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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF  
BURKE OVERLOOK HOMEOWNERS' ASSOCIATION**

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THIS **DECLARATION** made on the date hereinafter set forth by SUNSHINE HOMES, INC., Trustee (Declarant).

**W I T N E S S E T H**

**WHEREAS**, Declarant is the owner of certain property described on Exhibit A attached hereto, which has been dedicated by Deed of Dedication dated \_\_\_\_\_, 1985, and intended to be recorded prior hereto, and

**WHEREAS**, Declarant intends to convey the proportions of said subdivision, subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth; and

**WHEREAS**, as aid in the achievement of these objections, the Declarant desires to subject the property to certain covenants and restrictions and to provide for a homeowners' association to which may be delegated and assigned the powers of administering common easements, common areas and community facilities, and collecting and disbursing the assessments and charges created by this Declaration.

**NOW THEREFORE**, Declarant hereby declares that the said property as designated on Exhibit A and such additions thereto, as may hereafter be had, shall be held, transferred, sold, and conveyed and occupied subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property. These easements, covenants, restrictions, and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title, or interest in the described property or any part hereof, and shall inure to the benefit of each owner thereof.

## **ARTICLE I --- DEFINITIONS**

**Section 1.** "**Association**" shall mean and refer to BURKE OVERLOOK HOMEOWNERS' ASSOCIATION, its successors and assigns.

**Section 2.** "**Properties**" or "**Subdivision**" shall mean and refer to such real property as shall be subjected to this Declaration as may hereafter be brought within the jurisdiction of the Association by future dedications made pursuant to Article II.

**Section 3.** "**Common Areas**" shall mean all real property and all interests in real property including common easements and rights-of-way owned by the Association for the common use and enjoyment of the members of the Association, more specifically described in the aforesaid Deed of Dedication and as shown on the plats attached thereto.

**Section 4.** "**Lot**" shall mean and refer to any Lot or other Lots as shown upon a recorded subdivision plat or plats of the properties subject to this declaration.

**Section 5.** "**Member**" shall mean and refer to every person or entity who holds membership in the Association.

**Section 6.** "**Owner**" shall mean and refer to the record owner, whether one or more person entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation or trustees under any instrument securing an obligation.

**Section 7.** "**Declarant**" shall mean and refer to: SUNSHINE HOMES, INC., Trustee, and its successors and assigns if such successors and assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

**Section 8.** "**Facilities**" shall mean and refer to recreation facilities and all other facilities and improvements, if any, built or to be built on the Common Area.

**Section 9.** "**Number and Gender**" In this Declaration, unless the context otherwise requires words in the singular, include the plural, and words in the plural include the singular; words of masculine gender include the feminine and the neuter and words of the neuter include any gender.

**Section 10.** "**Captions**" The captions of this Declaration are for convenience only and shall not alter, enlarge, modify or otherwise affect its provisions.

## **ARTICLE II --- THE PROPERTY AND ADDITIONS**

**Section 1.** Property Subject to Declaration. The real property that is the subject of the Declaration, less and except Parcel B, shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, is located in Fairfax County, Virginia, and is more particularly described in the attached Exhibit which is hereby made a part of this Declaration (Exhibit A). The Declarant reserves the right to subject additional property to these Covenants and to thereby expand membership in the Association. Such annexation will be made by a Declaration recorded with appropriate Court land records incorporating this Declaration by reference.

## **ARTICLE III --- MEMBERSHIP AND VOTING RIGHTS**

**Section 1.** The Owner of any Lot that is or becomes subject by covenants of record to assessment by the Association shall be a Member of the Association. No owner shall have more than one membership for each Lot of which he is the Owner. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is or becomes subject to assessment by the Association. Ownership of such Lots shall be the sole qualification for membership.

**Section 2.** The Association shall have two (2) classes of voting membership:

**Class A.** Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

**Class B.** The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. Class 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 equal the total votes outstanding in the Class B membership, or
- (b)** on July 1, 1991.

## **ARTICLE IV --- PROPERTY RIGHTS**

**Section 1.** Member's Easements of Enjoyment. Every member 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 Lot, subject to the following provisions:

- (a)** the right of the Association to limit the number of guests of Members.

