

HOLD FOR: THIBREX, BLUE, STEADMAN
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DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR 000650
TUPPER PLACE SUBDIVISION

PRESENTED
FOR
REGISTRATION

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LAURA M. RIDGWAY
REGISTER OF DEEDS
WAKE COUNTY

THIS DECLARATION, made on the date hereinafter set forth by Shaw Development Corporation, a North Carolina corporation with its principal office located at Raleigh, Wake County, North Carolina, hereinafter referred to as "Declarant";

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in or near the City of Raleigh, County of Wake, State of North Carolina, which is more particularly described on Exhibit "A" attached hereto and shall be known as TUPPER PLACE SUBDIVISION PHASE 1.

NOW, THEREFORE, Declarant hereby declares that all of the Property described above together with such additions as may hereafter be made thereto shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described Property 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 Tupper Place Homeowner's Association, Inc., a North Carolina corporation, its successors and assigns.

Section 2. "Board" or "Board of Directors" shall mean those persons elected or appointed and acting collectively as the Board of Directors of the Association.

Section 3. "Building" shall mean and refer to a residential structure, constructed or erected on the Property and any additions thereto.

Section 4. "Common Elements" shall mean all real property together with any improvements thereon owned by the Association for the common use and enjoyment of the Owners or members or designated classes of members of the Association, including Limited Common Elements as may be designated on any subdivision map of the Property or by the Association, including water lines and sewer lines serving more than one Lot and located outside street rights-of-ways or City or Raleigh Sanitary sewer easements and storm drainage easements,

5400

stormwater pipes located on the Property serving more than one Lot and not accepted for public maintenance by any governmental authority, and identification signs identifying TUPPER PLACE.

Section 5. "Common Expenses" shall mean and include

- (a). All sums lawfully assessed by the Association against its members;
- (b). Payments or obligations to reserve accounts established and maintained pursuant to this Declaration.
- (c). Expenses of administration, maintenance, repair, or replacement of the Common Elements and Limited Common Elements, as well as access easements to real property owned by the Association.
- (d). Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws;
- (e). Hazard, liability, or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase; or as the Association may deem appropriate to purchase;
- (f). Ad valorem taxes and public assessment charges lawfully levied against Common Elements;
- (g). The expense of the maintenance of private drainage and utility easements and facilities and storm drainage devices located therein which are within the boundaries of the Property, cross Common Elements of the Property and serve Property and or the lands adjacent thereto; and,
- (h). The expense of the maintenance of landscape island(s) located within the right(s)-of-way of public street(s).
- (i). Expenses agreed by the members to be common expenses of the Association.

Section 6. "Declarant" shall mean and refer to SHAW DEVELOPMENT CORPORATION, its successors and assigns, to whom the rights of Declarant hereunder are expressly transferred, in whole or in part, and subject to such terms and conditions as Declarant may impose.

Section 7. "Limited Common Element" shall mean those portions of the Common Elements that serve only a limited number of Lots, and which may include, but specifically is not limited to, driveways, walkways, parking areas or areas serving only specified Lots, and such other similar areas as may be designated by a subdivision map of the Property or the Association.

Section 8. "Living Unit" shall mean and refer to any Lot on which a dwelling unit has been fully constructed and made ready for occupancy as a residence, including without limitation, completion of the final floor covering, interior paint and wallpaper and all appliances and for which a Certificate of Occupancy has been issued by the City of Raleigh.

Section 9. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Property with the exception of the Common Elements owned in fee.

Section 10. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 11. "Natural Buffer Area" shall mean all area(s) designated on the attached map of Property and similarly designated areas on future annexations of additional lands." (Exhibit "B")

Section 12. "Owner" or "Lot 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 Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 13. "Person" shall mean and refer to any individual, corporation, partnership, limited liability company, association, trustee or other legal entity.

Section 14. "Property" shall mean and refer to that certain real property here-in-before described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

ARTICLE II PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of use and enjoyment in and to the Common Elements together with and including the right of access, ingress and egress, both pedestrian and vehicular, on and over drives, walkways and parking areas of the Common Elements, all of which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a). the right of the Association to charge reasonable admission and other fees for the use of any recreational or other similar facility situated upon the Common Elements, all subject to the laws of the City of Raleigh;"

