

DECLARATION OF PROTECTIVE  
COVENANTS, CONDITIONS AND  
RESTRICTIONS AFFECTING BURNTWOOD  
WEST I

WHEREAS, BenjFran Development, Inc., an Oregon Corporation, hereinafter referred to as "Declarant", is the owner of certain real property situated in Washington County, Oregon known as Burntwood West.

WHEREAS, Burntwood West I Subdivision is a duly recorded plat; and

WHEREAS, the Declarant desires to declare of public record certain protective covenants, conditions and restrictions upon the ownership of real property:

NOW, THEREFORE, in consideration of the foregoing, the Declarant does hereby declare that the following protective covenants, conditions and restrictions:

1. Shall become and are hereby made a part of all conveyances of Burntwood West I Subdivision, recorded on the **24th** day of **October**, 1984, in Book **57** of Plats at Page(s) **24, 25 & 26** of the Records of Washington County, State of Oregon, and, 2. Shall by reference become part of any conveyances of said properties or any part thereof, shall run with said properties, shall be binding on all parties having or acquiring any right, title or interest therein and shall apply thereto as fully and with the same effect as if set forth in full therein.

ARTICLE I  
DEFINITIONS

1.01 "Declarant" shall mean BenjFran Development, Inc., an Oregon corporation, its successors and assigns.

1.02 "Owner" shall mean the owner of record, whether one or more persons or entities, of a fee simple title to any lot, (multifamily dwelling unit, if applicable) which is a part of Burntwood West I Subdivision, including contract sellers.

1.03 "Burntwood West I" shall mean all real property now and hereafter contained in the plats of Burntwood West I Subdivision filed in the Plat Records of Washington County, Oregon, at Page \_\_\_\_\_. A legal description of Burntwood West I is attached hereto as Exhibit "A".

1.04 "Lot" or "Residential Lot" shall mean a plat of land designated for residential use within Burntwood West I and identified on the plat thereof by Arabic numerals, together with such additional lots or parcels as may hereafter, by recorded conditions or restrictions, be brought within the jurisdiction of the Association. The Lots in Burntwood West I presently *number 1 - 56*.

1.05 "These covenants" or "Declaration" shall mean the protective Covenants, Conditions and Restrictions as set forth in this Declaration with respect to Burntwood West I Subdivision together with the Architectural Control Committee rules as set forth in Article VIII hereof, as the same may be amended and supplemented from time to time in accordance with the provisions of this Declaration.

1.06 "Association" shall mean and refer to Burntwood West Homeowners Association, an Oregon nonprofit corporation to be organized in accordance with the terms hereof, its successors and assigns.

1.07 "Member" shall mean and refer to every person or entity who holds membership in the Association.

1.08 "Residence" shall mean that portion or part of any structure intended to be occupied by one family as a dwelling, together with attached or detached garage and the patios, porches, or steps annexed thereto.

1.09 "Property" or "Properties" or "These Properties" shall mean Burntwood West I together with such additional lots or parcels as may hereafter, by recorded conditions or restrictions, be brought within the jurisdiction of the Association.

ARTICLE II  
PROPERTY SUBJECT TO THESE COVENANTS

2.01 Initial Development. Declarant hereby declares that these properties are held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to these covenants.

2.02 Annexation of Additional Properties.

A. To bring within the jurisdiction of the Association property in addition to that located within the plat of Burntwood West I as above defined shall require the assent of two-thirds (2/3) of the votes of the Class A members and two-thirds (2/3) of the votes of the Class B members, if any, at a meeting duly called for this purpose, written notice of which meeting shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, and such notice shall set forth the purpose of the meeting. The presence of members or of proxies entitled to cast sixty percent (60%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not present at any meeting, another meeting may be called, subject to the notice requirement set forth above, and the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. The above provisions relating to annexation of additional property are subject to the provisions of Section B below.

B. If within twelve (12) years of the date of recording of this Declaration, BenjFran Development, Inc., an Oregon corporation, its successors or assigns shall develop additional real property, such additional real property may be annexed to said properties without the assent of the Class A members; provided, however, that the development of the additional lands described in this Article shall be in accordance with a general plan consistent with the development of the properties. There is no limitation on the number of additional lots or units which may be so created or annexed under this article or on the right of the Declarant to annex common property.

