

*Map: Hurricane Creek Subd
C/O City 1/27/99
Sheet No. 3142-725*

PREPARED BY:
BURKE CONSTRUCTION
620 HIDDEN FOREST DR.
CHATTANOOGA, TN 37421

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Hamilton County Tennessee

RESTRICTIVE COVENANTS

HURRICANE MOUNTAIN SUBDIVISION

**LOTS 1 THRU 19 AND LOT 326 PER PLAT BOOK 59, PAGE 383,
AND LOT 328 SHELTON'S ADDITION TO HURRICANE CREEK ESTATES UNIT VIII
PER PLAT BOOK 59, PAGE 99,
IN THE REGISTER'S OFFICE OF HAMILTON COUNTY, TENNESSEE.**

WHEREAS, the undersigned, PHILIP C. BURKE and wife NEKOLIA S. BURKE declaring that they are the lawful owners in fee simple of all Lots of HURRICANE MOUNTAIN SUBDIVISION in Hamilton County, Tennessee, as above set out in the title to this instrument; and,

WHEREAS, it is the plan of the Developer (Philip C. Burke) to devote the said lots in said Subdivision to restricted residential purposes;

NOW, THEREFORE, in consideration of the premises, and for the protection of the present owners, as well as the future purchasers of Lots in said subdivision, this declaration and agreement is made:

Each and every conveyance of any one of said Lots shall be subject to conditions, reservations covenants and agreements, which will run with the land, as follows:

(1) All of said lots in said subdivision shall be, and be known and described as, residential lots, and no structure shall be erected, altered, placed or permitted to remain on any residential building lot other than one detached single family dwelling, with attached garage, which may also be located in the basement, and which must be for a minimum of two cars. If practical, the garage doors must open from the side or rear elevations of the residence.

(2) No residence shall be designed, patterned, constructed or maintained to serve or for the use of more than one single family, and no residence shall be used as a multiple family dwelling at any time, nor used in whole or in part for any business service or activity, or for any commercial purpose; nor shall any lot be used for business purposes, or for trucks or other equipment inconsistent with ordinary residential uses.

(3) No building shall be erected on any Lot nearer than thirty five (35) feet to the front twenty-five (25) feet from the rear Lot line and ten (10) feet from the side Lot lines, unless the side Lot line fronts on a street, in which case no building shall be erected nearer than twenty-five (25) feet to such side Lot line; further, there are certain set-back requirements provided for and shown on the subdivision plat, which are incorporated in and made a part of these Restrictive Covenants. No structure, other than a swimming pool, outdoor fireplace, etc, of approximately ground level construction, shall be located nearer than twenty-five (25) feet to any rear lot line. However, it shall be permissible for Philip C. Burke , to reduce the front line requirement down to twenty-five (25) feet , without compliance of paragraph # (25) heretain. For the purpose of this covenant, caves, steps, and open porches shall not be considered as part of the building, providing, however, this shall not be construed to permit any portion of the building on the lot to encroach upon another lot. (No provision of the paragraph shall be construed to permit any structure to be constructed and erected upon any lot that does not conform to the zoning laws and regulations applicable thereto).

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(4) It is provided that not more than one dwelling house shall be erected or maintained on any one lot. This will not prevent the use of one or more lots or parts of lots as a single building plot of ground, providing that the division or re-arrangement of boundary lines of subdivision lots shall not reduce the basic width and size of the original lots as platted, or increase the total number of lots in said subdivision, and that the same shall conform to zoning laws and subdivision regulations in effect thereon. No lot or any part thereof shall be used as a means of access (either public or private) to other lands or used for the installation of utilities serving other lands. However, this will not prevent the use of one or more lots or parts of lots as a single building site as above set out.

