

BY-LAWS  
OF  
BURGOYNE FOREST WEST HOMES ASSOCIATION

ARTICLE I

NAME AND LOCATION

The name of the corporation is BURGOYNE FOREST WEST HOMES ASSOCIATION, hereinafter referred to as the "Association". The principal office of the corporation shall be located at 4084 University Drive, Fairfax, Virginia, but meetings of members and directors may be held at such places within the State of Virginia, County of Fairfax, as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to Burgoyne Forest West Homes Association, its successors and assigns.

Section 2. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties recorded in the Office of the Clerk of the Circuit Court of Fairfax County, Virginia.

Section 3. "Properties" shall mean and refer to that certain real property described in the "Declaration" and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the members of the Association.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area and areas dedicated as public streets.

Section 6. "Member" shall mean and refer to every person or entity who holds a membership in the Association.

Section 7. "Owner" shall mean and refer to the record owner, whether one or more persons or 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.

Section 8. "Declarant" shall mean and refer Richard D. Goodman, his successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

### ARTICLE III

#### MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

### ARTICLE IV

#### VOTING RIGHTS

The Association shall have two classes of voting membership:

Class A: Class A members shall be all those Owners as defined in Article III with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article III. When more than one person holds such interest in any Lot,

all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B: The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot in which he holds the interest required for membership by Article III; provided, that Class B membership shall cease and a Class A membership with one (1) vote for each lot in which he holds an interest shall be issued 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 January 1, 1985.

#### ARTICLE V

##### PROPERTY RIGHTS: RIGHTS OF ENJOYMENT

Section 1. Members' Easements of Enjoyment. Every member shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) The right of the Association to limit the number of guests of members at such recreational facility.
- (c) The right of the Association, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property and to acquire property encumbered by the lien or liens of the deed or deeds of trust securing improvements on said property;

(d) The right of the Association to suspend the voting rights and right to use of the Common Area and 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;

(e) The right of the Association at any time or upon dissolution 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, provided that any such dedication or transfer shall have the assent of more than two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. And upon such assent and in accordance therewith, the officers of the Association shall execute the necessary documents.

(f) The right of any public utility to acquire, without the payment of damages to the Association, easements for the construction, reconstruction, installation, repair and/or necessary maintenance of utility lines through or over any portion of the Common Areas. The foregoing shall not be construed, however, to permit any such public utility to acquire or damage any improvements situate upon the Common Areas, or other structures or installations situate thereof which would otherwise be deemed to be part of the realty, without the payment of damages, including severance or resulting damages, if any to the Association, all in amounts and in a manner now or hereafter governing proceedings for the acquisition of private property for public use by condemnation in this State.

Section 2.      Delegation of Use. Any member may delegate, in accordance with 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 member's Lot.

ARTICLE VI

BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE

Section 1.      Number. The affairs of this Association shall be managed by a Board of five (5) directors, who need not be members of the Association and such number can be changed only by amendment of the Articles of Incorporation.

Section 2.      Election. At the first annual meeting the members shall elect two directors for a term of one year, two directors for a term of two years and one director for a term of three years; and as the terms of such directors expire, new directors shall be elected for terms of three years.

Section 3.      Removal. Any directors may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4.      Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual reasonable expenses incurred in the performance of his duties.

Section 5.      Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

ARTICLE VII

MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two directors, after not less than three (3) days notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VIII

NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations

may be made from among members or non-members.

Section 2.      Election. Election to the Board of Directors shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

#### ARTICLE IX

##### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1.      Powers. The Board of Directors shall have power:

(a) To adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

(b) Suspend the voting rights and right to use of the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;

(c) To exercise for the Association all powers, duties and authority vested in or delegated to this Association not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration;

(d) To declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

(e) To employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe

their duties.

Section 2. Duties. It shall be the duty of the Board of Directors:

(a) To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members or at any special meeting, when such statement is requested in writing by one-fourth (1/4) of the Class A members who are entitled to vote;

(b) To supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;

(c) As more fully provided herein and in the Declaration:

(1) to fix the amount of the annual assessments against each Lot at least thirty (30) days in advance of annual assessment period, as hereinafter provided in Article XIII; and

(2) to send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period;

(3) to foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same.

(d) To issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of any assessment therein stated to have been paid;

(e) To procure and maintain adequate liability insurance, and to procure adequate hazard insurance on property owned by the Association;

(f) To cause all officers or employees having fiscal

responsibilities to be bonded, as it may deem appropriate; and

(g) To cause the Common Area to be maintained.

ARTICLE X

COMMITTEES

Section 1. The Association shall appoint an Architectural Control Committee as provided in the Declaration and a Nominating Committee as provided in these By-Laws. In addition, the Board of Directors may appoint other committees as deemed appropriate in carrying out its purposes, such as:

(a) A Recreation Committee which shall advise the Board of Directors on all matters pertaining to the recreational program and activities of the Association and shall perform such other functions as the Board, in its discretion, determines;

(b) A Maintenance Committee which shall advise the Board of Directors on all matters pertaining to the maintenance, repair or improvement of the Properties and shall perform such other functions as the Board, in its discretion, determines;

(c) A Publicity Committee which shall inform the members of all activities and functions of the Association and shall, after consulting with the Board of Directors, make such public releases and announcements as are in the best interests of the Association; and

(d) An Audit Committee which shall supervise the annual audit of the Association's books and approve the annual budget and statement of income and expenditures to be presented to the membership at its regular annual meeting as provided in Article XII, Section 8(d). The Treasurer shall be an ex officio Member of the Committee.