C. The common expenses for a fiscal year shall be reallocated and reapportioned if additional Lots are so created or annexed during a fiscal year according to a formula that will (i) cause

each such additional Lot to bear its equal share thereof in proportion to the number of days during such fiscal year such additional Lot was so created or annexed and (ii) will relieve all other Residential Lots of the burden of such common expenses in equal amounts.

D. Annexation, as contemplated herein, shall be accomplished as set forth above and by the execution and recordation by the Association, if annexation is pursuant to Section A of this Section 2.02, or by execution and recordation by the Declarant, if annexation is pursuant to Section B of this Section 2.02. The declaration shall, among other things, describe the real property to be annexed, establish any additional or different limitations, restrictions, covenants and/or conditions which are intended to be applicable to such property, and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration.

E. The property included by any annexation pursuant to this Section 2.02 shall become a part of this Declaration and shall be thereafter within the jurisdiction of the Association.

F. Notwithstanding any provision apparently to the contrary, a declarant with respect to any annexed area may:

1. Establish new land classifications and such limitations, restrictions, covenants and conditions with respect thereto as it may deem to be appropriate for the development of the annexed property; and
2. With respect to existing land classifications, establish such additional or different limitations, restrictions, covenants and conditions with respect thereto as it may deem to be appropriate for the development of such annexed property and as may be remitted pursuant to applicable law and agreement then in effect.

### ARTICLE III

#### OWNER'S ASSOCIATION

3.01 Organization. The Declarant shall organize an association of all the owners of Residential Lots. Such Association, its successors and assigns, shall be organized under the name Burntwood West Owner's Association or a name similar thereto and shall have property, powers and obligations as set forth in these covenants for the benefit of the properties.

The Declarant shall, prior to approval of the final plat of Burntwood West I organize the Association as a nonprofit corporation under the general nonprofit corporation laws of the State of Oregon. The Articles of Incorporation of the Association shall provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. In that event, all of the property, powers and obligations of the incorporated association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association, and such vesting shall thereafter be confirmed and evidenced by appropriate conveyances and assignments by the incorporated association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and the Bylaws of the Association as if they had been made to constitute the governing documents of the unincorporated association. The Articles of Incorporation and the Bylaws of the Association shall be deemed covenants running with the ownership of Residential Lots and shall be binding upon owners as if verbatim recited herein.

3.02 Membership. Every person or entity who is a record owner of a fee of undivided fee interest in any Residential Lot (including Residential Lots created or annexed under Section 2.02) shall be a proprietary member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Residential Lot which is subject to assessment by the Association. Ownership of such Residential Lot shall be the sole qualification for membership.

Each lessee, renter or other occupant of a Residential Lot not eligible for proprietary membership, but who satisfied the conditions of the Bylaws of the Association of this Declaration shall be an associate member, which status shall continue in effect during such period as the associate member shall be an authorized non-proprietary tenant of a Residential Lot, Associate membership shall carry all of the rights and privileges and shall be subject to all

obligations and responsibilities of proprietary membership, except the right to vote. Associate membership alone shall not be deemed to constitute ownership of a Lot for purposes of liability for assessments. At any time an associate member shall cease to be a resident of the properties, or shall become a proprietary member, his rights and privileges as an associate member shall thereupon terminate.

3.03 Control of Affairs of Association. On the date that is not later than 120 days after lots representing 75 percent (75%) of the votes of the members have been conveyed, Declarant shall call a meeting and at such meeting shall turn over administrative responsibility to the Association in accordance with applicable statutes.

3.04 Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A members shall be all of those members as defined in this Article with the exception of BenjFran Development, Inc., its successors and assigns, provided, that BenjFran Development, Inc. shall become a Class A member when its Class B membership has been converted as hereinafter defined. Class A members shall be entitled to one (1) vote for each Residential Lot in which they hold the interest required for membership by Section 3.02. When more than one person holds such interest in any Residential Lot, each such person shall be a member. The vote for such Residential Lot shall be exercised as they among themselves determine and shall have certified unanimously and in writing to the secretary of the Association, but in no event shall more than one (1) vote be cast with respect to any Residential Lot.