(b). the right of the Association to suspend the voting rights and the right to use the recreational or other Common Element facilities, if any, by an Owner for any period during which any assessment against his Lot

remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

- (c). the right of the Association to dedicate, sell, lease or transfer all or any part of the Common Elements, or any interest therein, to any public agency, authority or utility, or to any other person for such purposes and subject to the provisions of the Raleigh City Code and to such conditions as may be agreed upon by the members. No such dedication, sale or transfer shall be effective unless it has been approved by two-thirds (2/3) of each class of members and an instrument of dedication, sale, lease, or transfer properly executed by the Association has been recorded. On such instrument the Secretary of the Association shall certify that two-thirds (2/3) of each class of members have approved the dedication, sale, lease, or transfer and that certificate may be relied upon by any third party without inquiry and shall be conclusive as to any grantee, its successors or assigns; provided, however, conveyances for general utility purposes as specified herein may be made by the Association without consent of the members;
- (d). the right of the Association to limit the number of guests of members; The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Elements and facilities and in aid thereof to mortgage the Common Elements, and the rights of such mortgagee in the Common Elements shall be subordinate to the rights of the homeowners and the Association hereunder;
- (e). the right of the Association in accordance with its Articles of Incorporation or Bylaws to impose rules and regulations for the use and of enjoyment of the Common Elements and improvements thereon, which rules and regulations may further restrict the use of the Common Element and to create Limited Common Elements, the creation of which must be approved by the City of Raleigh.
- (f). the right of Owners of Lots on additional lands annexed to the Property initially, or subsequently, to the easements of enjoyment and rights of ingress, egress and access, as specified above, to the initial Property and all lands included in subsequent phases.
- (g). with the assent of two-thirds (2/3) of the votes of the entire Class A membership and two-thirds (2/3) of the entire Class B membership, if any, the Association, acting through its Board, from time to time may exchange with Declarant or any member a portion of the Common Elements for a portion of the real property owned by such member within TUPPER PLACE, provided that the real property acquired by the Association in the Exchange; (a) is free and clear of all encumbrances except the Declaration, and easements for drainage, utilities, and sewers; (b) has

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approximately the same area and utility as the portion of the Common Elements exchanged and (c) the Common Elements as constituted after the conveyance meets the standards for open space as required by the City of Raleigh. The real property so acquired by the Association shall be a part of the Common Elements, and, without further act of the Association or membership, shall be released from any provisions of the Declaration except those applicable to the Common Elements. The portion of the Common Elements so acquired by Declarant or a member, without further act of the Association or membership, shall cease to be Common Elements and shall be subject to those provisions of the Declaration that were applicable to the real property conveyed to the Association by the member

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of use and enjoyment to the Common Elements and facilities to the members of his family, his tenants, guests, or contract purchasers who reside on the Property.

Section 3. Title to the Common Elements. The Declarant hereby covenants for itself, its successors and assigns, that prior to the conveyance of the first Lot it will convey fee simple title to the Common Elements located within the Property as shown on each subdivision map of the Properties recorded in the Wake County Registry to the Association, free and clear of all encumbrances and liens, prior to the conveyance of any Lot shown on said map, except encumbrances of utility, service, access, storm drainage, greenway and other similar service or utility easements. Similarly, the Declarant will convey to the Association Common Elements which are a portion of any additional property as the same is annexed in the future at the time of conveyance of the first Lot located on that additional property. If such conveyance is made, this additional property will become Common Elements belonging to the Association.

Section 4. 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 or his designated agent. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at a reasonable cost.

Section 5. TV Antennas, Cablevision, Music. The Association may provide one or more central television or radio antennas for the convenience of the members and may supply cablevision and piped-in music, and the cost of these may be included in annual or special assessments. The Association may regulate or prohibit the erection of television, satellite dishes, radio or other antennas on individual Lots.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

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

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

Class A. Class A Members shall be all Owners with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members; however, the vote for such Lot shall be exercised as they among themselves determine, or as set forth in the Bylaws, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting is prohibited.

Class B. The Class B Member shall be all Lots owned by Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership with one vote for each Lot owned on the happening of either of the following events, whichever occurs earlier:

(a). when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership; but provided, that the Class B membership shall be reinstated if thereafter, and before the time stated in Subparagraph (b) below, such additional lands are annexed to the Property without the assent of Class A members on account of the development of such additional lands by the Declarant, all as provided for in Article VII below, or

(b). August 1, 2008

Section 3. The right of any member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations and the Articles and Bylaws of the Association and according to the provisions of Article II, Section 1(b) herein.

ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS

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

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- (1). annual assessments or charges which are Common Expenses, and
- (2). special assessments for capital improvements.

Notwithstanding any provision herein to the contrary, the assessment for each Lot which is not a Living Unit shall be twenty-five percent (25%) of the assessment of a Living Unit.

The Association shall also have the authority, through the Board of Directors to establish, fix and levy a lien on any Lot or Living Unit to secure the liability of the Owner thereof to the Association arising from breach by such Owner of any of the provisions of this Declaration which breach shall require the expenditure of time and money or both, by the Association for repair or remedy.

