

REC. 1988 APR 13

DECLARATION OF COVENANTS AND RESTRICTIONS
FOR
BURKE PLACE

THIS DECLARATION, made on this the 14th day of April, 1988, by Burke Place, an Alabama general partnership having H. G. Folmar, Jr., Jim W. Cleveland, III and William A. Cleveland as partners (herein referred to as "Declarant");

WITNESSETH:

WHEREAS, Declarant is the owner of the premises described in Exhibit "A" attached hereto, (hereinafter called the "Properties"), and Declarant wishes to impose certain restrictions on the Properties for the benefit thereof; and

WHEREAS, Declarant plans to develop the Properties as a Planned Community under the appropriate zoning regulations of the various governing bodies under whose jurisdiction the Properties are subject, with all roads being privately owned and maintained;

NOW, THEREFORE, Declarant hereby declares that all of the Properties shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Properties and be binding on all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each other.

ARTICLE I
DEFINITIONS

Section 1. "Articles" shall mean the Articles of Incorporation of the Association, as said Articles may be amended from time to time.

Section 2. "Association" shall mean and refer to Burke Place Homeowners' Association, Inc., an Alabama nonprofit corporation, its successors and assigns.

Section 3. "Board" shall mean the Board of Directors of the Association.

Section 4. "By-Laws" shall mean the By-Laws of the Association, as such By-Laws may be amended from time to time.

Section 5. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners, as defined herein and in the Subdivision Maps.

Section 6. "Declarant" shall mean Burke Place, an Alabama general partnership, who shall also be considered an Owner and a Member, so long as the Declarant owns a Lot.

Section 7. "Declaration" shall mean the covenants, conditions, and restrictions herein set forth in this entire document, as same may from time to time be amended.

Section 8. "Design Review Committee" shall mean the Committee created pursuant to ARTICLE VII hereof.

Section 9. "Design Review Committee Rules" shall mean the rules, if any, adopted by the Design Review Committee.

Section 10. "Improvement" shall mean the buildings, garages, carports, roads, driveways, parking areas, fences, walls, hedges, plantings, planted trees and shrubs, and all other structures or landscaping improvements of every type and kind on a lot.

Section 11. "Lot" shall mean any parcel of real property designated as a Lot on the recorded Subdivision Map and shall also mean parcels of real property further subdivided within Lots 41, 42 and 43 as shown on the Subdivision Map and delineated on the Subdivision Map as being for Cluster Homes. A Lot shall be deemed "Improved" when a residence has been constructed thereon.

Section 12. "Member" shall mean the Declarant while the Owner of a Lot, and the person or persons who is the owner and occupier of an improved lot, who is also a member of the Association. There shall be only one member per improved lot.

Section 13. "Open Space" shall mean that portion of the properties required by the Zoning Ordinance to remain as open space as defined therein.

Section 14. "Owner" and "Owners" shall mean and refer to the Declarant while an owner of a Lot, and the record owner, whether one or more persons or entities, of equitable or beneficial title (or legal title if same has merged) of any Lot. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation. For the purposes of ARTICLE IV only, unless the context otherwise requires, "Owner" shall also include the family, invitees, licensees, and lessees of any Owner, together with any other person or parties holding any possessory interest granted by such Owner in any Lot.

Section 15. "Properties" shall mean and refer to that certain real property hereinbefore referred to and described in the Subdivision Map as "Burke Place, A Redivision of Lot 2" more fully described in Exhibit A attached hereto. The Declarant reserves the right and option to add additional real property to Properties, and impose part or all of these covenants and restrictions thereon.

Section 16. "Single Family" shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than two (2) persons not all so related, who maintain a common household in a dwelling.

Section 17. "Single Family Residence" shall mean a dwelling constructed in accordance with the restrictions and conditions set forth in ARTICLE IV hereof.

Section 18. "Single Family Residential Use" shall mean the occupation or use of a Single Family Residence in conformity with this Declaration.

Section 19. "Subdivision Map" shall mean the recorded maps or plats covering any or all of the property referred to in this Declaration, described in Exhibit A attached hereto, and any additional real property added hereto.

Section 20. "Zoning Ordinance" shall mean the zoning ordinance of the City of Auburn, Alabama.

ARTICLE II PROPERTY RIGHTS

Section 1. COMMON AREA: Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to the Lot acquired by the Owner, subject to the right of the Association to dedicate all or any part of the Common Area to any political entity or subdivision. No such dedication or transfer shall be effective unless an instrument reflecting the agreement of Members representing two-thirds (2/3) of the votes agreeing to such dedication or transfer has been recorded.

Section 2. ROADS: The Declarant will lay out and construct the initial road system for ingress and egress to the Lots within the Properties. The roads shall be private and for use of the Declarant, the owners, their invitees and guests, for service and emergency personnel use, and such other use as may be authorized by the Board. The Declarant will convey, assign, and transfer the road and right of way for the road to the Association, for maintenance and supervision, with the Association having the right to dedicate and retransfer all of the road system to any political system or subdivision; and in such event such dedication or transfer shall be evidenced by an instrument reflecting that said dedication and transfer was approved by a majority of the members of the Board over the certificate of the Secretary of the Association.