Class B. The Class B membership shall be BenjFran Development, Inc., its successors and assigns. The Class B member shall be entitled to three (3) votes for each platted lot within the properties in which it holds the interest required for membership by Section 3.02 provided, that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

A. When the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership, or

B. Twelve (12) years from the date of recording these Covenants in the County Deed Records.

ARTICLE IV  
PROPERTY RIGHTS

4.01 Members' Easement of Enjoyment. Every member of the Association shall have a right and easement of enjoyment in and to the common areas, and such easement shall be appurtenant to and shall pass with the title to every Residential Lot; subject, however, to the following provisions:

A. The right of the Association to limit the number of guests to use the common areas.

B. The right of the Association to charge reasonable admission fees for the use of any facility situated upon the common area.

C. The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the common areas and in aid thereof to mortgage said common areas for such purposes, and the right of any mortgage in said properties shall be subordinate to the rights of the members hereunder.

D. The right of the Association to suspend any member's voting rights and/or right to use of any of the common areas for any period during which any assessment against said member's property remains unpaid; and for a period not to exceed thirty (30) days for each infraction of its published rules and regulations.

E. The right of the Association to offer to dedicate or transfer all or any part of the common areas to the Declarant or any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by members entitled to cast a two-thirds (2/3) of the votes of the Class A membership and a two-thirds (2/3) of the votes of the Class B membership, if any, has been recorded in the

appropriate records of Washington County, Oregon, agreeing to such dedication or transfer; and provided that Declarant or any public agency, authority or utility agrees to accept said common area; and unless written notice of the proposed action is sent to every member not less than thirty (30) days nor more than ninety (90) days prior to such dedication or transfer.

F. The right of the Directors of the Association, from time to time, to promulgate reasonable rules and regulations governing such rights of use in the interest of securing maximum safe usage of the common areas by the members without unduly infringing upon the privacy or enjoyment of the owner or occupant or any part of said property, including without being limited thereto, rules restricting persons under or over designated ages from using certain portions of said property during certain times, and reasonable regulations and restrictions regarding parking.

4.02 Delegation of Use. Any member may delegate in accordance with Rules and Regulations adopted from time to time by the Directors, his right of enjoyment to the common areas to the members of his family, his tenants or contract purchasers, providing they reside within a residence.

4.03 Title to the Common Areas. The Declarant hereby covenants for itself and its successors and assigns that it will convey to the Association fee simple title to the common areas so designated on a plat prior to the conveyance of the first residence located within such plat. The legal description of said common area is set forth on attached Addendum "A", by this reference made a part hereof.

## ARTICLE V

### COVENANT FOR MAINTENANCE ASSESSMENTS

5.01 Creation of the Lien and Personal Obligation of Assessments.

The Declarant hereby covenants for all of the Properties, that each owner and each vendee of any Residential Lot, including any additional lot created or annexed pursuant to Section 2.02, whether or not it shall be so expressed in any deed or other conveyance or agreement for conveyance, is deemed to covenant and agree to pay to the Association (1) regular annual or other regular periodic

assessments or charges as established by the Association and (2) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The regular and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the Residential Lot and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys fees, shall also be the personal obligation of the person who was the owner of such property at the time such assessment became due. The obligation shall remain a lien upon the property until paid or foreclosed, but shall not be a personal obligation of successors in title unless expressly assumed by them.

5.02 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and protection of the members of the Association and in particular for the improvement and maintenance of the common areas (public thoroughfares) within Burntwood West 1 and other property designated by the Directors of the Association and for funding the Reserve Account.

The Association may also render such additional services as designated by its directors.

5.03 Basis and Maximum of Annual Assessments. Until January 1, 1985, the maximum regular annual assessment shall be \$72.00 for each Residential Lot subject thereto:

A. From and after January 1, 1985, the maximum annual assessment may be increased effective January 1, of each year, beginning January 1, 1985, without a vote of the membership, in conformance with the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington, D.C. or successor U. S. governmental agency) from July of the year in which these covenants are recorded to July of the year preceding the year in which such increase becomes effective, taking into consideration prior increases in such maximum, if any.

B. From and after January 1, 1985, the maximum annual assessment may be increased above that determined by reference

to Consumer Price Index, as aforesaid, by a vote of the members provided that any such increase shall be approved by the affirmative vote of not less than fifty-one percent (51%) of the votes of each class of members who are voting in person or by proxy, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The limitations hereof shall not apply to any change in the maximum flat charge and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

5.04 Reserve Account. The Declarant shall establish a reserve account for replacement of all items of common property which will normally require replacement, in whole or in part, in more than three (3) and less than thirty (30) years and which are insurable by a common carrier of all purpose risk insurance.