(5) No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. In particular, tractor trucks shall not be frequently or habitually kept parked on a driveway, nor shall the owner of any lot in the subdivision park a tractor truck in the street or streets therein. Further, trucks larger than

pick-ups, motor homes, campers and boats must be parked to the rear of the residence in a location so they cannot be seen from the street on which the residence fronts. Satellite dishes, antennas, etc. must be located so they cannot be seen from the street on which the residence fronts, and from side streets in case of a corner lot.

(6) No part of any lot shall be used for residential purposes until, first a completed dwelling house, conforming fully to the provisions of this instrument, shall have been erected thereon, the intent of this paragraph being to prevent the use thereon of a garage, incomplete structure, trailer, barn, tent, outbuilding or other structure as a temporary living quarters before or pending the erection of a permanent building. No structure of temporary character, including trailers and similar structures, shall be erected or permitted to remain on any lot except during the period of construction.

(7) Any residence being erected on a lot shall be completed within twelve (12) months from the date the lot is cleared and/or prepared for commencement of construction.

(8) No dwelling house shall be erected or permitted to remain in the subdivision unless it has the number of square feet of enclosed living area, exclusive of open porches or screened porches, carports, garages or basements, set forth in this paragraph. For the purposes of this paragraph, stated square footage shall mean the minimum floor area required, and floor area shall mean the finished and heated living area contained within the residence, exclusive of open porches, garages, eaves and steps. In the case of houses which are known as "Split Levels" in order for a level to qualify as a main living area, it must be exposed or full height on three sides. In the case of any question as to whether a sufficient number of square feet of enclosed living area have been provided, the decision of Philip C. Burke, his successors, designates, or assigns, shall be final. The number of square feet required are as follows:

- (I) A 2-story residence with attached double garage, 1,200 square feet, on the first floor of such residence, and a minimum of 1,000 square feet on the second floor;
- (II) A 1-story residence with full basement and with attached double garage, 2,200 square feet;
- (III) A 1-1/2 story residence with attached double garage, 1,400 square feet on the first floor and 800 square feet on the second floor .
- (IV) A 1-1/2 story with garage in basement , 1,600 square feet on the first floor and 600 square feet on the second floor.
- (V) A split -level, with attached double garage, (not counting finished basement) 2,200 square feet .
- (VI) A 2-story residence with garage in the basement, 1,400 square feet on the first floor and 800 square feet on the second floor.
- (VII) 1-story and split level residences must have attached double garages.
- (VIII) It shall be permissible for Philip C. Burke to permit variations in square footage requirements as to the volume contained on a particular floor, so long as the dwelling contains at least 2,200 square feet total.

(9) All dwelling houses shall have conventional and acceptable frontal appearance from the main street fronting said lots , this also applies to the side elevations on all residences that are located on corner lots regarding the side facing side street as well.

(10) That no lot shall be re- subdivided without the written permission of Philip C. Burke, reserves unto himself the right to re-subdivide any or all lots so long as it meets subdivision regulations of Hamilton County. In either event , the Restrictive Covenants contained in Paragraph " 3 " above, shall apply to only the outside boundry line of any building lot formed by such re-platting, or by the combination of two or more lots, or part of lots. No part of lots may be used as access to any other property outside of this subdivision without written consent of Philip C. Burke, and consent must be recorded in the Register's Office of Hamilton County, Tennessee.