Section 3: SWIMMING POOL: The Declarant shall construct a swimming pool for the use and benefit of the Declarant, the Owners, their invitees and guests, and for such other use as may be authorized by the Board. The pool shall be constructed on the Common Area located on the North side of the properties.

ARTICLE III PROPERTY SUBJECT TO RESTRICTIONS

Section 1. GENERAL DECLARATION. The Declarant intends to sell and convey the Lots to Owners, subject to this Declaration and any subsequent amendment or supplement thereto. Declarant hereby declares that all of the Properties are and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration, as amended or supplemented from time to time. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision and development of the Properties and is established for the purpose of enhancing and protecting the value, desirability and attractiveness thereof. All of the provisions of this Declaration shall run with the Properties for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners and their heirs, successors and assigns.

ARTICLE IV LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS

Section 1. PERMITTED USES AND RESTRICTIONS--SINGLE FAMILY. The permitted uses, easements, and restrictions for the Properties shall be as follows:

A. SINGLE FAMILY RESIDENTIAL USE. All lots shall be used, improved and devoted exclusively to Single Family Residential Use. No business activity of any kind whatsoever shall be conducted on any such property. No structure whatever, other than one Single Family Residence, a private garage, a storage building, a guest house, a swimming pool, and a cabana, shall be erected, placed or permitted to remain on any of Lots 1-40, inclusive. The Design Review Committee shall be charged with the responsibility of ensuring that no improvement on any of the Lots, whether in the nature of design, building materials or landscaping, shall be initiated unless the quality of such improvement is compatible with the standards within the Properties. The quality and attractiveness of every improvement must meet the standards, and the Design Review Committee is hereby granted broad discretion in judging the compatibility of proposed improvements. No part of any dwelling shall be used for the lodging of paying guests. Every residence, exclusive of open porches, garages, carports and finished basements, shall each have not less than the following number of square feet of floor space:

(1) For Lots 1-14 inclusive - 1500 square feet.

(2) For Lots 15-40 inclusive - 2000 square feet.

Lots 41-43, inclusive, of the properties have been approved by the Auburn Planning Commission for the number of units as delineated on the Subdivision Map. Declarant anticipates these lots being improved by construction of residential units of a number not exceeding the numbers as shown on the Subdivision Plat, and in accordance with the Zoning Ordinance.

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B. ANIMALS. The only animals allowed are dogs, birds and cats or similar house or yard pets, and such animals shall be maintained only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing or confinement of any animal shall be maintained on any Lot so as to be visible from neighboring property. Upon the written request of any owner, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal is a generally recognized house or yard pet, or a nuisance, or whether the number of animals on any such property is reasonable. Any decision rendered by the board shall be enforceable as other restrictions contained herein. In addition, with respect to Lot 43 only, yard pets shall be on leashes or confined within a walled area.

C. ANTENNAS. No antennas or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors within the Properties, whether attached to a building or structure or otherwise, unless approved by the Design Review Committee, provided that such approval shall not be withheld if an antenna or other device is reasonably necessary for clear television or radio reception. The Design Review Committee may impose reasonable restrictions with respect to antennas in order to ensure aesthetic compatibility with the neighborhood.

D. UTILITY SERVICE. Unless approved in writing by the Design Review Committee or permitted pursuant to easement granted prior to recordation of the Subdivision Map, no lines, wires, or other devices for the communication or transmission or electric current or power, including telephone, television and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Design Review Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Design Review Committee. An easement for all utilities is granted within all road rights-of-way as shown on the Subdivision Map. Certain easements for utilities and/or sewer are shown on the Subdivision Map and/or have been conveyed by separate instrument by the Declarant. In addition to such easements, an easement fifteen feet in width is reserved along all Lot boundaries, seven and one-half feet on either side on each such boundary, for the purpose of establishing, constructing, maintaining any utility or storm drainage system.

The Owners of Lots will not erect or grant to any person, firm or corporation the right, license or privilege to erect or use or permit the use of overhead wires, poles, or overhead facilities of any kind for electrical, television cable, or telephone service on said real estate (except such poles and overhead facilities as may be required at those places where distribution facilities enter and leave the Properties). Nothing herein shall be construed to prohibit overhead street lighting, or ornamental yard lighting, where serviced by underground wires or cables.