The Reserve Account established under this section shall be funded by assessments against the Residential lots for maintenance of items for which the reserves are established.

The amounts assessed shall take into account the estimated remaining life of the items for which the reserve is created and the current replacement costs of those items.

The Reserve Account shall be established in the name of the Association. The Association is responsible for administering the account and for making periodic payments into it. The Association shall adjust the amount of the payments at regular intervals to reflect changes in current replacement costs over time. The account may be used only for replacement of common property and is to be kept separate from assessments for maintenance. However, after the individual lot owners have assumed responsibility for administration pursuant to Section 3.03, the Board of Directors of the Association may borrow funds from the reserve account

to meet high seasonal demands on the regular operating funds or to meet other temporary expenses. Funds borrowed to meet temporary expenses under this subsection must be repaid from special assessments or maintenance fees.

Assessments paid into the Reserve Account are the property of the Association and are not refundable to sellers or owners of lots.

5.05 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction or unexpected repair or replacement of a described capital improvement upon the common areas, including the necessary fixtures and personal property related thereto, provided that any such special assessment for structural alterations, capital additions or capital improvements shall require the assent of fifty-one percent (51%) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. This section shall not prohibit the Directors from authorizing capital expenditures for replacements or repairs or improvements from funds generated by regular assessments.

5.06 Uniform Rate of Assessment; Common Profits. Both annual assessments and any special assessments must be fixed at a uniform rate for services rendered for all lots and may be collected on an annual, quarterly or monthly basis at the discretion of the Directors. If special services are rendered to specific lots at the request of such owner, additional assessments shall be charged to such Residential Lots. If the Association has any common profits at the end of any fiscal year the Board of Directors may, in its sole discretion, elect to distribute said profits to members in proportion to the assessments made to the members' lots during the same fiscal year.

5.07 Quorum for Any Action Authorized Under Sections 3 and 5. At the first meeting called, as provided in Sections 3 and 5 hereof, the presence at the meeting of members or of proxies entitled to cast twenty percent (20%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming, at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 3 and 5, and

the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the date of the meeting at which the quorum was forthcoming.

5.08 Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Residential lots on the first day of the month following the conveyance to the Association of the common areas located within such plat. The first regular assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the regular assessment at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand at any reasonable time, furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specific Residential Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates; such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

5.09 Effect of Nonpayment of Assessments; Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date the assessment shall bear interest from the date of delinquency at the following rate per annum: From the date hereof until the first annual meeting of Members, twelve percent (12%) per annum; and hereafter at a rate per annum which the Members shall establish at each such annual meeting to be in effect until the next such annual meeting, but if no such rate is so established by the Members, then the rate shall be twelve percent (12%) per annum. The Secretary of the Association shall notify the office of the Director of Records, County Clerk, or appropriate recorder of conveyances of Washington County, Oregon, within one hundred twenty (120) days after delinquency, a statement of the amount of any such charges or assessments together with interest as aforesaid, which have become delinquent with respect to any Residential Lot. Upon payment in full thereof, the Secretary shall execute and file a proper

release of the lien securing the same. The aggregate amount of such assessment, together with interest, costs, expenses and reasonable attorney's fees for the filing and enforcement thereof, shall constitute a lien on the Residential Lot with respect to which it is fixed, including any improvement thereon, from the date the notice of delinquency thereof is filed in the office of said Director of Records or County Clark or other appropriate recording office, until the same has been paid or released as herein provided. Such lien may be enforced by the Association in the manner provided by law with respect to liens upon real property. The owner of said Residential Lot at the time said assessment becomes due shall be personally liable for the expenses, costs, disbursements and attorney's fees which shall also be secured by said lien, including additional attorney's fees incurred on appeal. The owner at the time such assessment is incurred shall also be personally liable for any deficiency remaining unpaid after any foreclosure sale. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the common areas or abandonment of his residence location or any improvement thereon.