Section 2. It shall be the duty of each committee to receive complaints from members on any matter involving Association functions, duties, and activities within its field of responsibility. It shall dispose of such complaints as it deems

appropriate or refer them to such other committee, director or officer of the Association as is further concerned with the matter presented.

, ARTICLE XI

MEETINGS OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the members shall be held within one (1) year from the date of incorporation of the Association, and each subsequent regular annual meeting of the members shall be held on the same day of the same month of each year thereafter, at the hour of 8:00 P.M. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the members may be called at any time by the president or by the Board of Directors, or upon written request of the members who are entitled to vote one-fourth (1/4) of all of the votes of the Class A membership.

Section 3. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least 15 days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes of each class of membership shall

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Comments*

constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his lot.

#### ARTICLE XII

##### OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may

be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6.      Vacancies. A vacancy in any office may be filled in the manner prescribed for regular election. The officer elected to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7.      Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8.      Duties. The duties of the officers are as follows:

(a) President. The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

(b) Vice-President. The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

(c) Secretary. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve

notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

(d) Treasurer. The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

#### ARTICLE XIII

#### ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association:

- (a) Annual assessments or charges, and
- (b) Special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collections thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner

of such Lot at the time when the assessment fell due and shall not pass to his successors in title unless expressly assumed by them.

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 in the Properties and in particular for the payment of taxes and improvements and maintenance of services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area.

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 annual assessment shall be Sixty and No/100 Dollars (\$60.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot, the maximum annual assessment may be 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 for the Washington D.C. standard metropolitan area (published by the Department of Labor, Washington, D.C.) for the year ending the preceding July 1; provided, however, that any increase in an annual assessment as provided hereinabove shall not exceed five percent (5%) of the preceding annual assessment.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot, the maximum annual assessment may be increased above that established by subparagraph (a) above by a vote of the members for the next succeeding three (3) years, and thereafter for each succeeding period of three (3) years, provided that any such change shall have the assent by a vote of more than two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

9/16  
2/3 vote of membership  
more than 2/3

*Board can set fees if Board so dictate*

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

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, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a 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 more than two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

Section 5. Rate of Assessment. Both annual and special

assessments shall be fixed at a uniform rate for all Lots not owned by a Declarant. Any Lots owned by a Declarant shall be assessed at one-fourth (1/4) of the rate of lots not owned by a Declarant so long as the Declarant has Class B membership status.

Section 6. Quorum for any Action Authorized Under

Sections 3 and 4. At the first meeting called, as provided in Sections 3 and 4 hereof, the presence at the meeting of members or proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirements set forth in Sections 3 and 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments:

Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to an Owner. 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 sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Remedies of the Association in the Event of

Default. If any 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 eight percent (8%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against the property, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. 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.

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 trust or mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a foreclosure or any

proceeding in lieu thereof shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments that thereafter become 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 public authority; (b) the Common Area; (c) all properties owned by charitable or other organizations 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 XIV

##### BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

#### ARTICLE XV

##### CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: BURGoyNE FOREST WEST HOMES Association, a Virginia Corporation.

#### ARTICLE XVI

##### AMENDMENTS

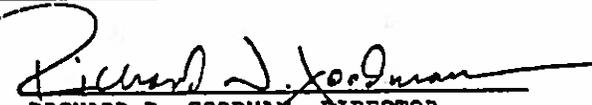
These By-Laws may be amended, at a regular or special meeting of the members, by a vote of the majority of a quorum of members present in person or by proxy.

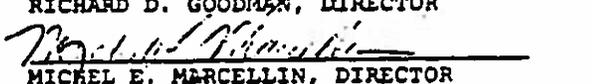
ARTICLE XVII  
MISCELLANEOUS

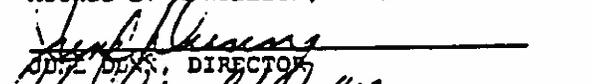
Section 1. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

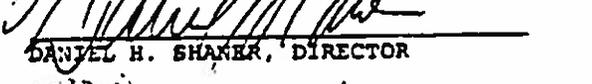
Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

IN WITNESS WHEREOF, we, being all of the directors of the BURGoyNE FOREST WEST HOMES ASSOCIATION, have hereunto set our hands this 2<sup>nd</sup> day of June, 1978.

  
 \_\_\_\_\_  
 RICHARD D. GOODMAN, DIRECTOR

  
 \_\_\_\_\_  
 MICHEL E. MARCELLIN, DIRECTOR

  
 \_\_\_\_\_  
 DANIEL H. SHANER, DIRECTOR

  
 \_\_\_\_\_  
 ROBERT J. MOYE, DIRECTOR

CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting secretary of the BURGoyNE FOREST WEST HOMES ASSOCIATION, a Virginia corporation; and

THAT the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof, held on the 2<sup>nd</sup> day of June, 1978.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 2<sup>nd</sup> day of June, 1978.

  
 Secretary

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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS made this 21st day of November, 1977, by RICHARD D. GOODMAN, hereinafter known as "Declarant" and BURGUYNE FOREST WEST HOMES ASSOCIATION, a Virginia non-stock corporation, hereinafter known as "Association."