(11) All buildings or structures of any kind constructed on any Lot shall have full masonry foundations , no block shall be exposed to the exterior above the grade level. The exterior front and side elevations of all buildings shall be of either wood (horizontal boards, vertical boards, and batten, or similar), or stone, or brick or masonite. In any event, if horizontal board are used, not over 8 inches of each board may be exposed to the weather. All retaining walls shall be of stone or brick finish. All front and side foundation elevations shall be brick or stone finish. The rear foundation elevations of corner lots shall be brick or stone finish. The rear and side elevations (not visible from any street) or other lots shall be brick or stone or stucco finish. Retaining walls not visible from the street on which the dwelling faces may be stucco finished. Each dwelling shall have a Brick Mailbox of a type consistent with the character of the property, which must be installed at time of construction and before the house is occupied . The owner is responsible for the selection and maintenance of each mailbox to complement the residence and the neighborhood. Owners must keep Gas Lights in operable and good working order so that each light operates from dusk to dawn as intended. Design for mailboxes must be approved by the Developer. All exterior materials must be approved in writing by the Developer. All sheetmetal work (roof caps, flashings, vents, chimney caps, etc.) must be painted to match the roof. Gutters and downspouts must be painted in approved colors. All roof pitches visible from the street on which dwelling faces must be 8/12 or greater. Artificial brick or stone may be used on the exterior of any dwelling , provided the use thereof

is approved by Philip C. Burke before the same is installed. All roof stacks and plumbing vents must be placed on rear slopes, provided however, for good cause shown, the Developer may make exceptions as to the placement of such roof stacks and plumbing vents. In connection with the construction of improvements and utility service for the Development, natural gas service for all Lots in the subdivision has or will be available from a gas line constructed at the full or partial expense of Developer. Accordingly, Lots in the Subdivision are required to use natural gas utility service for heating and hot water in all homes. The Developer, in his sole discretion, may waive this requirement with respect to natural gas utility service to a specific Lot.

(12) FENCES : Any fence erected on any lot in the subdivision must not be located nearer to the front lot line than the line of the rear elevation of the residence, extended in a direct line to the side lines; and , as to the corner lots, the same shall not be erected or maintained nearer to the side street line than the side street elevation of the residence, extended in a direct line to the rear lot line. No fence, of any type, may be more than 8 feet high. (No fence may be constructed of plain, uncoated galvanized wire, unless a written waiver has been obtained from the developer prior to construction of such fence.) All fences constructed of wood must have the finished side facing towards other Common Property , another Lot or street, so as to enhance the appearance for all property owners.

(13) Each residence constructed upon a lot in said subdivision must be served by a driveway, paved with concrete, brick, laid stone, or similar. Asphalt and loose stone or rock shall not be permitted.

(14) CLEARANCE OF DEBRIS : In the construction of a residence upon a lot, the Builder shall keep all debris cleared from the street or streets bounding the lot; and, before any residence is occupied, all debris must be removed from the entire lot.

(15) Before any construction is commenced or carried on, plans and specifications for any dwelling house to be constructed on any one of said lots shall be submitted for approval by Philip C Burke, and written approval thereof procured. It is stipulated that such approval shall not be unreasonably withheld. It is further provided that, in the event of the completion of any dwelling house on any lot, without any proceedings have been instituted in the Courts of Hamilton County, Tennessee, to enjoin the construction thereof, the said dwelling shall be conclusively presumed to have had such approval.

(16) That for the purpose of property improvement , as long as it retains record ownership in any lots in the subdivision, Philip C. Burke , reserves the right to grant waivers from these restrictive covenants. Said waiver must be in writing and recorded in the Register's Office of Hamilton County, Tennessee. Any waiver executed by him would be conclusive proof that the waiver would not materially effect the purpose sought thereby, by the developer. Other owners of lots in subdivision shall not be entitled to bring suit to enforce the compliance of the original restrictions, where a waiver has been given by the developer unless it is a violation of the restrictions as waived or modified. Nor is the owner entitled to damages from the developer for any waivers granted by him.

(17) No sheep, swine, goats, horses, cattle, burros, fowls or any like animals shall be permitted to be kept or to remain on any of the lots hereinabove described , or to roam at large on any of the streets or way in or bordering the same. There shall be no kennels permitted on any lot in the subdivision, for the commercial breeding of domestic pets. No liquor, beer or other intoxicating substances shall be sold within the bounds of said subdivision.

(18) Whether expressly stated so or not in any Deed conveying any one or more said lots , each conveyance shall be subject to existing governmental zoning and subdivision ordinances or regulations in effect thereon.