5.10 Subordination of the Lien to Mortgagees. The lien of the assessments provided for herein shall be inferior, junior and subordinate to the lien of all mortgages and trust deeds now or hereafter placed upon said property or any part thereof. The sale or transfer of any Residential Lot which is subject to any mortgage or trust deed, pursuant to a decree of foreclosure under such mortgage or trust deed or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to amounts thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such Residential Lot and any improvements thereon from liability for any assessments thereafter becoming due or from the lien thereof.

5.11 Exempt Property. The following property subject to this declaration shall be exempt from the assessments created herein: (a) All properties expressly dedicated to and accepted by a Local public authority; (b) The common areas; (c) All other properties owned by the Association.

## ARTICLE VI ENCROACHMENTS

If any portion of a Residence or other structure now or hereafter constructed upon any Residential Lot encroaches upon any part of a common area or upon a lot or lots used or designated for use by an owner of another Residential Lot such encroachment shall promptly be removed by the owner of the Residential Lot upon which the encroaching Residence or other structure was constructed.

## ARTICLE VII RESIDENTIAL COVENANTS

7.01 Land and Building Type. No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single family dwelling (with the exception of those lots specified as multiple family lots if any) not to exceed two and one half (2 1/2) stories in height, as determined by the Architectural Control Committee. The foregoing provisions shall not exclude construction of a private greenhouse, storage unit, private swimming pool or a shelter or port for the protection of such swimming pool, or for the storage of a boat and/or camping trailer kept for personal use provided that the location of such structure is in conformity with the applicable municipal regulations, and is compatible in design and decoration with the residence constructed on such lot, and has been approved by the Architectural Control Committee.

The foregoing provisions shall not be deemed to prohibit the construction of a residence on a lot in accordance with this Declaration nor the storage, during the course of construction, of construction materials and equipment on said Lot as may be necessary for such construction nor the use of any residence on a Lot as a sales office or model home for the purpose of sales in Burntwood West I under such circumstances and for such periods of time as may from time to time be deemed reasonable by the Architectural Committee.

7.02 Dwelling Size. The total floor area of any dwelling, exclusive of open porches and garage shall not be less than 1200 square feet, as measured by the Architectural Committee.

7.03 Building Setbacks. Residences shall be situated on Lots according to applicable law, In addition to the requirements of applicable law, with respect to any Lot which has a common lot line with any portion of the Common Area such Lot line shall be considered to be the rear yard of such Lot and no residence or other structure shall be located within twenty-five (25) feet of the rear yard setback of such Lot line, unless specifically permitted in writing by the Architectural Committee.

The Architectural Committee, upon application from a Member, may in its discretion waive any violation of this Section 7.63 which it finds to have been inadvertent, provided the same would not constitute a violation of applicable law.

7.04 Easements. Easements for installation and maintenance of utilities and drainage, and irrigation facilities are reserved, as shown on the recorded plat. Within these easements no structure, fence, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and/or maintenance of such utilities, or which may change the direction of flow of water through a drainage channel in the easements or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the Lot except for those improvements for which a public authority or utility company is responsible

Every member of the Association shall have a right and easement of enjoyment in and to the Common Areas and shall recognize such right in other members, and such easement shall be appurtenant to and shall pass with the title to every lot; subject, however, to the following provisions:

- A. The right of the Association to limit the number of guests to use the Common Areas;
- B. The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purposes of improving the Common Areas and in aid thereof to mortgage said Common Areas for such purposes, and the right of any mortgagee in said properties shall be subordinate to the rights of the members hereunder;

C. The right of the Directors of the Association to promulgate reasonable rules and regulations governing such rights of use, from time to time, in the interests of securing maximum safe usage of the Common Areas by the members without unduly infringing upon the privacy or enjoyment of the owner or occupant of any part of said property, including without being limited thereto, rules restricting persons under or over designated ages from using certain portions of said property during said times and period.

7.05 Temporary Structures. No structure of a temporary nature, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporary or permanent.

7.06 Fences. No fence shall exceed six (6) feet in height from the finished lot grade on the highest side. In no event shall side yard fences project beyond the front walls of any dwelling or garage, except as allowed by the Architectural Control Committee. Prior to construction, designs of all fences must be approved in writing by the Architectural Control Committee. All fences and other structures located within five (5) feet of the brick wall adjacent to 170th Avenue, must be at least one (1) foot lower in height than the adjacent brick wall within that five (5) foot setback.