**(b)** the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

**(c)** the right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and Facilities.

**(d)** to take steps reasonably necessary and in conformity with this Declaration to protect the property of the Association against mortgage default or foreclosure.

**(e)** the right of the Association to suspend the voting rights and right to use of the recreational facilities by a Member for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; in accordance with the By-Laws.

**(f)** the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members in accordance with its Articles of Incorporation, and subject to such conditions as may be required by and aforesaid public agency, authority or utility. PROVIDED HOWEVER, that no such dedication or transfer of all or any part of the Common Area shall be permitted without the consent of more than 2/3 (two-thirds) of the members acting at a meeting and further provided written notice of the proposed action is sent to every member not less than thirty (30) days before the meeting is held.

**(g)** acting by and through its Board of Directors, to grant right-of-way or easements to any governmental or municipal agency or authority, to any purposes of installing or maintaining any utilities that may be necessary to serve any of the Common Areas or Facilities or to serve any Lot. No such easement or right-of-way, however, shall be permanently inconsistent with the enjoyment of the Common Areas and Facilities by the Members.

**Section 2. Delegation of Use.** Any Member may delegate, in accordance with the subject to the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on the property.

**Section 3. Title to Common Area.** The Declarant hereby covenants for itself, its heirs and assigns, that it will convey the property interests and the easements constituting the Common Areas to the Association, free and clear of all encumbrances and liens, prior to the conveyance or encumbrance to or for the benefit of any party of any of the Lots subjected to this Declaration.

## **ARTICLE V --- COVENANTS FOR MAINTENANCE ASSESSMENTS**

**Section 1.** Creation of the Lien and Personal Obligations of Assessments. The Declarant for each Lot subjected to this Declaration, hereby covenants, and each Owner of any Lot by acceptance of a Deed, therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agrees to pay to the Association:

- (1) Annual assessments or charges, and
- (2) Special assessments for capital improvements, and
- (3) Special assessments as provided herein. Such assessments are to be fixed, established and collected from time to time as provided in the By-Laws and herein. The annual and special assessments, together with such interest thereon, and costs of collection thereof, including twenty-five percent (25%) attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interests, costs and twenty-five percent (25%) attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. Such personal obligation for delinquent assessments shall not pass to its successors in title unless expressly assumed by them.
- (4) The above provisions notwithstanding, however, the Declarant shall not be liable for Annual and Special Assessments as herein provided until the conveyance and recordation of the first of the aforesaid lot to an owner other than Declarant.

**Section 2.** Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the areas subjected to this Declaration and in particular for the improvement of the Properties, services and facilities devoted to these purposes and related to the use and enjoyment of the Common Area, and of the homes situated upon the Properties and maintenance of the private roadway within the Subdivision.

**Section 3.** Basis and Maximum of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum assessment shall be \$ 420.00 per Lot per year. No assessment shall be required of Declarant until conveyance of first Lot to an Owner.

**(a)** From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be automatically increased, effective January 1 of each year, without a vote of the membership in conformance with the rise, if any, of "The Consumer Price Index, United States City Average—All Items", published by the U.S. Department of Labor, Washington, D.C., which Index uses the period 1957–1959 as being equal to 100 percent. The Index issued immediately prior to the conveyance of the first Lot to an Owner shall be computed under this subparagraph (a).

**(b)** From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above that established by the Consumer Price Index formula for succeeding periods of as long as three (3) years by an affirmative vote of the members, such vote to be taken at a duly constituted meeting; provided that, any such change shall have the assent of two-thirds (2/3) of the votes 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.

**(c)** After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

**(d)** From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment for any Lot owned by Declarant shall be \$ 15.00 and shall not be increased or subject to any special assessments, PROVIDED, HOWEVER, that in no case shall the minimum annual assessment for any Lot owned by Declarant be less than twenty-five percent (25%) of the assessment levied against other Lots. While Declarant is a Class B member, he agrees to fund all budget deficits and maintain the common area at no cost to the Homeowners' Association. Any Lot owned by the Declarant shall be assessed uniformly with the other Lots upon the instance of either of the following, whichever occurs first:

**(1)** the occupancy of the said Lot by the Declarant or any other party under the authority of the Declarant, provided, however, that Declarant, its successors and assigns may use and occupy Lot sales and may further use said models for administrative offices in connection with improvement and marketing Lots. Said uses shall not subject Declarant, its successors and assigns to the uniform assessment provided herein, or

(2) a five year subsection to this Declaration in the manner heretofore provided.