(19) All of said lots in said subdivision must, from the date of purchase, be maintained by the owner in a neat and orderly condition (grass being cut when needed, as well as leaves, broken limbs and other debris being removed when needed) . Tree limbs, rocks and other debris must be kept out of the streets. In the event that an owner fails, of his own violation, to maintain his lot in a neat and orderly condition, Philip C. Burke or his duly appointed agent, may enter upon said lot without liability and proceed to put said lot into orderly condition, billing the cost of such work to the owner. All property owners in the subdivision are requested to aid in keeping cars, trucks and delivery trucks off the curbs of the streets, as the same can easily be broken , particularly when new. Also, all owners of lots must keep the street clean and clear of concrete blocks, concrete, and building materials while residence is under construction.

(20) There shall be no detached garages, outbuildings or servants quarters, but a bathhouse built expressly in conjunction with a private swimming pool shall not be included in this prohibition upon written approval of developer of its location, style, materials and size. Thus a bathhouse will not have to be connected or attached to the dwelling. However, such a structure shall not be included in complying with any minimum square footage requirements as set forth in (8) above.

(21) That, before any dwelling any said premises shall be occupied, a septic tank, or sewage disposal system constructed in accordance with the requirements of the Tennessee State Board of Health, shall be installed, all sewage from the premises shall be turned into such sewage disposal facility,

and the same shall be continuously maintained in proper state of sanitation. The effluent from such septic tank or sewage disposal shall not be permitted to discharge into a stream, storm sewer, open ditch or drain unless first it has been passed through an absorption field approved by the public health authority.

(22) No sign of character shall be displayed or placed upon any part of the property except those advertising the property for sale or rent and those used by a builder to advertise the property during the construction and sales period, said signs referring only to the premises on which displayed. No such sign shall exceed nine (9) square feet in size nor have an overall height exceeding four (4) feet above the ground level.

(23) All buildings and improvements to the lots in said subdivision must, from their completion, be maintained by the owner in a neat, well repaired and well maintained condition.

(24) Sidewalks. It is the obligation of each Lot Owner subsequent to Developer to install a sidewalk along lines of the Lot which front a road in accordance with the Developer's specifications by the time the House is completed or within one (1) year from the time of purchase of the Lot, whichever is earlier.

(25) In the event of violation of set-back lines, either side, front or rear, which may be minor in character, a waiver thereby may be made by Philip C. Burke, joined by the owner or owners of the lots adjoining the lot on which such violation occurs; provided, that as to a side line violation, only the joinder of the owner of the lot on that side will be necessary.

(26) Renting or Leasing. No House may be rented or leased for a period of time that is less than six (6) months.

(27) Tanks and Garbage Receptacles, Tree Houses and Swings. No fuel tanks or similar storage receptacles may be exposed to view, and such tanks or receptacles may be installed only within a Dwelling Unit, within a screened area or buried underground. All garbage and trash containers must be placed in enclosed areas of the rear or side yard and must not be visible from adjoining Lots, houses, or from any street. No Tree houses may be built or maintained on the Lot, and no swingsets, other than wooden swingsets, will be permitted to be installed on a Lot.

(28) Rainwater Drainage. All side and rear property lines are dedicated drainage easements and may be used for drainage. Each Lot must be graded so as not to obstruct these easements. All drainage should be directed to these easements, and these easements must be graded so water flows to the street or to an adjoining drainage easement.

(29) In any event that, for any reason, any one or more of the foregoing protective covenants and restrictions be construed by judgment or decree of any Court of record to be invalid, such action shall affect in no way any of the other provisions, which shall remain in full force and effect, the owner hereby declaring that said restrictions are not interdependent but severable, and any one would have been adopted even without the others.