Hedges or other solid screen planting may be used as lot line barriers subject to the same height restrictions as fences. No building, wall, fence, paving, landscaping or construction of any type shall be erected or maintained by any Owner of a Lot so as to trespass or encroach upon the Common Areas

7.07 Offensive Activity. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may become an annoyance or a nuisance to the neighborhood.

7.08 Business and Commercial Uses. No trades, crafts, businesses, professions, or commercial or similar activity of any kind shall be conducted on any Lot except as allowed by the local jurisdiction. Nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any Lot, excepting the right of any homebuilder or the Declarant to construct residences on any Lot, to store construction materials and equipment on said Lots in the normal course of said construction and to use completed homes as sales models.

7.09 Signs. No sign of any kind shall be displayed to the public view on any lot or improvement, except one professionally made sign of not more than six (6) square feet advertising the property for sale. This restriction shall not prohibit the temporary placement of political signs on any lot by the owner, or placement of a professionally made sign by the Declarant, which must comply with the local sign ordinances. This restriction does not apply to signs used by the Declarant, builders, realtors or agents during construction and sales.

7.10 Parking. Parking of boats, trailers, motor cycles, trucks, truck-campers and like equipment will not be allowed on any part of any lot or on public ways adjacent thereto, except on an occasional basis, consistent with guidelines the Architectural Control Committee may from time to time adopt. However, such parking shall be allowed within the confines of an enclosed garage, storage port, or behind a screening fence or shrubbery which shall in no event project beyond the front walls of any dwelling or garage. No owner shall permit any vehicle which is in state of disrepair to be abandoned or to remain parked upon any Lot or on the Common Areas for a period in excess of forty-eight (48) hours.

7.11 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes.

7.12 Trash or Rubbish. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall be kept in sanitary containers and out of public view. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.

7.13 Construction Completion. Construction of any dwelling shall be completed, including exterior decoration, within eight (8) months from the date of the start of such construction. All Lots shall, prior to the construction of improvements thereon, be kept in a neat and orderly condition and free of brush, vines, weeds, debris and the grass thereon cut or mowed at sufficient intervals to prevent creation of a nuisance or fire hazard.

7.14 Landscape Completion. All landscaping must be completed within one hundred twenty (120) days from the date of substantial completion of the residence constructed thereon, determined by the Architectural Committee. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval of the Architectural Control Committee.

7.15 Antennas and Service Facilities. Exterior antennas or satellite receiving stations shall not be permitted to be placed upon any Lot or on the roof of any structure if visible from the street in front of said Lot. Any such facilities shall be screened so as not to be visible from the street.

7.15 Utilities. No outdoor overhead wire or service drop for the distribution of electric energy or for telecommunication purposes, nor any pole, tower or other structure supporting said outdoor overhead wires shall be erected, placed or maintained within Burntwood West I. All owners of Lots within this subdivision, their heirs, successors and assigns shall use underground service wires to connect their premises and the structures built thereon to the underground electric, telephone utility or cable television facilities provided, except as mandated by local jurisdictions or public utility companies.

7.16 Water Supply. No individual water supply system shall be permitted on any Residential Lot.

7.17 Exterior Finish. The exterior of all construction on any Lot shall be designed, built and maintained in such a manner as to blend in with the natural surroundings, existing structures and landscaping in Burntwood West I. The Architectural Control Committee will establish guidelines to regulate the color of building exteriors. Exterior colors must be approved by the Architectural Control Committee in accordance with the provisions of Article VIII. Exterior trim, fences, doors, railings, decks, eaves, gutters and the exterior finish of garages and other accessory buildings shall be designed built and maintained to be compatible with the exterior of the structure they adjoin.

7.18 Roofing. Only cedar roofing shall be used on any structure constructed on a Lot unless approved beforehand in writing by the Architectural Control Committee.

## ARTICLE VIII

### ARCHITECTURAL CONTROL COMMITTEE

8.01 Membership: Appointment and Removal. The Architectural Control Committee referred to herein shall be composed of three members elected annually by a majority vote of the Board of Directors. At the first such election, one member shall be elected to serve for a one-year term, one to serve for a two-year term and one to serve for a three-year term. At each such election thereafter, a member elected to fill the position of a member whose term has expired shall be elected for a three-year term. If any member of the Architectural Committee is unable or unwilling to act, the remaining members shall elect a successor to serve out the unexpired term. No member of the Architectural Committee however created or constituted, shall receive any compensation from the Association or make any charge for his services.