Each Owner covenants for himself, his heirs, successors and assigns, to pay each assessment levied by the Association on the Lot described in such conveyance to him within ten (10) days of the due date as established by the Board, and further covenants that if said assessment shall not be paid within thirty (30) days of the due date, the amount of such assessment shall be in default and become a lien upon said Owner's Lot as provided herein and shall continue to be such lien until fully paid. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, cost and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments 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 paying of Common Expenses to promote the recreation, health, safety, and welfare of the residents of the Property and in particular, but not limited to, for the acquisition, improvement and maintenance of Property, and for the use and enjoyment of the Common Elements, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Common Elements, the procurement and maintenance of insurance in accordance with the Bylaws or as deemed appropriate by the Board, the payment of common antenna service, the employment of counsel, accountants and other professionals for the Association when necessary, and such other needs as may arise.

Section 3. Amount of Assessment.

- (a). Initial Maximum Assessment. The maximum annual assessment shall not exceed \$100.00 per Living Unit.

(b). Increase by Association. From and after December 31, 2000, the annual assessment effective for any subsequent year may be increased by the succeeding year for the Board of Directors, without a vote of the membership, by a percentage which may not exceed ten percent (10%) above the maximum assessment for the previous year.

(c). Increase by Members. From and after December 31, 2000, the annual assessment may be increased by a percentage greater than permitted by this Section by an affirmative vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for such purpose. The limitations herein set forth shall not apply to any increase in assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(d). Criteria for Establishing Annual Assessment. In establishing the annual assessment for any assessment year, the Board of Directors shall consider all current costs and expenses of the Association, any accrued debts, and reserves for future needs, but it may not fix the annual assessment in an amount in excess of that permitted in Subsection (b) of this Section 3 above without the consent of members required by Subsection (c) of this Section 3.

(e). 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, reconstruction, restoration, repair or replacement of a capital improvement upon the Common Elements or any extraordinary maintenance, including fixtures and personal property related thereto and any property for which the Association is responsible, provided that any such assessment shall have the assent of 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.

Section 5. Notice and Quorum for Any Action Authorized Under Section 3(c) and 4. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such

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subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and Living Units and may, at the discretion of the Board of Directors, be collected on a monthly basis. Provided, however, that the assessment for Lots which are not Living Units shall be twenty-five percent (25%) of the regular assessments for Living Units.

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 Common Elements to the Association and as to all Living Units, as Living Units, on the first month following the date a Lot became a Living Unit. All Lots in subsequently annexed properties, similarly, shall be subject to assessment commencing on the first day of the first month following conveyance of the Common Elements therein to the Association. 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. At such time as the assessment includes maintenance of amenities set out in Article IV, Section 3(a) above, the Board of Directors may provide that such payment may be made monthly. The Association shall, upon demand, and for a reasonable charge if it deems appropriate, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be delinquent, in default and shall bear interest from the due date at the highest rate then permitted by North Carolina law not to exceed ten percent (10%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same plus interest, costs, late payment charges and reasonable attorneys' fees, or foreclose the lien against the Lot: interest charges, late payments charges and reasonable attorney's fees shall be added to the foreclosure. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any institutional first mortgage the City of Raleigh loan made pursuant to agreement between Declarant and the City dated 19 May 1998 and ad valorem

taxes on said Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to such mortgage or tax foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. Any portion of the Property dedicated to, and accepted by, a local public authority and any portion of the Property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 11. Payment of Common Expenses. All Owners shall be obligated to pay the Common Expenses assessed by the Association. No Lot Owner shall be liable for the payment of any part of the Common Expenses assessed against his Lot subsequent to the consummated sale, transfer or other conveyance by him (made in accordance with the provisions of the Declaration and applicable restrictions of record) of such Lot. The personal obligation for any delinquent assessments shall not pass to successors in title unless expressly assumed by them. A first-lien mortgage or other purchase of a Lot at a foreclosure sale of such Lot shall not be liable for, and such Lot shall not be subject to, a lien for the payment of Common Expenses assessed prior to such foreclosure sale, and such unpaid Common Expenses shall be deemed to be Common Expenses collectible from all of the Lot Owners, including such purchaser, his successors and assigns.

Section 12. Foreclosure of Liens for Unpaid Common Expenses. In any action brought by the Board to foreclose a Lot because of unpaid Common Expenses, the Lot Owner shall be required to pay a reasonable rental for the use of his Lot and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Board, acting on behalf of all Lot Owners, or on behalf of any one or more individual Lot Owners, if so instructed, shall have the power to purchase such Lot at a foreclosure sale and to acquire, hold, lease, mortgage, convey, or otherwise deal with the same; subject, however, to applicable restrictions of record. A suit to recover money judgment for unpaid Common Expenses may be maintainable without foreclosing or waiving the lien securing the same.