(e) The assessments collected by the Association shall in each year be sufficient to maintain and operate the Properties and Common Area, as herein set forth, in neat and good order, and to pay all taxes, assessments, and expenses payable with respect to the maintenance and operation of the Properties to be operated and maintained by the Association for the aforesaid purposes.

**Section 4. 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, or applicable for a maximum of one (1) year, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a desired capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that, any such assessment shall have the assent of two-thirds (2/3) of the votes of Members 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.

**Section 5. Quorum.** In order to take action under Article V, Section 3 (b) and 4, there must be a duly held meeting. Written notice setting forth the purpose of the meeting shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of such meeting. At such meeting, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes, in person or by proxy, shall constitute a quorum.

**Section 6. Uniform Rate.** Both annual and special assessments must be fixed at a uniform rate for all Lots subject thereto, and may be collected as determined by the Board of Directors.

**Section 7. Date of Commencement of Annual Assessments/Dues.** The annual assessment provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area by Declarant. The first annual 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 annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be established by the Board of Directors. Upon demand of any member at any time, the Association shall furnish a certificate in writing, signed by an officer of the Association, setting forth whether the assessments, on a specified Lot owned by such member, 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.

**Section 8 (As amended November 3, 1988). Effect of Non-Payment of Assessments: Remedies of the Association.** Any assessment which are not paid when due shall be delinquent. Any assessment not paid within thirty (30) days after the due date shall be assessed a late charge of ten dollars (\$10.00) or such reasonable amounts as the Board of Directors shall determine by resolution. 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 rate of twelve percent (12%) per annum and the Board of Directors shall have the authority to accelerate and declare immediately due and payable the remaining installments of the fiscal year. The Association may bring an action at law against the owner personally obligated to pay the same or may foreclose the lien against the Lot, and interest, costs, late fees and reasonable attorney's fees not less than twenty-five percent (25%) of the amount claimed shall be added to the amount of such assessment and shall remain a lien on the Lot. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. Any payments received shall be applied in the following order: interest, attorney's fees, legal costs, specific assessments, then late charges and special or annual assessments applied to the oldest amount due. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of his Lot.

*Previously Section 8 read: Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments which are not paid when due shall be delinquent and shall when due become a lien on the Lot against which the assessment is made. Any assessment which is not paid within thirty (30) days after the due date shall bear interest form the date of delinquency at the rate of eighteen percent (18%) per annum and the Association may bring such action at Law or in Equity against the Owner personally obligated to pay the same, or against the Property subject thereto, or both, and interest, costs and twenty-five percent (25%) attorney's fees of any such action shall be added to the amount of such assessment.*

**Section 9. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust financing sale or transfer of any Lot and shall not affect the lien of any assessment. However, the sale or transfer of any Lot pursuant to the foreclosure under such first mortgage or deed of trust, or the issuance of a deed to or conveyance of the property in lieu of foreclosure, shall extinguish the lien of such assessments as to payment thereof which became due prior to such sale or transfer.

No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

**Section 10. Exempt Property.** The following property subject to this Declaration shall be exempt from the assessments created herein:

- (a) all properties dedicated to and accepted by a local authority;
- (b) the Common Areas; and
- (c) all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Virginia. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

#### **ARTICLE VI --- MAINTENANCE**

Each Owner shall maintain his Lot and premises and every part thereof in good repair and condition and shall maintain the same fully protected from the elements to the satisfaction of the Architectural Control Committee of the Association or the Board of Directors of the Association.

If the Owner shall fail to maintain or keep his premises and the improvements therein in as good repair and as good condition as when he acquired the premises, subject to reasonable use and wear, then the Association shall have the right, subject to the provisions hereinafter set forth, to provide Exterior Maintenance upon each Lot or Lots as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, fences, trees, shrubs, grass, walks, and any other exterior improvements required.