8.02 Procedures. In the event the Committee fails to approve or disapprove within fifteen (15) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

8.03 Action. Except as otherwise provided herein, any two members of the Architectural Control Committee shall have power to act on behalf of the Committee, without the necessity of meeting and without the necessity of consulting the remaining members of the Committee. The Committee may render its decision only by written instrument setting forth the action taken by the members consenting thereto.

8.04 Approval of Plans by Architectural Control Committee. No building or structure, including swimming pools, animal runs and storage units shall be commenced, erected, placed or altered on any Lot until the construction plans and specifications, and a plan showing the nature, shape, height, materials and colors, together with detailed plans showing the proposed location of the same on the particular building site, have been submitted to and approved in

writing by the Committee. All plans and specifications for approval by the Committee must be submitted at least fifteen (15) days prior to the proposed construction starting date.

8.05 Nonwaiver. Consent by the Committee to any matter proposed to it and within its jurisdiction under these provisions or any other person or persons owning any real property embraced within the plat, at its or their option, shall have full power and authority to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any of the said covenants, either to prevent the doing of such or to recover damages sustained by reason of such violation. Should the Declarant employ counsel to enforce any of these covenants, conditions or restrictions, by reason of such violation, all costs incurred in such enforcement, including a reasonable fee for counsel, shall be paid by the owner of such Lot or Lots and the Declarant shall have a lien upon such Lot or Lots to secure payment of all such accounts.

8.06 Construction by Declarant. This Article shall not govern construction by a Declarant upon portions of property owned by the Declarant or its successors or assigns. However, Declarant shall approve in writing all plans for original construction prior to the commencement of such construction.

Declarant does not choose to limit Declarant's rights to add improvements not described in this Declaration.

## ARTICLE IX

### ENFORCEMENT

9.01 Use of Common Areas and Facilities. In the event any owner shall violate any provision of this Declaration, the Bylaws of the Association or other rules adopted by the Association, then the Association, acting through its Board of Directors, shall notify the owner in writing that the violations or nuisances exist and that the owner is responsible for them, and may (a) notify the owner in writing that his voting rights and right to use the Common Areas and facilities thereon are suspended and that the duration of such suspension shall continue for the period that the violations or nuisances remain unabated, or (b) impose fines upon the owner

as such fines may be provided for in the Bylaws and rules of the Association, or (c) enter the offending Lot and remove the cause of such violation, or alter, repair or change the item which is in violation of these Covenants in such a manner as to make it conform thereto, in which case the Association may assess such owner for the entire cost of the work done, which amounts shall immediately be payable to the Association, or (d) bring suit or action against the owner on behalf of the Association and other owners to enforce these Covenants, or may do any of the above in conjunction with each other. Such fines immediately shall be paid to the Association and deposited to the Reserve Account.

9.02 Interest, Expenses and Attorney's Fees. Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date until paid at the following rate per annum: From the date hereof until the first annual meeting of Members, twelve percent (12%) per annum; and hereafter at a rate per annum which the Members shall establish at each such annual meeting to be in effect until the next such annual meeting, but if no such rate is so established by the Members, then the rate shall be twelve percent (12%) per annum. In the event the Association shall bring any suit or action to enforce this Declaration, to collect any money due to it, or to foreclose a lien, the prevailing party shall be entitled to recover all costs and expenses incurred by him in connection with such suit or action, including a foreclosure title report and such amount as the court may determine to be reasonable as attorney's fees at trial and upon any appeal thereof.

9.03 Nonexclusiveness and Accumulation of Remedies. *An election by the Association to pursue any remedy provided for violation of the Declaration shall not prevent concurrent or subsequent exercise of any remedy permitted under this Declaration. The remedies provided in this Declaration are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable laws.*

9.04 Effect of Breach. The breach of any of these covenants, conditions or restrictions shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any Lot or Lots or portions of Lots in such premises, but these covenants, conditions and restrictions shall be binding upon and effective against any such mortgagee or trustee or owner thereof, whose title thereto or whose title is or was acquired by foreclosure, trustee's sale or otherwise.