WHEREAS, Declarant is the sole owner of certain real property located in Springfield District, Fairfax County, Virginia, known as BURGUYNE FOREST WEST, and as the same is duly dedicated, platted and recorded immediately prior hereto among the land records of Fairfax County, Virginia; and as more particularly described by metes and bounds on Schedule "A" and "B" attached thereto and incorporated therein by reference; and

WHEREAS, Declarant desires to create thereon a residential community with permanent open spaces and other common facilities for the benefit of the community and to provide for the preservation of the values and amenities of said community and such other area as may be subjected to this Declaration by Declarant, its successors or assigns, and for the maintenance of said open spaces and other facilities; and, to this end, desires to subject the real property as hereinafter described to the covenants, restrictions, easements, conditions, charges and liens hereinafter set forth; it being intended that the easements, covenants, restrictions and conditions shall run with said real property and shall be binding on all persons or entities having or acquiring any right, title or interest in said real property or any part thereof, and shall inure to the benefit of each owner thereof; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities of said community to create an agency which shall be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and

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Arling, Virginia 22030

restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated under the laws of the State of Virginia, as a non-stock corporation, BURGUYNE FOREST WEST HOMES ASSOCIATION, for the purposes of exercising the functions aforesaid;

NOW, THEREFORE, Declarant, for and in consideration of the premises and the covenants contained herein, does hereby grant, establish and convey to each Owner of a Lot mutual non-exclusive rights, privileges and easements of enjoyment on equal terms in common with all other owners of Lots, in and to the use of the Common Area; and FURTHER, does hereby declare the real property described in the Deed of Dedication and Subdivision recorded immediately prior hereto and designated as Lots One (1) through Forty-one (41), inclusive, Parcels "A" and "B", Section ONE (1), BURGUYNE FOREST WEST, to be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, conditions, charges and liens (hereinafter referred to as "Covenants and Restrictions"), hereinafter set forth, which are for the purpose of protecting the value and desirability of, and shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to BURGUYNE FOREST WEST HOMES ASSOCIATION, its successors and assigns.

Section 2. "Properties" shall mean and refer to certain real property hereinabove described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

HAZEL  
BICKENBOM & HANES  
Attorneys at Law  
P. O. Box 347  
Fairfax, Virginia 22030

Section 3. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the members of the Association.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision plat of the Properties with the exception of the Common Area, and areas dedicated as public streets.

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 persons or 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.

Section 7. "Declarant" shall mean and refer to RICHARD D. GOODMAN, his successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

## ARTICLE II

### MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

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ARTICLE III  
VOTING RIGHTS

The Association shall have two classes of voting membership:

Class A: Class A members shall be all those Owners as defined in Article II with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article II. When more than one person holds such interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B: The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot in which he holds the interest required for membership by Article II; provided, that Class B membership shall cease and a Class A membership with one (1) vote for each lot in which he holds an interest shall be issued 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 January 1, 1985.

ARTICLE IV  
PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment. Every member shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) The right of the Association to limit the number of guests of members at such recreational facilities;

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(c) The right of the Association, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property and to acquire property encumbered by the lien or liens of the deed or deeds of trust securing improvements on said property;

(d) The right of the Association to suspend the voting rights and right to use of the Common Area and 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;

(e) The right of the Association at any time or upon dissolution 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, provided that any such dedication or transfer shall have the assent of more than two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. And upon such assent and in accordance therewith, the officers of the Association shall execute the necessary documents.

(f) The right of any public utility to acquire, without the payment of damages to the Association, easements for the construction, reconstruction, installation, repair and/or necessary maintenance of utility lines through or over any portion of the Common Areas. The foregoing shall not be construed, however, to permit any such public utility to acquire or damage any improvements situate upon the Common Areas, or other structures or installations situate thereof which would otherwise be deemed to

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be part of the realty, without the payment of damages, including severance or resulting damages, if any to the Association, all in amounts and in a manner now or hereafter governing proceedings for the acquisition of private property for public use by condemnation in this State.

Section 2. Delegation of Use. Any member may delegate, in accordance with 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 member's Lot.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, 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 agree to pay to the Association:

(a) Annual assessments or charges, and

(b) Special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collections thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment together with such interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due and shall not pass to his successors in title unless expressly assumed by them.

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 in the Properties and in particular for the payment of

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taxes and improvements and maintenance of services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area.

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 annual assessment shall be Sixty Dollars (\$60.00) per lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot, the maximum annual assessment may be 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 for the Washington, D.C. standard metropolitan area (published by the Department of Labor, Washington, D. C.) for the year ending the preceding July 1; provided, however, that any increase in an annual assessment as provided hereinabove shall not exceed five percent (5%) of the preceding annual assessment.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot, the maximum annual assessment may be increased above that established by subparagraph (a) above by a vote of the members for the next succeeding three (3) years and thereafter for each succeeding period of three (3) years, provided that any such change shall have the assent by a vote of more than two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

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

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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, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction repair or replacement of a capital improvement upon the Common Area, including the fixtures and personal property related thereto, provided that any such assessment shall have the assent of more than two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

Section 5. Rate of Assessment. Both annual and special assessments shall be fixed at a uniform rate for all Lots not owned by a Declarant. Any Lots owned by a Declarant shall be assessed at one-fourth (1/4) of the rate of lots not owned by a Declarant so long as the Declarant has Class B membership status.

Section 6. Quorum for any Action Authorized Under Sections 3 and 4. At the first meeting called, as provided in Sections 3 and 4 thereof, the presence at the meeting of members or proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirements set forth in Sections 3 and 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

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Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to an Owner. 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 sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Remedies of the Association in the Event of Default. If any 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 eight percent (8%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against the property, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. 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.