The Association shall only be permitted to perform repairs and maintenance under this Article, if the Owner failed to commence said repairs and maintenance within twenty (20) days after written notice is given by the Association to the Owner of the said Lot or Lots in question which shall state the deficiencies, the intended repairs or maintenance to be done and the estimated cost of these repairs and maintenance.

The cost of such maintenance or repairs by the Association and all costs of collection including attorney's fees shall be added to and become a part of the assessment or assessments to which such Lot is subject; but such cost shall not be deemed to be a part of the annual or special assessments herein before defined, but shall be in addition thereto.

#### **ARTICLE VII --- PROTECTIVE COVENANTS AND RESTRICTIONS**

In order to conserve the natural beauty of the subdivided property, to insure its best use and most appropriate development and to prevent the erection of poorly designed or constructed improvements the Lots shown on the plat of the subdivision, and such other Lots as become subject to this Declaration, shall be subject to the following:

- 1.** Except for townhomes built by Declarant or Declarant's successors in interest, no shed, outbuilding, or other structure shall be constructed to the property unless it is screened by shrubbery or fencing so as not to be visible from adjoining Lots.
- 2.** No Lot shall be used except for residential purposes, or for professional offices, or for a builder's construction or sales office during the construction and sales period.
- 3.** No fence, wall, tree, hedge or shrub planting shall be maintained in such manner as to obstruct sight lines for vehicular traffic. Except as may be required to comply with the prior sentence, no tree of a diameter of more than four inches measured two feet above ground level, lying outside the approved building driveway and parking areas, shall be removed without the approval of the Board of Directors.
- 4.** No noxious or offensive activity shall be carried on upon any portions of the Properties, nor shall anything be done thereon that may be or become a nuisance or annoyance to the neighborhood. No exterior lighting shall be directed outside the boundaries of a Lot or other parcel of the Properties.
- 5.** Easements for the installation and maintenance of driveways, walkways, parking areas, water lines, gas lines, telephone and electric power lines, underground utilities, supply and transmission lines and drainage facilities are reserved unto the Declarant through all areas shown on the plat attached to the Deed of Dedication of the Subdivision, or on such other plats recorded pursuant to Article II of this Declaration, whether within the boundaries of residential Lots or in Common Properties. Such easements shall include the right of ingress and egress, provided that any damage resulting from the installation, maintenance or repair of an underground utility, supply or transmission line or drainage facility shall be promptly repaired or replaced at the expense of the Association or authority which directed the entry.
- 6.** No fence or wall of any kind other than those constructed by Declarant, its successors and assigns shall be erected, begun or permitted to remain upon any portion of the Properties unless shown on the attached plat or unless approved by the Board of Directors.
- 7.** No sign of any kind larger than one foot square shall be displayed to the public view of any Lot, except temporary signs of no more than four square feet advertising the said Lot for sale or rent and except for temporary signs erected by the Declarant in connection with the construction, lease or sale of buildings and Lots or other parcels of the Properties.
- 8.** No livestock including horses, cattle and hogs, nor fowl such as chickens and pigeons, shall be kept on the property. The breeding of animals for commercial use is prohibited, but nothing contained herein shall be construed to prohibit the keeping of the usual domestic pets.

**9.** No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.

**10.** No commercial truck, commercial bus or other commercial vehicle of any kind nor shall any recreational vehicles, trailers or boats be permitted to be kept or parked overnight upon any portion of the Properties except as permitted by Paragraph 2 during the builder's construction and sales period. No vehicle other than a private automobile may be parked in any of the parking spaces maintained by the Association.

### **ARTICLE VIII --- EASEMENTS AND RESERVATIONS**

**1.** Easements for the installation, repair and maintenance of underground or above ground utilities, supply and transmission lines, sewer, water, and drainage facilities are reserved to Declarant throughout all areas of the Properties, whether within the boundaries of the residential Lots, or in the Common Area, while Declarant is still the Owner of any Lot. Such easements shall include the right of ingress and egress, provided that any damage resulting from such installation, repair or maintenance shall be promptly repaired or replaced at the expense of the Declarant or authority which directed the entry.