E. IMPROVEMENTS AND ALTERATIONS. No improvements, alterations, repairs, excavation or other work which in any way alters the exterior appearance of any Lot or the improvements located thereon from its natural or improved state existing on the date such property was first conveyed in fee by Declarant to an Owner shall be made or done without the prior approval of the Design Review Committee, except as otherwise expressly provided in this Declaration. Prior to making any improvement to any Lot, the Owner shall submit to the Design Review Committee the plans and specifications of the improvements to be made, and landscaping of the Lot. No building, fence, wall, screen, residence or other structure shall be commenced, erected, maintained, improved, altered, made or done without the prior written approval of the Design Review Committee or any committee established by the Design Review Committee for this purpose. Pursuant to its rule making power, the Design Review Committee shall establish reasonable procedures for the preparation, submission and determination of applications for any improvement or alteration. The Design Review Committee shall have the right to refuse to approve any plans or specifications or landscape plans, which are not reasonably suitable or desirable, in its opinion, for aesthetic or other reasons, and in so passing upon such plans, specifications and landscape plans, and without any limitation of the foregoing it shall have the right to take into consideration the suitability of the proposed building or other structure, and of the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the building or other structure as planned, on the outlook from the adjacent or neighboring property. All subsequent additions to or changes or alterations in any building, fence, wall, structure, or landscaping shall be subject to the prior approval of the Design Review Committee. No changes or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the Design Review Committee. All decisions of the Design Review Committee shall be final unless overridden by a vote of 3/4 of the members of the Board, and no Owner or other parties shall have recourse against the Design Review Committee or the Board for its refusal to approve any such plans and specifications or plot plan. In the event that the Design Review Committee shall fail either to approve or disapprove any plans or specifications within 30 days after submission to it, then such plans or specifications will be deemed to have been approved and the Owner may proceed with his proposed improvements, alterations, repairs, landscaping, excavation or other work.

F. TEMPORARY OCCUPANCY. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary building or structure of any kind shall be used at any time for a residence within the Properties, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any Lot shall be removed immediately after the completion of construction.

G. TRAILERS AND MOTOR VEHICLES. No mobile home, bus, motor home, truck larger than 3/4 ton, trailer of any kind, truck camper, or permanent tent or similar structure shall be kept, placed (except during the course of making deliveries or for the purposes of loading or unloading), maintained, constructed, reconstructed or repaired within the Properties, nor shall any motor vehicle be constructed, reconstructed, or repaired upon any property or street within the Properties in such a manner as will be visible from neighboring property; provided, however, that the provisions of this paragraph shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the Design Review Committee. No vehicle of any kind shall be allowed to park overnight on any street or on any yard within the Properties. Vehicles must be parked in garages, carports or defined parking areas. No motorized vehicle of any kind may be operated in a manner which, in the opinion of the Design Review Committee, is dangerous, noisy, or which creates a nuisance.

H. MAINTENANCE OF LAWNS AND PLANTINGS. Each Owner of a Lot within the Properties shall properly maintain the yard and keep the Lot free of trash, and other unsightly material; provided, however, that such Owner shall not be responsible for maintenance of any area as to which Declarant or the Association has assumed the responsibility. The initial landscaping of any Lot shall be subject to approval by the Design Review Committee in the manner set forth in Paragraph E above. The Owner shall not undertake any landscaping program or remove any trees or shrubs from the portion of the Lot within 15 feet of the rear boundary, or any tree having a diameter of 6" or more, measured from a 2 feet above-ground level, unless approved in writing by the Design Review Committee prior to any such action.

I. NUISANCES. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Properties and no odors shall be permitted to arise therefrom, so as to render the Properties or any portion thereof unsanitary, unsightly, offensive, or detrimental to any Lot in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or operate upon the Properties so as to be offensive or detrimental to any Lot in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any of the lots.

J. REPAIR OF BUILDINGS. No building or structure within the Lot shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

K. TRASH CONTAINERS AND COLLECTION. No garbage or trash shall be placed or kept within the Lot, except in covered containers of a type, size and style which are approved by the Design Review Committee. In no event shall such containers be maintained so as to be visible from neighboring property except to make the same available for collection, and such containers shall be placed in an appropriate place for pickup only on scheduled pickup days and shall be removed to a nonvisible storage area reasonably soon after such pickup. All rubbish, trash, or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No incinerators for burning trash or garbage shall be kept or maintained on any Lot, nor shall garbage or trash be permitted to be buried on any Lot at any time.

L. CLOTHES DRYING FACILITIES. Outside clothes lines or other outer facilities for drying or airing clothes shall not be erected, placed or maintained within the Properties unless they are: (1) erected, placed and maintained exclusively within a fixed service yard, or otherwise concealed; (2) not visible from neighboring property; or (3) approved by the Design Review Committee.

M. EASEMENT. Drainage flow shall not be obstructed nor be diverted from drainage swales, storm sewers and/or utility easements as designated herein, or as may hereafter appear on any plat of record in which reference is made to these covenants. Developer may cut drainways for surface water wherever and whenever such action may appear to Developer to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes, or shrubbery, make any gradings of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health and appearance. Except as provided herein, existing draining shall not be altered in such a manner as to divert the flow of water onto an adjacent Lot or Lots.

N. RIGHT OF WAY. During reasonable hours and in appropriate circumstances, any member of the Design Review Committee or the Board, or any authorized representative of either of them, shall have the right to enter upon and inspect the properties and the improvements thereon, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such person shall not be deemed guilty of trespass by reason of such entry.

O. MINERAL EXPLORATION. No property within the Properties shall be used in any manner to explore for or to remove any water, oil, or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

P. MACHINERY AND EQUIPMENT. No machinery or equipment of any kind shall be placed, operated or maintained upon any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a residence, appurtenant structures, or other improvements.