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 trust or mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale

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or transfer of any Lot pursuant to a foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter become 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 public authority; (b) the Common Area; (c) all properties owned by charitable or other organizations 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

RESTRICTIVE COVENANTS

1. The properties shall be used for residential purposes only. The Declarant, however, for itself, its successors and assigns, reserves the right, prior to sale and transfer of any lot, pursuant to a recorded resubdivision plat, to alter, amend and change any lot lines or subdivision plan. No building shall be erected, altered, placed or permitted to remain on any lot other than one single-family dwelling and an approved outside storage building for use solely by the occupant. No residence, or any part thereof, nor any outbuildings related thereto, shall be used for the conduct of any business, commerce, or profession. Except for those related to real estate sales and construction, no sign, advertisement or message shall be displayed or published which offers or implies commercial or professional services, or which might constitute any other kind of business solicitation in, or from, any residence or residential property. Notwithstanding the foregoing during the construction and/or sales period,

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real estate sales and construction offices, displays, signs and special lighting may be erected, maintained and operated by Declarant, or its assigns, on any part of the property and on or in any building or structure now or hereafter erected thereon.

2. No clothing, laundry or wash shall be aired or dried on any portion of the Lots in any area other than in the rear yards of the Lots.

3. No tree, hedge or shrub planting shall be maintained in such manner as to obstruct sight lines for vehicular traffic.

4. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done or placed thereon which may become an annoyance or nuisance to the neighborhood. Property owners shall, at all times, maintain their property and all appurtenances thereto in good repair and in a state of neat appearance. Except for flower gardens, shrubs and trees which shall be neatly maintained, all open lot areas shall be maintained as lawns and all lawn areas shall be kept mowed and shall not be permitted to grow to a height in excess of three (3) inches.

5. No sign of any kind that is illuminated and/or larger than two square feet shall be displayed to the public view on any Lot, except for temporary signs erected in connection with the development, construction, lease, or sale of improved Lots.

6. No horse, pony, cow, chicken, pig, hog, sheep, goat or other domestic or wild animal shall be kept or maintained on any Lot; however, common household pets, such as dogs and cats, may be kept or maintained, provided that they are not kept, bred or maintained for commercial purposes and do not create a nuisance or annoyance to surrounding Lots or the neighborhood.

7. Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection. No accumulation or storage or litter, new or used building materials or trash of any other kind shall be permitted on any Lot. Trash,

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refuse or waste materials shall not be burned, and incinerators manufactured or designed for the burning of trash, garbage, or waste materials shall not be placed or operated on the property.

8. 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 Board of Directors of the Association, or by an Architectural Control Committee appointed by the Board.

9. No structure or addition to a structure shall be erected, placed or altered on any lot until the plan and specification, including elevation, material, color and texture and a site plan showing location of improvement with grading modifications shall be filed with and approved in writing as to harmony of external design, color, and location in relation to surrounding structures and topography by the Board of Directors of the Association or an Architectural Control Committee appointed by the Board. Structure shall be defined to include any building or portion thereof, fence, pavement, driveway or appurtenances to any of the aforementioned. Declarant shall be exempt from this restriction.

10. No junk vehicle, or commercial or industrial vehicles such as, but not limited to, moving vans, trucks, tractors, trailers, vans, wreckers, hearses, compressors, concrete mixers, or buses shall be regularly or habitually parked in front of any lot nor upon any lot.

11. The Declarant, 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 of Covenants, Conditions and Restrictions. Failure by the Declarant, Association or by any Owner to enforce any

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covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

13. The Architectural Control Committee shall consist of the Directors of the Association, or a committee of three persons appointed by them. Applications for committee approval shall be in writing. Approval or disapproval by the Committee shall also be in writing. Failure of the Committee to approve or disapprove a request within thirty (30) days shall be construed as Committee approval of the request.

14. No temporary building, except construction or sales offices, shall be maintained on any Lot without the approval of the Association or its Architectural Control Committee.

#### ARTICLE VII

##### EASEMENTS

Section 1. There is hereby granted a blanket easement to the Association, its directors, officers, agents, and employees, to any Manager employed by or on behalf of the Association, and to all policemen, firemen, ambulance personnel and all similar persons to enter upon the Properties in the event of emergencies, in the performance of governmental functions, and in the exercise of the functions provided by this Declaration and the Articles, By-Laws and Rules of the Association.

Section 2. The rights accompanying the easements provided by Section 1 of this Article shall be exercised only during reasonable daylight hours and then whenever practicable only after advance notice to, and with the permission of, any Owner or tenant directly affected thereby when not an emergency situation or a governmental function.

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Section 3. The Declarant, its agents and employees, shall have a right of ingress and egress over the Common Area as required for construction and development of the Properties.

Section 4. Easement for Utilities, Etc. There shall be and is hereby reserved to the Declarant a perpetual and nonexclusive easement over any Lot and/or Common Area for the purpose of installing, repairing and/or maintaining utility lines of any sort including, but not limited to, storm drains, sanitary sewers, gas lines, electric lines and/or cables, water lines, telephone lines and the like.

Section 5. Easement for Landscaping and Related Purposes. There shall be and is hereby reserved to the Declarant a perpetual and nonexclusive easement over all Lots, or any Common Area, for a distance of fifteen (15) feet behind any Lot line which parallels a street (whether public or private) for the purpose of erecting and maintaining street intersection signs, directional signs, temporary promotional signs, entrance features and/or "theme areas", light, stone, wood, or masonry wall features and/or related landscaping.