(30) Each and every one of the aforesaid covenants, conditions, and reservations shall attach to and run with each and every one of the said lots of land and titles to, and estates therein, shall be subject thereto and the same shall be binding upon each and every owner-occupancy of the same until January 1, 2010, and shall be extended automatically to apply to each of said lots for successive periods of ten (10) years thereafter unless, by action of a minimum of sixty-six and two-thirds percent (66-2/3%) of the then owners of the lots, it is agreed to change said covenants in whole or in part; provided, further that the Instrument evidencing such action must be in writing and shall be duly recorded in the Register's Office of Hamilton County, Tennessee.

Neither the undersigned, nor any part of parties claiming under the, shall or will convey, devise or demise any or either of said lots, or any part of same, except as being subject to these covenants, conditions and restrictions, and the obligation to observe and perform the same. These covenants, conditions and restrictions shall run with and be appurtenant to the said land and every part thereof as fully as if expressly contained in proper and obligatory covenants or conditions in each and every contract or conveyance of or concerning any part of the said land or the improvements to be made thereon.

If the undersigned or any party or parties claiming thereunder, shall violate or attempt to violate any of the covenants or restrictions herein provided for before January 1, 2010, or within the extended time as hereinbefore provided, it shall be lawful for Philip C. Burke, respective successors, heirs or assigns, or any person or persons owning any of said lots to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants or conditions; and either to prevent him or them from doing, or to recover damages or other dues for such violation, including reasonable attorney's fees.

We, Joyce S. Trask, as to Lot 326 and Linda C. Hardison as to Lot 15 of the hereinabove Subdivision do hereby join in these restrictive covenants.

Book and Pages 61 5285 746

WITNESS our hand this the 4th day of February, 1999.

Joyce S. Trask
JOYCE S. TRASK, Owner of Lot 326, Shelton's
Addition to Hurricane Creek Estates, Unit VIII

Philip C. Burke
PHILIP C. BURKE

Linda C. Hardison
LINDA C. HARDISON, Owner of Lot 15,
Hurricane Mountain Subdivision

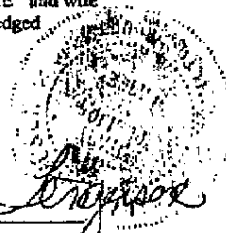
Nekolia S. Burke
NEKOLIA S. BURKE

STATE OF TENNESSEE
COUNTY OF HAMILTON

On this 4th day of February 1999, before me personally appeared PHILIP C. BURKE and wife NEKOLIA S. BURKE, with whom I am personally acquainted, and who upon oath acknowledged themselves to be the person's described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

WITNESS my hand and seal this 4th day of February 1999.

Pamela Ferguson
NOTARY PUBLIC



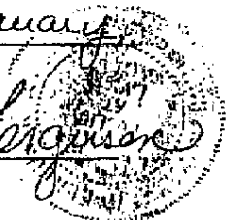
My Commission Expires 01/19/2000

STATE OF TENNESSEE
COUNTY OF HAMILTON

Before me personally appeared JOYCE S. TRASK, to me known (or proved to me on the basis of satisfactory evidence) to be the person in and who executed the foregoing instrument and acknowledge that she executed the same as her free act and deed.

WITNESS my hand and seal this 2nd day of February, 1999.

Pamela Ferguson
NOTARY PUBLIC



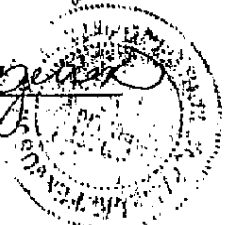
My Commission Expires: 01/19/2000

STATE OF TENNESSEE
COUNTY OF HAMILTON

Before me personally appeared LINDA C. HARDISON, to me known (or proved to me on the basis of satisfactory evidence) to be the person in and who executed the foregoing instrument and acknowledge that she executed the same as her free act and deed.

WITNESS my hand and seal this 3rd day of February, 1999.

Pamela Ferguson
NOTARY PUBLIC



My Commission Expires: 01/19/2000