Q. DISEASES AND INSECTS. No Owner shall permit any thing or condition to exist upon the Properties which shall induce, breed or harbor infectious plant diseases or noxious insects.

R. SIGNS. No signs, or billboards whatsoever (including but not limited to, commercial, "for sale," political and similar signs) shall be erected or maintained on any Lot, except:

- (1) Such signs as may be required by legal proceedings;

- (2) Reasonable residential identification signs;
- (3) During the time of construction of any building or other improvement, reasonable "For Sale" signs and one job identification sign, no larger than 36" in width and 24" in height.
- (4) Such signs, the nature, number, and location of which have been approved in advanced by the Design Review Committee.

S. DECLARANT'S EXEMPTION. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant or its duly authorized agents, of structures, improvements or signs necessary or convenient to the development, sale, operation or other disposition of the Lots.

T. SWIMMING POOLS. Nothing herein contained shall prohibit the construction of a swimming pool on any Lot, together with such appurtenances as may be reasonably necessary for the use and enjoyment thereof, subject to approval of the Design Review Committee in the manner prescribed for other improvements.

U. OPEN SPACE. That portion of the Properties that has been designated Open Space shall be maintained in accordance with the Zoning Ordinance by the owner thereof. Any open space located on any part of the properties not owned by the Association shall not be developed or subsequently subdivided contrary to the Zoning Ordinance.

V. IMPERVIOUS SURFACE. In order to comply with the Zoning Ordinance with regard to impervious surface limitations, the Declarant has filed with the Planning Commission of the City of Auburn in file number "S-4-87 Burke Place" a schedule showing the maximum number of square feet of impervious surface for each lot. No Owner shall improve his lot in such a manner as would cause the number of impervious surface square feet to be exceeded.

ARTICLE V IMPROVEMENTS AND SERVICES

Section 1. After the completion of the installation and operation of the road system and swimming pool, and the conveyance of 10 Lots, the Declarant shall convey to the Association the road system and the Common Area for the Association to control, maintain, operate and supervise. Declarant shall be responsible for making the necessary improvements to the Common Area at its expense. Pending the conveyance of the various improvements, the Declarant shall be responsible for the control, maintenance, operation, supervision and care thereof.

A. MAINTENANCE BY ASSOCIATION. The Association, may, at any time, as to any of the Common Area or roadways, conveyed or transferred to it, or otherwise placed under its jurisdiction, in the discretion of the Board, without any approval of the Owners being required:

- (1) Reconstruct, repair, or refinish any improvement or portion thereof upon any such area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area),
- (2) Construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of such area used as a road, street, walk, driveway, bridge, or parking area;
- (3) Remove or replace injured and diseased trees or other cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes; and
- (4) Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;
- (5) Do all such other acts which the Board deems necessary to preserve and protect the Properties and the beauty thereof, in accordance with the general purposes specified in Declaration.

The Board shall be the sole judge as to the appropriate maintenance of all grounds and the improvements within the Common Area, including the road system. The Association shall assume responsibility for maintaining any of the Common Area required by the Zoning Ordinance to be open space.

B. GENERAL SERVICES. The Board shall have the right to provide services, the cost of which shall be paid out of the charges provided in Article VI, and adopt rules, regulations, procedures and policies with respect to:

- (1) garbage and trash collection and removal;
- (2) motor vehicle operations;
- (3) parking of motor vehicles on streets or roads in Common Area;
- (4) maintenance and furnishing of guard or security guard services;
- (5) fire protection and fire prevention and extinguishment of fires;
- (6) landscaping and the maintenance thereof;
- (7) furnishing a road system, and the maintenance thereof;
- (8) such other matters which involve use of Common Area, roads, and swimming pool.

C. DAMAGE OR DESTRUCTION BY OWNERS. In the event any Common Area or structures hereinabove mentioned are damaged, altered, or destroyed by an Owner or any guest, tenants, licensees, agents or family members, such Owner does hereby authorize the Association to repair said damaged area, and the Association shall so repair said damaged areas in a good and workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association, in the discretion of the

Association. The amount necessary for such repairs shall be paid by said Owner, upon demand by the Association, to the Association and the Association may enforce collection of same in the same manner as provided elsewhere in this Declaration for collection and enforcement of assessments.

D. EASEMENTS TO ASSOCIATION. The Association shall have a right and permanent easement to enter upon any and all Lots, Common Area, roadways, easements, walkways, for the purposes of such maintenance and repair hereinabove mentioned.