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ARTICLE V
MAINTENANCE OF PROPERTIES

Section 1. Maintenance of Lots. If in the opinion of the Board, an Owner fails to maintain his Lot, including Buffer Areas located on a Lot as shown on recorded maps, in a neat and orderly condition or otherwise neglects his Lot and allows unsightly conditions to develop, the Board, after thirty (30) days written notice to the Owner, may, but is not obligated to, take steps to remedy the problem. Such remedy may include, but shall not be limited to; the removal of debris or junked cars, the mowing of grass or cutting of brush and the painting of structures located in the Lot. The Board shall bill such Owner for all expenses incurred in correcting the problem. Every Owner by acceptance of a deed covenants to pay said bill. Failure to pay said bill shall allow the Board to file an action to collect the unpaid amount and such action may result in a lien against the Lot. All Lots shall be subject to an easement in favor of the Association to do such maintenance work including right of entry.

Section 2. Maintenance of Common Area. The Association shall maintain or cause to be maintained all areas designated as Common Area. The cost of such maintenance shall be a Common Expense, which shall be paid from the funds supplement from the annual assessment.

Section 3. Natural Buffer Areas. All Natural Buffer Areas located in lots shown on the attached maps (Exhibit A) shall be maintained by the owner of said lot state. Subdivision maps of the Property shall be maintained by the Owner of said Lot. No improvements may be constructed, erected or allowed to remain in the Natural Buffer Areas except, an Owner of a Lot, other than the Declarant, may erect a fence in the Natural Buffer Area only with the prior written approval of the Association. The construction of any fence shall be governed by the provisions of Article VI of the Declaration on architectural control. The Owner of any Lot on which a Natural Buffer Area is located may, but is not obligated to, plant trees and shrubs in the Natural Buffer Areas.

ARTICLE VI
ARCHITECTURAL CONTROL

No site preparation or initial construction, erection or installation of any improvements, including but not limited to, buildings, fences, signs, walls, screens, plantings, or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to, or change, or alteration therein be made by any Owner other than Declarant until the plans and specifications showing the nature, kind, shape, height, materials, and location of the proposed improvements shall have been submitted to, and approved in writing by, as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more

representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with; provided that plans and specifications that contain inaccurate or missing data or information when submitted shall not be deemed to be approved notwithstanding the foregoing.

The Association shall have the right, at its election, but shall not be required, to enter upon any of the Property during site preparation or construction, erection, or installation of improvements to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

ARTICLE VII ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation by Members. Except as provided in Section 2 of this Article, annexation of additional land shall require the assent of two-thirds (2/3) of the Class A membership and two-thirds (2/3) of the Class B membership if any.

Section 2. Annexation by Declarant. If, prior to August 1, 2008, the Declarant should develop additional lands contiguous to the boundaries of the property described on Exhibit "A" attached hereto, such additional lands may be annexed to said Properties without the assent of the Class A Members.

Section 3. Method of Annexation. Annexation of additional Properties shall be accomplished by recording in the Wake County Registry a Declaration of Annexation, duly executed by the Declarant, if the Declarant has the right to annex pursuant to Section 2 above (and by the Association and Property Owner if pursuant to Section 1 above), describing the lands annexed and incorporating the provisions of this Declaration. The additional lands shall be deemed annexed to the Properties on the date of recordation of the Declaration of Annexation, and in the case of an annexation by the Declarant, no action or consent on the part of the Association or any other Person or entity shall be necessary to accomplish the annexation except the City of Raleigh. All Declaration of Annexations shall be approved by Raleigh City Attorney or his/her deputy prior to their recordation.

Section 4. Conveyance of Common Areas. Prior to the conveyance of the first Lot within any newly annexed land, the Owner shall convey to the Association all Common Areas located within the annexed land. Title shall be conveyed to the Association in the same manner as set forth in Article II, Section 3, of the Declaration.

ARTICLE VIII
BUILDING RESTRICTIONS

Section 1. Square Footage. Any dwelling erected on a Lot shall contain a minimum enclosed dwelling area of 1700 square feet for a single level dwelling and 1850 square feet for all dwellings of two or more levels. The term "enclosed dwelling area" as used herein shall mean the total enclosed area within a dwelling subject to heating and cooling; provided the term specifically does not include garages, terraces, open porches, decks, stoops and like areas regardless of heating or cooling. The Declarant or the Board of Directors may approve, in writing, a variance not in excess of twenty (20%) per cent from the requirements set out in this Section 1.