#### ARTICLE VIII

##### GENERAL PROVISIONS

Section 1. Enforcement. The Declarant, Association, or any Owner shall have the right to enforce, by an proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or thereafter imposed by the provisions of this Declaration. Failure by the Declarant, Association or by any Owner to enforce any right, provision, covenant, or condition which may be granted by this Declaration shall not constitute a waiver of the right of the Association or an Owner to enforce such right, provision, covenant, or

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condition in the future. All rights, remedies and privileges granted to the Declarant, Association or any Owner pursuant to any term, provision, covenant or condition of this Declaration shall be deemed to be cumulative, and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such privileges as may be granted to such party by this Declaration, or at law or in equity.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. 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 (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended in whole or in part, provided that any such amendment during the first twenty (20) year period shall have the assent of at least ninety percent (90%) of the Lot Owners, and thereafter any amendment shall have the assent of seventy-five percent (75%) of the votes of the Lot Owners, at a meeting duly called for this purpose, written notice of which shall be sent to all Lot Owners not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. Any amendment must be properly executed and acknowledged (in the manner required by law for the execution and acknowledgment of deeds) by the Association

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and recorded among the land records of Fairfax County, Virginia.

Section 4. Annexation of Additional Properties.

(a) The Association may, at any time, annex additional areas and provide for maintenance, preservation and architectural control of residence Lots, and so add to its membership under the provisions of Article II, provided that any such annexation shall be authorized at a duly held meeting at which a quorum is present by the assent of more than two-thirds (2/3) of each class of members; and

(b) If within ten (10) years of the date of incorporation of this Association, the Declarant should develop additional lands within that certain tract acquired by the Declarant by Deeds recorded in Deed Book 4383, at Page 249 and in Deed Book 4383, at Page 252 of the land records of Fairfax County, Virginia, such additional land may be annexed to said Properties without the assent of the Association.

Section 5. Preservation of Common Area. Common Area or open space not contained in Lots and streets shall not be denuded, defaced or otherwise disturbed in any manner at any time without the approval of the appropriate County departments and in concurrence with the County Planning Engineer.

IN WITNESS WHEREOF, BURGOYNE FOREST WEST HOMES ASSOCIATION, have caused this DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS to be executed in its incorporated names, and its corporate seal to be hereto affixed and duly attested by the Secretary; and

WITNESS the following signature and seal:

*Richard D. Goodman* (SEAL)  
RICHARD D. GOODMAN

BURGOYNE FOREST WEST HOMES ASSOCIATION  
By: *Richard D. Goodman*  
President

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Attorneys at Law  
P. O. Box 347  
Fairfax, Virginia 22030

(Corporate Seal)  
ATTEST:  
*Michel J. M... ..*  
Secretary

SCHEDULE A

DESCRIPTION OF PORTIONS OF THE LAND OF RICHARD D. GOODMAN  
SPRINGFIELD DISTRICT  
FAIRFAX COUNTY, VIRGINIA

BEGINNING at a point in the northerly line of POHICK ROAD (Route #641),  
said point being the southwesterly corner of THE LAND OF GREEN;

THENCE running with the northerly line of POHICK ROAD the following courses  
and distances:  
S 86° 03' 18" W 67.82 feet to a point, S 82° 50' 22" W 157.04 feet to a point  
and S 81° 04' 17" W 224.66 feet to a point, said point being the southeasterly  
corner of THE LAND OF POPOVICH;

THENCE departing the northerly line of POHICK ROAD and running with the  
easterly line of POPOVICH and continuing with the easterly line of THE LAND  
OF GREEN N 13° 13' 46" W 608.61 feet to a point;

THENCE departing the easterly line of GREEN and running through THE LAND  
OF GOODMAN the following courses and distances:  
N 55° 02' 10" E 227.17 feet to a point, N 76° 46' 14" E 44.01 feet to a point,  
S 58° 13' 46" E 66.08 feet to a point, S 13° 13' 46" E 62.82 feet to a point  
and N 76° 46' 14" E 208.43 feet to a point in the westerly line of THE LAND  
OF GREEN;

THENCE running with the westerly line of GREEN S 07° 22' 57" E 630.72  
feet to the point of BEGINNING CONTAINING 7.1689 ACRES.

SCHEDULE B

BEGINNING at a point in the southerly line of THE LAND OF FOUSE AND BILD, INC., said point being the northwesterly corner of THE LAND OF DE LUCA;

THENCE departing the southerly line of FOUSE AND BILD, INC. and running with the westerly line of DE LUCA S09° 48' 58" E 680.00 feet to a point;

THENCE departing the westerly line of DE LUCA and running through THE LAND OF GOODMAN S82° 02' 17" W 630.26 feet to a point and continuing through THE LAND OF GOODMAN and with the easterly line of THE LAND OF POOLE N 09° 51' 33" W 655.48 feet to a point in the southerly line of THE LAND OF BLESSLEY, said point being the northeasterly corner of POOLE;

THENCE running with the southerly line of BLESSLEY and continuing with the southerly lines of THE LANDS OF FLEMING and FOUSE AND BILD, INC. N 79° 48' 30" E 630.44 feet to the point of BEGINNING CONTAINING 8.6601 ACRES.