E. MAINTENANCE AND IMPROVEMENTS BY ASSOCIATION--LOTS 41-43. The Association shall maintain all yards, exterior painted surfaces and roofs of buildings, located within Lots 41-43, inclusive. Owners of buildings within these lots shall be responsible for maintaining all other parts of their buildings, including but not limited to, glass, doors, doorways, gutters and downspouts, hardware, screened areas, patios, decks, plumbing, electrical, and heating and air conditioning systems. Each Owner of a lot located within Lots 41-43 by acceptance of a deed for such lot is deemed to covenant and agree to pay to the Association (1) annual charges and (2) special charges as herein provided. These charges are in addition to the charges provided for in Article VI. The annual charges levied shall be used for the maintenance detailed in this paragraph E. Special charges shall be for the purpose of defraying the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any common area located within Lots 41-43, and shall only be assessed upon the assent of two-thirds (2/3) of the members who own lots within Lots 41-43. The provision of Article VI with respect to meetings, notice, quorums, uniform rate of charges, effect of nonpayment of charges and subordination, to the extent that those provisions do not conflict with the provisions of this paragraph E, shall also apply to this paragraph. Each of Lots 41-43 shall, for the purposes of this paragraph E, be managed on a separate basis. For example, annual and special charges for lots subdivided within one of these Lots 41-43 will likely be different from the charges for lots subdivided within one of the other Lots 41-43. Furthermore, the Owner of any one of Lots 41-43, or the owners of individual lots within one of these lots, upon the assent of two-thirds (2/3) of those owners, may elect to not be governed by the provisions of this paragraph E, by giving written notice to the Association.

Section 2. VARIANCES AND AMENDMENTS OF DECLARATION. The restrictive covenants set forth herein may be waived by the Design Review Committee with respect to any given Lot for the benefit of such Lot, provided that no restrictive covenant shall be waived unless the Design Review Committee shall set forth in writing its unanimous determination that such waiver is consistent with the objectives of this Declaration and is not detrimental to any Lot or to any property owned by the Association. Additionally, this Declarant may be amended by filing of record an agreement between the Declarant and all of the members of the Design Review Committee setting forth the amended portion of the Subdivision plat and the amendments to the restrictive covenants. Notwithstanding the above provisions, Article VIII of this Declaration may only be amended in accordance with the provisions of Section 4 of Article VIII hereof. In the event that, as a result of a proposed amendment to this Declaration, some part of the Common Area will be eliminated, moved or otherwise altered, then the Association shall make such conveyance of Common Area to the Declarant or otherwise as may be necessary to permit the effectuation of such proposed amendment to this Declaration.

ARTICLE VI COVENANTS FOR MAINTENANCE CHARGES INCLUDING TAXES AND ASSESSMENTS

Section 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF CHARGES. The Declarant, for each Lot owned by it hereby covenants, and each Owner by acceptance of a deed for any of the Properties is deemed to covenant and agree to pay to the Association (1) annual charges, and (2) special charges as herein provided. The annual and special charges, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such charge is made. Each such charge, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the charge became due. The personal obligation for delinquent charges shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 2. PURPOSE OF CHARGES. The charges levied by the Association shall be used for the payment of taxes, assessments or charges levied or assessed against, or on the Common Area, and for the improvements, and maintenance of the Common Area and for the provision of certain services or the procuring of certain services to the Association and Owners, including but not limited to services listed in Article V, Section 1, paragraph (B), and similar services which may be approved by Members representing two-thirds (2/3) of the votes or otherwise provided for under this Declaration or any amendment thereto. Notwithstanding the above restriction on use of funds for improvement and maintenance of the Common Area, the said funds may, to the extent of the excess of accumulated surplus over the total amount of regular charges for the preceding year, be used for capital expenditures to benefit the Common Area and fulfill the purposes of the Association.

Section 3. MAXIMUM ANNUAL CHARGES. The maximum annual charges shall be \$200.00 per Lot for the first year in which charges are made. The maximum annual charges may not be increased each subsequent year more than three (3) percent above the maximum charges for the previous year without a vote of the membership. The maximum annual charges may be increased above three (3) percent by the vote of two-thirds (2/3) of the members who are voting in person or by proxy, at a meeting duly called for this purpose. The Board of Directors may fix the annual charges at an amount not in excess of the maximum.

Section 4. SPECIAL CHARGES FOR CAPITAL IMPROVEMENTS. In addition to the annual charges, the Association may levy, in any given year, a special charge applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such charge shall have the assent of two-thirds (2/3) of the votes of the Members (voting in person or by proxy) at a meeting duly called for this purpose.

Section 5. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTION 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 4, shall be sent to all Members not less than 30 days, nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the 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 60 days following the preceding meeting.

Section 6. UNIFORM RATE OF CHARGES. Both annual and special charges, including taxes, maintenance costs and charges for other services as provided in Article V, must be fixed at a uniform rate, with each Owner being required to pay a prorata part of such charges. Notwithstanding the foregoing, Owners of unimproved Lots, shall only be required to pay one-half (1/2) of the annual charges for a Lot. Further, there shall not be any annual charge for Lots 41-43, inclusive, until such time as individual lots within these Lots are improved. Annual charges for individual lots within those Lots 41-43 shall commence for any lot on the first day of the month following the commencement of construction of a residence thereon.

Section 7. DATE OF COMMENCEMENT OF ANNUAL CHARGES: DUE DATES. There will be no charges made to any Owner until the Declarant has sold and conveyed 10 Lots or until December 31, 1989, whichever occurs first. The annual charges provided for herein shall commence as to all Lots on the first day of the month following the sale and conveyance of 10 Lots by the Declarant or December 31, 1989, whichever date occurs first. The first annual charge shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual charges against each Lot at least thirty (30) days in advance of each annual charge period. Written notice of the annual charge shall be sent to every Owner subject thereto. The Declarant or Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer setting forth whether the charges on a specified Lot have been paid.