**2.** Easements across and over and to use and occupy all or any portion of the Common Area are reserved to Declarant during the period Declarant holds record title to any Lot to permit Declarant's development and maintenance of the Common Area. Such easements shall include the right of ingress and egress to and from such Common Area to accomplish aforesaid purpose during aforesaid period. All Owners appoint Craig E. Buck as their attorney-in-fact with full power to execute, acknowledge, and deliver all easements, deeds or other documents necessary grant, dedicate or otherwise convey easements across Lots and common areas for utilities or other public purposes as may be reasonably necessary for the development of the subdivision or any additional property subjected to this Declaration.

### **ARTICLE IX --- PARKING SPACES AND TRAFFIC**

**Section 1. Parking.** Subject to existing Laws and Ordinances, the Association may designate at least one (1) parking space conveniently located with respect to each Lot for the exclusive use of the member who owns such Lot or his family or guests. The use of such space by any other member or person may be enjoined by the Association or the member entitled thereto. The right to the exclusive use of such parking space and to its maintenance and designation by the Association shall be appurtenant to and shall pass with the title to the Lots.

**Section 2. Traffic Regulation.** The Association shall have the power to regulate parking and traffic within the Properties in any manner not inconsistent with the rights of the individual Owners in order to provide adequate access for police, fire fighting and other public vehicles; to preserve the orderly flow of traffic; to maintain roadways and parking areas within the Properties and to erect and maintain street and traffic signs and to do anything which is consistent with and incidental to the objective of this Article.

## **ARTICLE X --- GENERAL PROVISIONS**

**Section 1. Application.** The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns.

**Section 2. Enforcement.** The Association or any Owner shall have the right to enforce, by and proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration. Failure by the Association or by an Owner to enforce any covenant or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 3. Severability.** Invalidation of anyone 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.

**Section 4. 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 Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of twenty-five (25) years from the date this Declaration is recorded after which time said covenants shall be automatically extended for successive periods of twenty (20) years. The covenants and restrictions of this Declaration may be amended during the first twenty-five (25) year period by an instrument signed by all the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. The above notwithstanding, however, the Declarant shall have the right to annex additional property to the Homeowners' Association and to amend these covenants, as provided under Article II. Any amendment must be properly recorded.

**Section 5. Condemnation.** In the event that any part of the Common Area is appropriated or otherwise taken under the power of eminent domain, the proceeds of the condemnation action shall be used as the Board of Directors deems proper under the circumstances and in accordance with the purposes for which the Association is incorporated, including the acquisition of additional lands or easements (if available) to be used in the place and instead of the lands so condemned.

Nothing herein contained shall prevent any Owner, whose Lot is directly damaged by such

condemnation, from contesting the same and seeking an award for the impairment of the rights and easements immediately appurtenant to such Lot.

**Section 6. Notice.** Any notice required to be sent to any Owner or Member under the provisions of this Declaration shall be deemed to have been properly sent when mailed, first class, postage prepaid, to the last known address of the person who appears on record as Owner at the time of such mailing.

**Section 7. Conflict Between Articles of Incorporation, Declaration and By-Laws.** If there is any conflict between any of the Articles of Incorporation of the Association and/or the provisions of the By-Laws of the Association and/or the provisions of this Declaration, then and in any such conflict, this Declaration shall control, rule and take precedence over the By-Laws and, further, in any such conflict this Declaration shall control, rule and take precedence over the Articles of Incorporation.

**Section 8. Real Estate Taxes.** Each and every Owner shall be responsible and chargeable for any real estate taxes or any governmental assessments or charges made against the Lot or Lots owned by him.

## **ARTICLE XI**

The Common Areas shall not be denuded, defaced or otherwise disturbed in any manner at any time without approval of the appropriate governmental agency for Fairfax County, Virginia.

## **ARTICLE XII --- ARCHITECTURAL REVIEW**

**Section 1. The Board.** The Architectural Review Board shall consist of the Directors of the Association, or a committee of three (3) or more persons appointed by them. Applications for approval by the Architectural Review Board shall be in writing. Approval or disapproval by the Board shall also be in writing.

**Section 2. Duties.** The Architectural Review Board shall regulate the external design, appearance and locations of the Properties and improvements thereon in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.

**Section 3. Standards.** No person shall paint the exterior of any building a color different than the original color of said building without the proposed color having been approved by the Architectural Review Board.