This instrument with certificate annexed,  
admitted to record-Office of Circuit Court

Fairfax County, Va. FEB 24 1978 at 2:58 p

Tested: *Janna E. Hooper* Clerk

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STATE OF VIRGINIA  
COUNTY OF FAIRFAX, to-wit:

I, the undersigned Notary Public, in and for the County and State aforesaid, whose commission expires on the 18<sup>th</sup> day of JANUARY, 1981, do hereby certify that RICHARD D. GOODMAN, whose name is signed to the foregoing Declaration of Covenants, Conditions and Restrictions, has personally acknowledged the same before me in my State and County aforesaid.

GIVEN under my hand and seal this 21<sup>st</sup> day of NOVEMBER, 1977.

*Michel Ante Marshall*  
Notary Public

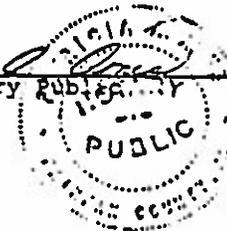


STATE OF VIRGINIA  
COUNTY OF FAIRFAX, to-wit:

I, the undersigned Notary Public, in and for the County and State aforesaid, whose commission expires on the 31<sup>st</sup> day of Nov, 1981, do hereby certify that Richard D Goodman and Michelle E. Proceller, whose names are signed to the foregoing Declaration of Covenants, Conditions and Restrictions, as President and Secretary, respectively, of BURGoyNE FOREST WEST HOMES ASSOCIATION, have acknowledged the same before me in my State and County aforesaid to be the act and deed of said corporation.

GIVEN under my hand and seal this 31<sup>st</sup> day of November, 1977.

*Patricia A. Proceller*  
Notary Public



HAZIL,  
HECKMORN & MANIS  
Attorneys at Law  
P. O. Box 347  
Chesapeake, Virginia 23026

AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS AMENDMENT AGREEMENT made this 24<sup>th</sup> day of JULY, 1978, by RICHARD D. GOODWIN, party of the first part; and BURGoyNE FOREST WEST HOMES ASSOCIATION, a Virginia non-stock corporation, hereinafter referred to as "Association", party of the second part.

W I T N E S S E T H :

WHEREAS, the party of the first part subjected Lots One (1) through Forty-One (41), inclusive, and Parcels "A" and "B", Section One (1), Burgoyne Forest West to the covenants and restrictions contained in the Declaration of Covenants, Conditions and Restrictions dated November 21, 1977 and recorded in Deed Book 4815, at page 760, of the land records of Fairfax County, Virginia; and

WHEREAS, the parties hereto agree that it is in the best interest of the Burgoyne Forest West Subdivision to amend the Restrictive Covenants of the Declaration as hereinafter provided; and

WHEREAS, the Declaration of Covenants, Conditions and Restrictions provides in Article VIII, Section J, for amendment by an instrument duly recorded among the land records of Fairfax County, Virginia, and executed by not less than ninety percent (90%) of the Lot Owners; and

WHEREAS, the party of the first part is the sole owner and proprietor of all the lots in the subdivision, having acquired title thereto by Deeds recorded in Deed Book 4383, at Page 249, and in Deed Book 4303, at Page 252, of the land records of Fairfax County, Virginia.

NOW, THEREFORE, in consideration of the promises and other good and valuable consideration, the receipt of which is hereby acknowledged, the party of the first part, together

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Arling, Virginia 22200

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with the party of the second part which joins herein to acknowledge its consent to this amendment, does hereby amend the Declaration of Covenants, Conditions and Restrictions dated November 21, 1977, and recorded in Deed Book 4815, at Page 760, of the aforesaid land records by addition of the following section to Article VIII, entitled General Provisions:

Section 6. FHA/VA Approval. After initial approval of the Lots for FHA or VA financing for so long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration.

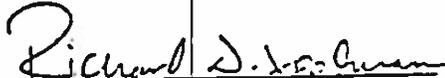
a) Annexation of additional properties except the land within that certain tract acquired by the Declarant by Deeds recorded in Deed Book 4383, at Page 249 and in Deed Book 4383, at Page 252, among the land records of Fairfax County, Virginia;

b) Dedication of Common Area; and

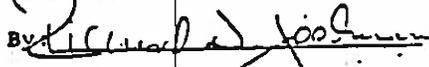
c) Amendment of the Declaration of Covenants, Conditions and Restrictions.

It is understood and agreed that except as herein amended, all terms and provisions of the Declaration of Covenants, Conditions and Restrictions shall remain in full force and effect and nothing contained herein shall be deemed or construed to impair or affect the validity of the Declaration.

WITNESS the following signatures and seals:

  
RICHARD D. GOODMAN

BURGOYNE FOREST WEST  
HOMES ASSOCIATION

By 

STATE OF VIRGINIA  
COUNTY OF FAIRFAX, to-wit:

I, the undersigned Notary Public, in and for the State and County aforesaid, whose commission expires on the 28<sup>th</sup> day of January, 1981, do hereby certify that RICHARD D. GOODMAN, whose name is signed to the foregoing, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

HAZEL  
SCHEIDT & MATHEIS  
Attorneys at Law  
P. O. Box 347  
Alex, Virginia 22030

**BURGOYNE FOREST WEST HOMES ASSOCIATION**

**POLICY RESOLUTION NO. 95-1**

**(Policies and Procedures Relative to the Collection  
of Routine and Delinquent Assessments)**

WHEREAS, Article IX, Section 1 of the Bylaws empowers the Board of Directors to set policies and to adopt Rules and Regulations for the Association;

WHEREAS, Article XIII, Section 1 of the Bylaws personally obligates each lot owner to pay an annual assessment to fund the common expenses of the Association; and

WHEREAS, the Board of Directors deems it necessary and in the best interest of the Association to establish orderly procedures for the billing and collection of assessments.