Section 8. EFFECT OF NONPAYMENT OF CHARGES: REMEDIES OF THE ASSOCIATION. Each Owner is and shall be deemed to covenant and agree to pay to the Association the charges provided for herein, and agrees to the enforcement of the charges in the manner herein specified. In the event the Association employs an attorney or attorneys for collection of any charge, whether by suit or otherwise, or to enforce compliance with or specific performance of the term and conditions of this Declaration, or for any purpose in connection with the breach of this Declaration, each Owner agrees to pay reasonable attorney's fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner. In the event of a default in payment of any such charge when due, in which case the charge shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in any manner provided by law or in equity or without any limitation of the foregoing, by either or both of the following procedures:

A. **ENFORCEMENT BY SUIT.** The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner to enforce each such charge obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon at the greater of, the maximum legal rate per annum, or 15% per annum from the date of the delinquency, plus court costs, and reasonable attorney's fees in such amount as the Court may adjudge against the delinquent Owner.

B. **ENFORCEMENT BY LIEN.** There is hereby created a claim of lien, with power of sale, on every Lot to secure payment to the Association of any and all charges levied against any and all Owners, together with interest thereon, at the greater of, the maximum legal rate, or 15% per annum, plus Court costs and reasonable attorney's fees. At any time after ninety days after the occurrence of any default in the payment of any such charge, the Association, or any authorized representative may, but shall not be required to, make a written demand for payment to the defaulting Owner, on behalf of the Association. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien or a lien, but any number of default may be included within a single demand or claim of lien. If such delinquency is not paid within ten days after delivery of such demand, or, even without such a written demand being made, the Association may elect to file such a claim of lien on behalf of the Association against the property of the defaulting Owner. Such a claim of lien shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information:

1. The name of the delinquent Owner;
2. The legal description and street address of property against which claim of lien is made;
3. The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and reasonable attorney's fees (with any proper offset allowed);
4. That the claim of lien is made by the Association pursuant to this Declaration; and

5. That a lien is claimed against said property in an amount equal to the amount stated.

Upon recordation of a duly executed original or copy of such a claim of lien, and mailing a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the property against which such was levied. Such a lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien thereof, except only tax liens for real property taxes on any property, charges on any property in favor of any municipal or other governmental assessing unit, and the liens which are specifically described in Section 8 hereinafter. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a realty mortgage or trust deed as set forth by the laws of the State of Alabama, as they may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Owners. The association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any property. In the event such foreclosure is by action in court, reasonable attorney's fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner hereby waives any objection to the enforcement and foreclosure of this lien in this manner and also hereby expressly waives the defense of the Statute of Limitation applicable to the bringing of any suit or action thereon.

Section 8. SUBORDINATION OF LIEN TO MORTGAGES. The lien of any assessment or charge authorized herein with respect to an Owner's Lot is hereby made subordinate to the lien of any bona fide mortgage on such Owner's Lot, if, but only if, all assessment and charges levied against such Owner's Lot falling due on or prior to the date such mortgage is recorded have been paid. The sale or transfer of any Owner's Lot pursuant to a mortgage foreclosure proceeding or a proceeding in lieu of foreclosure or the sale or transfer of such Owner's Lot pursuant to a sale under power contained in a mortgage on the Lot shall extinguish the lien for assessments falling due prior to the date of such sale, transfer, or foreclosure, but the Association shall have a lien on the proceeds of such sale senior to the equity of redemption of the mortgagor. The foregoing subordination shall not relieve an Owner whose Lot has been mortgaged, of the Owner's personal obligation to pay all assessments and charges falling while he is the Owner of the Lot.

ARTICLE VII DESIGN REVIEW COMMITTEE

Section 1. ORGANIZATION, POWER OF APPOINTMENT AND REMOVAL. There shall be a Design Review Committee organized as follows:

A. **COMMITTEE COMPOSITION.** The Design Review Committee shall consist of three regular members and two alternate members; none of such members shall be required to be an architect or to meet any other particular qualifications for membership. A member need not be a member of the Board or an officer of the Association.

B. **ALTERNATE MEMBERS.** In the event of the absence or disability of one or two regular members of said Committee, the remaining regular member or members, even though less than a quorum, may designate either or both of the alternate members to act as substitutes for the absent or disabled regular member or members for the duration of such absence or disability.

C. **INITIAL MEMBERS.** The following persons are hereby designated as the initial members of the Design Review Committee:

Office No. 3:	H. G. Folmar, Jr.
Office No. 2:	Jim W. Cleveland, III
Office No. 1:	William A. Cleveland
Alternates:	Katherine Farr Conner Gloria B. Nicholson

D. **TERMS OF OFFICE.** Unless the initial members of the Design Review Committee have resigned or been removed, their terms of office shall be for the periods of time indicated below, or until the appointment of their respective successors:

1. The term of Office No. 1 shall expire December 31, 1989.
2. The term of Office No. 2 shall expire December 31, 1990.
3. The term of Office No. 3 shall expire December 31, 1991.