9.05 Delay. No delay or omission on the part of the Declarant or the owners of other Lots in the properties in exercising any rights, power or remedy, herein provided, in the event of any breach of the covenants, conditions or restrictions herein contained, shall be construed as a waiver thereof or acquiescence therein, and no right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the Declarant for or on account of the failure to bring any action or account of any breach of these covenants, conditions or restrictions, or for imposing restrictions herein which may be unenforceable by the Declarant.

## ARTICLE X GENERAL PROVISIONS

10.01 The Association, or any Member, or owner of any recorded mortgage or trust deed on any part of Burntwood West I shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges new or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Member to enforce any covenant or restriction shall not be deemed a waiver of the right to do so thereafter.

10.02 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

10.03 Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of

any Residential lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty-five (25) years from the date appearing on this Declaration, after which time said covenants shall be automatically extended for successive periods of ten (10) years each. Any of the covenants and restrictions of this Declaration, except the easements herein granted, may be amended by an instrument signed by members entitled to cast not less than seventy-five percent (75%) of the votes of each class of membership. Easements herein granted and reserved shall not be amended except by instrument signed and acknowledged by one hundred percent (100%) of the owners of the property concerned, and by the Architectural Committee. All such amendments must be recorded in the appropriate Deed Records of Washington County, Oregon, to be effective.

10.04 No Right of Reversion. Nothing in this Declaration, or in any form of deed which may be used by Declarant, or its successors and assigns, in selling said property, or any part thereof, shall be deemed to vest or reserve in Declarant or the Association any right of reversion or reentry for breach of violation of any one or more of the provisions hereof.

10.05 Right of Mortgagees Relating to Maintenance. At any time that any part of the Common Area, or any other part of Burntwood West I, or any residence or building or improvement located thereon is not in accordance with this Declaration or the Association's Bylaws or is not properly maintained and kept in good order and repair, to the extent reasonably necessary to protect and preserve the appearance and value thereof and the appearance and value of the remainder of said property, then the record owner of any mortgage or trust deed upon any part of said property or residence or building thereon, upon giving written notice hereinafter provided, shall be entitled to exercise the rights of the mortgage-owner of such property as a member of the Association including the right to vote at all regular and special meetings of the members of the Association for a period of one year following the date of such notice. During said period of time such mortgagors shall be given notice of all regular and special meetings of the Association, the owner-mortgagor

shall receive such notice also and may attend such meetings as an observer. Said notice shall quote this paragraph and shall be sent by Certified United States mail, return receipt requested, to the owner-mortgagor, a copy by regular mail to the Association at last known address of each.

10.06 Loss of Property. In order to protect and preserve the appearance and value of the Properties, each owner is required to repair or rebuild his residence after any loss to it.

10.07 No Waiver. Provisions contained in this Declaration shall bind and inure to the benefit of and be enforceable by Declarant, the Association and the owner or owners of any portion of the Properties, and their heirs and assigns, and each of their legal representatives; and failure by Declarant or by the Association or by any of the members or their legal representatives, heirs, successors or assigns, to enforce any of such conditions, restrictions or charges shall in no event be deemed a waiver of the right to do so.

10.08 Assignment. Any or all rights, powers and reservations of Declarant *herein* contained may be assigned to the Association or to any other corporation or association which is now organized or which may hereafter be organized and which will assume the duties of Declarant hereunder pertaining to the particular rights, powers and reservations assigned; and upon any such corporation or association evidencing its intent in writing to accept such assignment and assume such duties it shall to the extent of such assignment have the same rights and powers to be subject to the same obligations and duties as are given to and assumed by Declarant herein. All rights of Declarant hereunder reserved or created shall be held and exercised by BenjFran Development Inc. alone, so long as it owns any interest in any portion of said Property.

IN WITNESS WHEREOF, the Declarant caused its corporate name to be subscribed by its Vice President on this 5th day of October, 1984.

BenjFran Development, Inc.

BY  VICE PRES.

State of Oregon            )  
                                  ) ss  
county of Washington )

*On this 5th* day of October, 1984, personally appeared Michael A. Nelson who, being duly sworn, did say that he is the Vice President of *BenjFran* Development Inc., and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me:

Notary Public for Oregon

My commission expires: 4/19/88.

Reference ONLY