NOW, THEREFORE, BE IT RESOLVED THAT the following assessment procedures be adopted:

**I. ROUTINE COLLECTIONS**

- A. All quarterly installments of the annual assessment shall be due and payable on the first day of the applicable quarter ("Due Date").
- B. The Board shall mail a notice to every lot owner to inform the lot owner of the amount of the lot owner's fee; however, no lot owner will be excused of the obligation to pay the assessment if notice is not received. Each lot owner is under a legal duty to seek out information from the Association about the assessment if the notice is not received.
- C. Non-resident lot owners must furnish the Board with a telephone number and address where they can be contacted; otherwise, all notices shall be sent to the property address within the Association and members shall be responsible for the information contained therein.
- D. Questions regarding the assessment may be directed to the Association's Treasurer, who is currently Robert Morgan, (703) 455-2569.

**II. REMEDIES FOR NON-PAYMENT OF ASSESSMENTS**

- A. Late Charge - Any installment of the assessment which is not fully paid to the Association within 15 days of the Due Date shall be considered delinquent and a late charge in the amount of \$5.00 shall be posted to the

account. Additional late charges in the amount of \$5.00 shall be posted to the account every 30 days thereafter until the installment and all associated late charges are fully paid.

- B. Returned Check Charge - If the Association receives a check from a member which fails to clear the lot owner's account, an administrative fee of \$20.00 may be posted to the account.
- C. Acceleration and Suspension of Privileges - Whenever any lot owner fails to pay any portion of the assessment, the following action may be taken by the Board:
1. The entire balance of the annual assessment may be accelerated and declared due in full; a lien in the accelerated amount may be recorded against the title of the lot; and/or a lawsuit may be filed against the lot owner in the Fairfax County Courts.
  2. The Board may suspend a lot owner's privileges and benefits of membership in the Association. If imposed, the suspension shall continue until payment in full on the account is received by the Board of Directors. Such suspension may include, but is not limited to, revocation of parking privileges. The lot owner shall be responsible for all costs which the Association incurs while effectuating the suspension or reinstatement of privileges and benefits of membership.
- D. Method of Crediting Payments - Payments received by the Association from delinquent lot owners shall be credited in the following order of priority, as applicable:
1. Any legal fees or costs of collection;
  2. Late charges and interest;
  3. All other charges and fees incurred by the Association as a result of any violation by a member, his family, employees, agents, tenants or licensees of the regulations of the Association;
  4. Any and all special assessments; and
  5. The monthly assessment for that lot.

**III. ASSISTANT SECRETARY**

A. The Board of Directors hereby appoints Juan R. Cardenas and Mitchell N. Roth, counsel for the Association, as Assistant Secretaries for the purpose of signing Memoranda of Lien.

This Resolution was duly adopted by the Board of Directors this 13<sup>th</sup> day of June, 1995.

BURGOYNE FOREST WEST HOMES  
ASSOCIATION

By: Joseph A. Monte  
Joseph Monte, President

**BURGOYNE FOREST WEST HOMES ASSOCIATION**

**POLICY RESOLUTION NO. 95-2**

**(Creation of Procedures to Ensure  
Due Process in Enforcement Cases)**

WHEREAS, the Virginia Property Owners' Association Act provides the Board of Directors with the power to assess monetary charges against members of the Association who are responsible for violations of the rules and regulations of the Association;

WHEREAS, the Virginia Property Owners' Association Act requires the Board of Directors to formally adopt and publish a written resolution to enact the statutory power to assess monetary charges against members for violations of the rules and regulations of the Association; and

WHEREAS, for the benefit and protection of all of the members of the Association, the Board of Directors deems it desirable to formally adopt a resolution to enact the statutory power to assess monetary charges and to establish a procedure for enforcement of the rules and regulations of the Association which are consistent with principles of due process and Virginia law.

NOW, THEREFORE, BE IT RESOLVED THAT the following procedures to ensure due process in enforcement cases are enacted:

**I. ENFORCEMENT STEPS**

- A. On behalf of the Association, the Board of Directors may undertake enforcement action upon its own detection of a violation of any rules and regulations of the Association or upon its confirmation of a violation reported by any source. At the discretion of the Board of Directors, initial enforcement action may take the form of verbal or informal written notification to the offending member.
- B. When informal notification is not elected or proves unsuccessful, the Board of Directors may issue a formal notice in writing. The formal notice shall be delivered by hand or mailed by registered or certified mail, return receipt requested, to the member at the member's address listed on the records of the Association, and to the property address, if different. NOTIFICATION WILL BE DEEMED EFFECTIVE IF ANY MEMBER FAILS OR REFUSES TO SIGN FOR ANY REGISTERED OR CERTIFIED MAILING FROM THE ASSOCIATION.
- C. Formal written notice to the member will generally advise the member of the nature of the offense, the citation of the specific provision within the

Association's governing documents which has allegedly been violated, the specific remedy required, and the number of days in which corrective action must be completed in order to preclude the possible imposition of a monetary charge.

- D. When formal written notice does not result in correction of the violation, the Board of Directors may impose monetary charges against the offending member. The decision shall be made by the Board of Directors at a duly convened meeting, and the decision shall be recorded in the minutes.