Thereafter the term of each Design Review Committee member appointed shall be for a period of three years or until the appointment of a successor. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members or new members who have resigned, been removed or whose terms have expired may be reappointed.

E. **APPOINTMENT AND REMOVAL.** The right to appoint and remove all regular and alternate members of the Design Review Committee at any time, shall be and is hereby vested solely in the Board, provided however, that no regular or alternate member may be removed from the Design Review Committee by the Board except by the vote or written consent of three-fourths (3/4) of all of the members of the Board.

F. **RESIGNATIONS.** Any regular or alternate member of the Design Review Committee may at any time resign from the Committee by giving written notice thereof to the Board.

G. **VACANCIES.** Vacancies on the Design Review Committee, however caused, shall be filled by the Board. A vacancy or vacancies on the Design Review Committee shall be deemed to exist in case of death, resignation or removal of any regular or alternate member.

Section 2. DUTIES. It shall be the duty of the Design Review Committee to consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof, to perform other duties delegated to it by the Board, and to carry out all other duties imposed upon it by this Declaration.

Section 3. MEETINGS AND COMPENSATION. The Design Review Committee shall meet from time to time as necessary to perform its duties hereunder. The vote or written consent of any two members, at a meeting or otherwise, shall constitute the act of the Committee unless the unanimous decision of the Committee is required by any other provision of this Declaration. The Committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. No member of the Design Review Committee who is a Member of the Association shall receive from the Association any compensation for services, provided that the Board may pay reasonable compensation to any member of the Design Review Committee who is not a Member of the Association. All regular or alternate Committee members shall be entitled to reimbursement from the Association for all reasonable expenses incurred by them in the performance of any Design Review Committee functions.

Section 4. DESIGN REVIEW COMMITTEE RULES. The Design Review Committee may, from time to time and in its sole and absolute discretion, but shall not be required to, adopt, amend and repeal, by unanimous vote or written consent, rules and regulations, to be known as "Design Review Committee Rules."

Section 5. WAIVER. The approval by the Design Review Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Design Review Committee, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specifications or matter subsequently submitted for approval.

Section 6. LIABILITY. Neither the Design Review Committee nor any member thereof shall be liable to the Association, any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, or specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, or (c) the development of any property. Without in any way limiting the generality of any of the foregoing provisions of this Section, the Design Review Committee, or any member thereof, may but is not required to, consult with or hear the view of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Design Review Committee.

ARTICLE VIII GENERAL PROVISIONS

Section 1. DECLARANT'S RIGHTS. In addition to each and every right, privilege and obligation herein provided for the Declarant, the Declarant shall also have all rights, privileges, authority and obligations of the Association or the Board, as the case may be, until the conveyance of the Common Areas and roadway system, as provided in Article V hereof.

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

Section 3. SEVERABILITY. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

Section 4. AMENDMENT. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforced 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 (20) years from the date this Declaration is recorded, after which time it shall be automatically extended for successive periods of ten (10) years. In addition to the provisions of amendment set forth in Section 2 of Article V hereof, this Declaration may be amended during the first twenty (20) years by an instrument signed by the Association and not less than ninety percent (90%) of the Owners, and thereafter by an instrument signed by the Association and not less than seventy-five percent (75) of the Owners. Any amendment must be recorded.

Section 5. VIOLATIONS AND NUISANCE. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Declarant, the Association or any Owner or Owners. However, any other provision to the contrary notwithstanding, only Declarant, the Association, the Board, or the duly authorized agents of any of them may enforce by self-help any of the provisions of this Declaration. A violation of these restrictions and covenants, or any one of them, shall not affect the lien of any mortgage now of record, or which hereafter may be placed on record upon said lots or any part thereof.

Section 6. VIOLATION OF LAW. Any violations of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation or use of the Properties is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.

Section 7. REMEDIES CUMULATIVE. Each remedy provided by this Declaration is cumulative and not exclusive.

Section 8. DELIVERY OF NOTICES AND DOCUMENTS. Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered twenty-four hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: If to the Declarant, Association, or the Design Review Committee, at P.O. Box 1551, Auburn, Alabama 36831; and if to an Owner, to the address of any Lot owned, in whole or in part, or to any other address last furnished by an Owner to the Association.

Section 9. THE DECLARATION. Deeds of conveyance of said Properties, Lots, or any part thereof, may contain the restrictions and covenants contained hereby by reference to this document, but whether or not such reference is made in any or all of said deeds, each person, entity, personal representatives, successors, transferees, or assigns, upon acquiring any interest in any Lot, shall do so subject to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences that all other restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future owners.

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed by H. G. Folmar, Jr., Jim W. Cleveland, III, and William A. Cleveland as partners of Burke Place, an Alabama general partnership.