The exteriors of all structures, including walls, doors, windows, and roofs shall be kept in good maintenance and repair. No structure shall be permitted to stand with its exterior in an unfinished condition for longer than six (6) months after the commencement of construction. In the event of fire, windstorm or other damage, the exterior of a structure shall not be permitted to remain in a damaged condition for longer than three (3) months.

No structure or addition to a structure shall be erected, placed, altered, or externally improved on any Lot until the plan and specification, including elevation, material, color and texture and a site plan showing location of improvements with grading modifications shall be filed with and approved in writing by the Architectural Review Board. Structure shall be defined to include any building or portion thereof, shed, fence, pavement, driveway or appurtenances to any of the aforementioned.

All fences or enclosures of different design from the original or located in front of or in the side yard of any dwelling must be approved by the Architectural Review Board Committee as to location, material, and design. Any fence or wall built on any Lots shall be maintained in a proper manner so as not to detract from the value and desirability of surrounding property.

No exterior television antenna or any sort shall be erected or maintained on any Lot with the written consent of the Architectural Review Board, provided that the Association shall have the right to erect and maintain a master antenna on Association property, if the erection of such master antenna is approved by members of the Association pursuant to the provisions of Article IV, hereof.

The Board of Directors may from time to time establish such additional standards as are necessary to carry out the intended purposes of this Declaration.

### **ARTICLE XIII --- PARTY WALLS**

**Section 1. General Rules of Law to Apply.** Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**Section 2. Rights of Owners.** The Owners of Contiguous Lots who have a party wall or party fence shall both equally have the right to use such wall or fence, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

**Section 3. Damage or Destruction.** In the event that any party wall or party fence is damaged or destroyed (including deterioration from ordinary wear and tear and lapse of time):

(a) Through the act of an Owner or any of his agents or guest or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the party wall or fence without cost to the other adjoining Lot Owner or Owners.

(b) Other than by the act of an Owner, his agents, guests or family, it shall be the obligation of all Owners whose Lots adjoin such wall or fence to rebuild and repair such wall or fence at their joint and equal expense.

Notwithstanding any provision herein, there shall be no impairment of the structural integrity of any party wall without the prior consent of all Owners of any interest therein whether by way of easement or in fee.

**Section 4. Right to Contribute Runs with Land.** The right of any Owner to contribute from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

**Section 5. Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Article, which cannot be resolved by all of the Owners of interest therein, such dispute shall be resolved by arbitration. Each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all of the arbitrators.

**Section 6. Easements.** The Owner of each Lot is hereby granted an easement on and over each and every Lot and Common Area which is adjacent to such first Lot for all building and roof overhangs, projections, fireplace walls, gutters, downspouts, and to the portions of the first Owner's buildings which extend or project into, onto, or over such adjacent Lots.

When any building or appurtenance extends to or over the Lot line of an adjoining Lot, the Owner of said building shall have the right to enter upon a reasonable portion of such adjoining Lot at reasonable times for the purpose of performing repairs or maintenance of his building. Except as otherwise provided in this Declaration, such right of entry shall place no obligation on the entering party to maintain the land entered upon, except to promptly restore any disturbed areas to their condition prior to the time of entry.

## **ARTICLE XIV --- POWERS AND DUTIES OF THE ASSOCIATION**

**Section 1. Discretionary Powers and Duties.** The Association shall have the following powers and duties which may be exercised by a majority vote of the Board of Directors of the Association:

**(a)** To enforce any or all building restrictions which may hereafter be imposed on any part of the properties. Provided that nothing contained herein shall be deemed to prevent the owner of any Lot from enforcing any building restrictions in his own name; the right of enforcement shall not serve to prevent such changes, releases or modifications of the restrictions or reservations placed upon any part of the Properties by any party having the right to make such changes, releases or modifications on the deeds, contracts, declarations or plats in which such restrictions and reservations are set forth; and the right of enforcement shall not have the effect of preventing the assignment of those rights by the proper parties wherever and whenever such right of assignment exists. The expense and costs of any enforcement proceeding initiated by the Association shall be paid out of the general fund of the Association, as hereafter provided for;

**(b)** To provide such light as the Board of Directors deem advisable on streets and for the maintenance of any and all improvements, structures or facilities which may exist or be erected from time to time on any Common Areas;

**(c)** To use the Common Area and any improvements, structures or facilities erected thereon subject to the general rules and regulations established and prescribed by the Board of Directors and subject to the establishment of charges for their use. The Board of Directors shall promulgate rules and regulations with regard to the tennis courts, basketball courts, and children's playground which may be a part of the Common Area.