## II. NOTICE AND HEARING GUIDELINES

Before the monetary charge may be made legally effective, the member shall be informed in writing of his/her right to request a hearing to contest the citation or the imposition of the monetary charge. The following guidelines apply to the notice and hearing procedure:

- A. A written notice delivered by hand or mailed by registered or certified mail, return receipt requested from the Board of Directors to the member shall advise the member of his/her right to contest the monetary charge at a hearing before the Board of Directors. Such notice will request the member to confirm in writing by a certain date his/her desire for a hearing to contest the monetary charge. The Board of Directors shall set all hearing dates at its discretion.
- B. WHEN NO RESPONSE IS RECEIVED FROM THE MEMBER BY THE DATE WHEN THE MEMBER MUST CONFIRM HIS/HER REQUEST FOR HEARING, OR WHEN THE MEMBER REQUESTS A HEARING BUT FAILS TO ATTEND THE HEARING WITHOUT PROVIDING REASONABLE AND SATISFACTORY EXPLANATION, THE MEMBER SHALL BE DEEMED TO HAVE WAIVED THE RIGHT TO REQUEST A HEARING. THE BOARD OF DIRECTORS SHALL NOT BE REQUIRED TO CONDUCT A HEARING UNLESS THE MEMBER CONFIRMS HIS/HER INTENTION TO ATTEND THE HEARING IN WRITING, AND THE BOARD OF DIRECTORS MAY IMPOSE A MONETARY SANCTION IN THE ABSENCE OF THE MEMBER.
- C. When hearings are conducted, the Board will provide the member with a reasonable amount of time to present any and all defenses to the alleged violation.
- D. Following such hearing, the Board may meet in executive session to discuss whether satisfactory proof of the alleged violation exists, and, if so, whether monetary charges should be levied.

### III. ENFORCEMENT REMEDIES

When the determination of the Board of Directors is unfavorable to the member, the Board will undertake the administrative actions required to effect a charge as an assessment against the member's lot. Monetary charges may not exceed \$50.00 for a single offense or \$10.00 per day for any offense of a continuing nature.

The Board of Directors shall use the following definitions:

- A. Single offense: A one-time act or omission by a member (or his family, tenant, guest or invitee) determined by the Board of Directors to constitute a violation of any provision of the Association's rules and regulations. Members shall be legally responsible to ensure that their tenants, guests, or invitees comply with the Association's regulations.
- B. Continuing Offense: The failure of a member (or his family, tenant, guest or invitee) to rectify an act or omission determined by the Board of Directors to constitute a violation of any provision of the Association's rules and regulations for more than one day after receipt of any written notice from the Board of Directors, or the reoccurrence of a single offense within six months of the date of the receipt of the written notice of the imposition of monetary charges for the single offense. Daily charges for continuing offenses may accrue up to the date when the member notifies the Board of Directors in writing that correction of the violation has occurred (subject to later confirmation by the Board of Directors). If the correction of a continuing offense has been confirmed by the Board, the monetary charge levied against the member's lot through the day of correction will remain in place.
- C. Applicability: The procedures outlined in this Resolution may be applied to all offenses of legal restrictions of the Association, but do not preclude the Association from exercising other enforcement procedures and remedies authorized by the Association's legal documents, including, but not limited to, suspension of privileges, initiation of suit or self help remedies.

The effective date of this Resolution shall be June 13, 1995.

I hereby certify that this Policy Resolution was duly  
adopted by the Board of Directors on June 13, 1995.

BURGOYNE FOREST WEST HOMES  
ASSOCIATION

By: Joseph A. Monte  
Joseph Monte, President

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The association may impose and collect a charge reflecting the actual cost of the preparation of the disclosure packet, but shall not exceed ten cents per page for copying costs, and the total cost may not exceed \$100. The association is legally bound by its statements in the packet regarding 1) status of the assessment account and, 2) violations of architectural guidelines on the property. If the association fails to provide the packet on time, it will likely be unable to collect delinquent assessments attributable to the seller. The purchaser cannot be held accountable for actions and violations of the former owner. If the seller is financially harmed due to the association's failure to provide the packet on time, the association may also be liable for damages of up to \$500. Sample forms for requesting a disclosure packet are at the end of this chapter.<sup>2</sup>

In 1995, section 55-516.2 was added to the Act to empower an association to negotiate with local governments for monetary awards when the association's common area is taken or damaged by eminent domain. This provision also stops individual members from contesting the association's (negotiation) actions in such matters.<sup>3</sup> The Property Owners Association Act is available from the Virginia Real Estate Board and in the reference section of the County Public Libraries. It can also be downloaded from the Internet at <http://leg1.state.va.us/000/src.htm> (enter 55-508 in the search window, press submit or enter, and click the same section number which is displayed as a link).

Burgoyne Forest West Home Owners Association  
Architectural Review Committee (ARC)  
PO Box 2488 Springfield VA 22152  
bfwha@hotmail.com

**Application for Work Activity Approval**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Lot Number: \_\_\_\_\_

Telephone: \_\_\_\_\_

Type of Home: \_\_\_\_\_

Date Work is Scheduled to Begin: \_\_\_\_\_

Date of Anticipated Completion: \_\_\_\_\_

Describe in detail the work to be performed. Include type and color of siding, windows, or doors:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Blueprints, brochures, or legible drawings must accompany this application in order for the ARC to consider approval. All structures must be inspected by Fairfax County Government upon completion.**

Contractor/Company Name: \_\_\_\_\_

Contractor/Company Address: \_\_\_\_\_

Contractor/Company Telephone: \_\_\_\_\_

**To be completed by the ARC**

Approved By: (Print name and title) \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_