BURKE PLACE
An Alabama General Partnership

H. G. Folmar, Jr.
Partner

Jim W. Cleveland III
Partner

William A. Cleveland
Partner

STATE OF ALABAMA

LEE COUNTY

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that William A. Cleveland, Jim W. Cleveland and H. G. Folmar, Jr., whose names as partners of Burke Place, an Alabama general partnership, are signed to the foregoing Declaration of Covenants and Restrictions, and who are known to me, acknowledged before me on this day that, being informed of the contents thereof, they, as such partners, and with full authority, executed the same on the day and year first above noted.

Given under my hand and official seal this 14th day of April, 1988.

Omra Mosier
Notary Public

(NOTARY SEAL)

MY COMMISSION EXPIRES:

MY COMMISSION EXPIRES OCT 5 1991

4702 112

AMENDMENT
DECLARATION OF COVENANTS AND RESTRICTIONS
FOR
BURKE PLACE

WHEREAS, Burke Place, an Alabama general partnership, has heretofore by instrument dated April 14, 1988, as recorded in Deed Book 1369, at Page 073, in the Office of the Judge of Probate of Lee County, Alabama, imposed certain covenants and restrictions on the lots located in the subdivision named, Burke Place, "a redivision of Lot 2", located in Auburn, Lee County, Alabama as shown by plat recorded in Book 13, at Page 70, in the Office of the Judge of Probate of Lee County, Alabama; and

WHEREAS, it is the desire of the Declarant, Burke Place, an Alabama general partnership, and the Design Review Committee, the members of which are the partners of Burke Place, to amend said declaration by adding a new Article to provide for membership in Burke Place Homeowners Association and voting rights for members of said association.

NOW, THEREFORE, in consideration of the premises, and in accordance with Section 2 of Article V of the Declaration, the undersigned do hereby amend the Declaration of Covenants and Restrictions for Burke Place by adding the following:

ARTICLE IX
MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

Section 2. Each member 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.

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed by H. G. Folmar, Jr., Jim W. Cleveland, III, and William A. Cleveland as partners of Burke Place, an Alabama general partnership, and the regular members of the Design Review Committee have also executed this document in accordance with Section 2 of Article V of the original Declaration.

Dated this 8th day of November, 1988.

BURKE PLACE
An Alabama General Partnership

H.G. Folmar, Jr.
Partner

H.G. Folmar, Jr.
Member of Design Review Committee

Jim W. Cleveland
Partner

Jim W. Cleveland
Member of Design Review Committee

William A. Cleveland
Partner

William A. Cleveland
Member of Design Review Committee

STATE OF ALABAMA
COUNTY OF LEE

I, Donna Alexander, a Notary Public in and for said County, in said State, hereby certify that H. G. Folmar, Jr., Jim W. Cleveland, and William A. Cleveland, whose names as partners of Burke Place, an Alabama general partnership, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such partners and with full authority executed the same for and as the act as of Burke Place.

Given under my hand and official seal this the 8th day of November, 1988.

(NOTARY SEAL)

Donna Alexander
Notary Public

MY COMMISSION EXPIRES:

MY COMMISSION EXPIRES OCT 5, 1991

1405-301

EXHIBIT A
TO
DECLARATION OF COVENANTS AND RESTRICTIONS
FOR
BURKE PLACE

Begin at the southwest corner of Section 21, Township 19 North, Range 26 East, Auburn, Lee County, Alabama, for a corner and starting point of the parcel herein to be described: FROM THIS STARTING POINT, thence North 00° 16' 30" West, 209.06 feet to an iron pin for a corner; thence North 89° 43' 30" East, 50.0 feet to an iron pin for a corner; thence North 00° 16' 30" West, 614.77 feet to an iron pin for a corner; thence South 89° 43' 30" West, 50.0 feet to an iron pin for a corner; thence North 00° 16' 30" West, 794.64 feet to an iron pin located on the south margin of the Western Railway of Alabama for a corner; thence North 66° 13' 02" East along the south margin of said railway for a distance of 720.89 feet to a concrete right-of-way monument; thence North 66° 15' 45" East along the south margin of said railway for a distance of 353.94 feet to an iron pin for a corner; thence South 00° 06' 10" West, 218.76 feet to an iron pin for a corner; thence South 00° 01' 40" West, 120.75 feet to an iron pin for a corner; thence South 00° 10' 20" West, 1,227.0 feet to an iron pin for a corner; thence South 65° 45' 00" West, 200.0 feet to an iron pin for a corner; thence South 00° 10' 20" West, 359.0 feet to an iron pin located on the northerly margin of Annalue Drive for a corner; thence South 65° 45' 00" West along the northerly margin of Annalue Drive for a distance of 11.74 feet to an iron pin for a corner; thence in a southwesterly direction along the curve of the northerly margin of Annalue Drive on the following chord bearings and distances (South 64° 44' 39" West, 109.78 feet; South 62° 31' 29" West, 84.52 feet; South 61° 50' 05" West, 60.36 feet; thence South 59° 23' 20" West, 153.98 feet; thence South 57° 43' 10" West, 385.35 feet to an iron pin for a corner); thence North 36° 26' 25" West, 147.25 feet to an iron pin for a corner; thence North 00° 58' 30" West, 241.0 feet to the starting point.

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