration shall bear their own expense in relation thereto, including but not by way of limitation, their attorney's fees, if any, and their arbitrator's expenses, if any, provided, however, that any additional arbitrator chosen by the arbitrators appointed by the parties to the arbitration shall be compensated by each party to the proceeding bearing an equal proportion of the expense of such arbitrator.
  - E. The arbitrators shall announce their award within two (2) weeks after the conclusion of the proceedings before them and shall furnish a written copy of such award to each party to the proceeding. Such copy of the award shall be delivered in person or be certified mail to such party or to such party's attorney, if represented by an attorney in such arbitration proceedings.
26. NO WAIVER.

The failure of the Board of Directors or its agents or designees to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this declaration or the Bylaws, or to exercise any right or option herein contained or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance by the Board of Director or its agent or designee of the payment of any Assessment from a Unit Owner with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by the Board of Directors of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board of Directors.

27. NOTICE.

Whenever notices are required to be sent hereunder, the same shall be sent to the Unit Owners by certified mail at their place of residence in the Condominium Buildings, unless the Unit Owner has, by written notice to the association specified a different address. Notices shall be sent to the Association at its principal office in Waco, Texas. All notices shall be deemed and considered sent when mailed. Any party may change his or its mailing address by written notice to the other party.

28. SEVERABILITY AND INTERPRETATION.

If any provisions of this Declaration, the Articles, the Bylaws or the Condominium Act, or any section, sentence, clause, phrase or word, or the application thereof in any circumstances is held invalid, the validity of the remainder of this Declaration, the Articles, the Bylaws, or the Condominium Act, and of the application of any such invalid provision, section, sentence, clause, phrase, or word in other circumstances shall not be affected thereby. If any declaration or provision herein contained shall be susceptible of two or more interpretations, the interpretation which shall most nearly be in accord with purposes

and intents hereof shall govern. In the event of the omission here from of any declaration, stipulation or provisions which shall be vital, necessary or expedient for the accomplishment of the purposes and intent of this Declaration, this declaration shall not thereby fail, in whole or in part, but any and all omitted matter shall be supplied herein by inference and/or by reference to the provisions of the Condominium Act under which this Condominium regime is established, and such provisions of such Act are hereby made a part hereof by reference thereto.

29. LEGAL ACTION.

Should the Association find it necessary to institute legal action to bring about compliance with the Condominium Act, this Declaration, the Article or the Bylaws, and such action results in a judgment for the Association, the defendant Unit Owner shall reimburse the Association for reasonable attorney's fees incurred by it in bringing such action.

30. CAPTION AND GENDER.

The captions in this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

Whenever the context so requires, the use of any gender shall be deemed to include all genders, the use of the plural shall include the singular and the singular shall include the plural. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Condominium.

31. LAW CONTROLLING.

This Declaration, the plat and the Bylaws shall be construed and controlled by and under the laws of the State of Texas.

32. EFFECTIVE DATE.

This Amended Declaration shall take effect when recorded.

IN WITNESS WHEREOF, the undersigned has executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 1992.

ATTEST:

BHD CORPORATION

\_\_\_\_\_, Secretary

\_\_\_\_\_  
Billy H. Davis, President

THE STATE OF TEXAS \*  
\*  
COUNTY OF MCLENNAN \*

THIS INSTRUMENT was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 1992 by Billy H. Davis, President, of BHD CORPORATION, a Texas corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for  
The State of Texas  
My commission expires: \_\_\_\_\_

EXHIBIT "A"

Lot Six (6), Block Five (5) of the Central Park Addition to the City of Waco, McLennan County, Texas as per plat thereof duly recorded at Volume 1538, Page 680 of the McLennan County Deed Records.

**EXHIBIT "C"**

<u>Unit No.</u>	<u>Building</u>	<u>General Description</u>	<u>Approx. Square Footage</u>	<u>Percentage Ownership of Common Elements</u>
1	A	2 Bedroom, 2 ½ Bath	1675	2.273
2	A	2 Bedroom, 2 Bath	1401	2.273
3	A	2 Bedroom, 2 Bath	1485	2.273
1	B	2 Bedroom, 2 Bath	1279	2.273
2	B	2 Bedroom, 2 ½ Bath	1338	2.273
3	B	2 Bedroom, 2 ½ Bath	1338	2.273
4	B	2 Bedroom, 2 ½ Bath	1338	2.273
5	B	2 Bedroom, 2 ½ Bath	1338	2.273
1	C	Undetermined	Unknown	2.273
2	C	Undetermined	Unknown	2.273
3	C	Undetermined	Unknown	2.273
4	C	Undetermined	Unknown	2.273
1	D-1	Undetermined	Unknown	2.273
2	D-1	Undetermined	Unknown	2.273
3	D-2	Undetermined	Unknown	2.273
4	D-2	Undetermined	Unknown	2.273
1	E	2 Bedroom, 2 Bath	1533	2.273
2	E	2 Bedroom, 2 ½ Bath	1675	2.273
3	E	2 Bedroom, 2 ½ Bath	1675	2.273
4	E	2 Bedroom, 2 Bath	1401	2.273
5	E	2 Bedroom, 2 ½ Bath	1656	2.273
6	E	2 Bedroom, 2 Bath	1485	2.273
1	F	2 Bedroom, 2 Bath	1533	2.273
2	F	2 Bedroom, 2 ½ Bath	1675	2.273
3	F	2 Bedroom, 2 ½ Bath	1675	2.273
4	F	3 Bedroom, 2 ½ Bath	1813	2.273
5	F	2 Bedroom, 2 ½ Bath	1656	2.273