**(d)** To mow and resow the grass and to care for, spray, trim, protect, plant, and replant trees and shrubs grown on the Common Area and to pick up and remove from said property and area all loose material, rubbish, filth, and accumulations of debris; and to do any other thing necessary or desirable in the judgment of the Board of Directors to keep the Common Area in neat appearance and in good order;

**(e)** To exercise all rights and control over any easements which the Association may from time to time acquire, including, but not limited to, those easements specifically reserved to the Association in Article VIII thereof;

**(f)** To maintain in good repair the trails located within the Common Area;

**(g)** To create, grant, and convey easements upon, across, over, and under all Association properties including, but not limited to, easements for the installation, replacement, repair and maintenance of utility lines serving Lots in the subdivision;

**(h)** To employ, counsel, institute, and prosecute such suits as the Association may deem necessary or advisable and to defend suits brought against the Association or Board of Directors;

**(i)** To employ from time to time such agents, servants and laborers as the Association may deem necessary in order to exercise the powers, rights, and privileges granted to it, and to make contracts; and

**(j)** To promulgate such rules and regulations as needed to regulate the use of any parking areas that may be constructed or authorized on Common Area for the benefit of all Owners, which rules and regulations may include assignment of parking spaces and a restriction or prohibition on certain vehicles as provided in this Declaration.

**Exhibit "A"**

**Metes and Bounds Description  
Section Four  
Burke Village, Springfield District  
Fairfax County, Virginia**

Beginning at the intersection of the south right-of-way of Burke Road, Route #652 and the south right-of-way of the Southern Railway Company, thence with the south right-of-way Burke Road S 39 degrees 20 minutes 56 seconds E 104.90 minutes. Thence with the north line of the now or formerly Bell Property the following courses and distances:

Departing the south right-of-way:

Burke Road S 77 degrees 08 minutes 30 seconds W 849.55 to a point  
N 81 degrees 56 minutes 45 seconds W 463.60 to a point  
S 37 degrees 58 minutes 57 seconds W 421.20 to a point, thence with the south line of the now or formerly Bell Property S 59 degrees 59 minutes 32 seconds E 466.47 minutes to a point in the west line of Burke Village, Section One, Parcel B. Thence with said line S 39 degrees 06 minutes 37 seconds W 66.00 degrees to a point in the north right-of-way line Coffey Woods Road. Thence with said right-of-way the following courses and distances:

64.65 minutes along the arc of a curve to the right, having a radius of 1117.50 minutes chord N 59 degrees 27 minutes 48 seconds W 64.64 minutes to a point  
N 57 degrees 48 minutes 22 seconds W 574.40 minutes to a point  
106.00 along the arc of a curve to the left, having a radius of 880.00 minutes chord N 69 degrees 16 minutes 38 seconds W 105.93 to a point. Thence departing said right-of-way and following the east line of Burke Village, Section 3, Parcel C the following courses and distances:

N 11 degrees 55 minutes 48 seconds E 151.46 minutes to a point  
N 18 degrees 06 minutes 37 seconds E 174.62 to a point  
N 59 degrees 51 minutes 58 seconds E 400.00 to a point  
N 03 degrees 51 minutes 57 seconds W 370.69 minutes to a point in the south right-of-way of the now or formerly Southern Railway Property. Thence with said right-of-way:

N 86 degrees 08 minutes 03 seconds E 244.64 minutes to a point  
S 03 degrees 52 minutes 00 seconds E 30.00 minutes to a point  
N 86 degrees 08 minutes 03 seconds E 252.62 minutes to a point of curvature 842.42 minutes along the arc of a curve to the right having a radius of 885.37 minutes chord S 66 degrees 36 minutes 27 seconds E 811.00 minutes to a point  
S 39 degrees 20 minutes 57 seconds E 249.48 minutes to a point  
N 77 degrees 08 minutes 30 seconds E 61.40 minutes to a point of beginning and containing 25.5294 acres of land. No title report furnished.