Section 2. Height and Accessory Building. No structure, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any detached single-family residential Lot other than a detached single family dwelling not to exceed two (2) stories in height, unless the Declarant or the Board of Directors approves in writing a variance permitting a structure of more than two stories and a garage and small accessory building; provide, the use of such garage or accessory building does not in the opinion of the Declarant or the Board of Directors overcrowd the site. Such accessory building may not be constructed prior to the construction of the primary dwelling. All garages must be attached to the main dwelling unless the Declarant or the Board of Directors approves in writing a variance permitting a detached garage.

Section 3. Multi-Family Use Prohibited. No Multi-family buildings are allowed on any portion of the Property.

Section 4. Remedies. If the finished dwelling, garage, accessory building or other structure does not comply with the submitted and approved plans and specifications, the Board retains the right to make the necessary changes at owner's expense to comply with the approved plans and specifications, the right to treat such charge or cost as an assessment, the right to file under the North Carolina lien laws a notice of liens for any cost incurred, and the further right to resort to all remedies provided under the laws of North Carolina for the recovery of such costs and the expenses of collection, including without limitation, reasonable attorneys' fees. Any changes in plans or specifications must first be re-approved by the Declarant or the Board of Directors in accordance with the procedure herein specified for architectural control.

ARTICLE IX
USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the yard space of

each Lot and the Common Elements. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

Section 2. Use of Property. No portion of the Property (except for model home/temporary office of Declarant or purchaser from Declarant) shall be used except for single-family residential purposes and for purposes incidental or accessory thereto.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Property, nor shall anything be done which may be, or may become, a nuisance or annoyance to the neighborhood.

Section 4. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and are controlled in accordance with applicable governmental ordinances and are not a nuisance to other Owners.

Section 5. Offensive Behavior. No immoral, improper, offensive, or unlawful use shall be made of the Property, or any part thereof, and all valid laws thereof shall be observed. All laws, order, rules, regulations, or requirements of any governmental agency having jurisdiction thereof, relating to any portion of the Property, shall be complied with, by and at the sole expense of the Owner or the Association, whichever shall have the obligation to maintain or repair such portion of the Property.

Section 6. Business. No industry, business, trade, occupation, or profession of any kind, whether commercial or otherwise, shall be conducted, maintained, or permitted on any part of the Property, except that the Declarant or its agents may use any unsold Lot of Living Unit for sales or display purposes.

Section 7. Signs. No owner shall display, or cause or allow to be displayed, to public view any sign, placard, poster, billboard, or identifying name or number upon any Building, or any portion of the Common Elements, except as allowed by the Association pursuant to its Bylaws or regulations or as required by local governmental authority; provided, however, that the Declarant any mortgagee who may become the Owner of any Lot, or their respective agents, may place "For Sale" or "For Rent" signs on any unsold or unoccupied Lots provided, however, that during the development of the Property and the marketing of any Lot, the Declarant or purchaser from Declarant or purchaser from Declarant deems appropriate as aids to such development and marketing, provided that such signs do not violate any applicable laws.

Section 8. Alterations. No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Elements except at the direction or with the express written consent of the Association.

Section 9. Parking. No boats, trailers, campers, motorhomes, trucks or tractors shall be parked on the Property or on any right of way of any streets adjoining the Property by any Lot Owners, its family members, tenants, or contract purchasers, except as may be permitted by Rules and Regulations to be parked in a closed garage.

Section 10. Natural Buffer Areas. Subject to the provisions of this Declaration, areas designated as Natural Buffer areas on recorded maps shall be left in their undisturbed, natural state. No improvements may be placed, erected or constructed on the Natural Buffer areas, except as approved by the City of Raleigh and the Association.

ARTICLE X EASEMENTS

Section 1. Utility Easements. All of the Property, including Lots and Common Elements, but excluding Natural Buffer Areas shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power line and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the subjecting of the Property to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under and across the Common Elements conveyed to it, such further easements as are requisite for the convenient use, proper maintenance and enjoyment of the Property without approval of the membership as provided in the Articles of Incorporation and this Declaration.

Section 2. Easement for the Benefit of the City of Raleigh. An easement is hereby established for the benefit of the City of Raleigh, or other governmental agency, over all Common Elements for the setting, removing and reading of water meters (which shall be separate for each Living Unit), maintaining and replacing water and sewage, for police protection, fire fighting, postal delivery, and garbage collection and the rendering of such other services as are appropriate and necessary for the use and enjoyment of the Property. In no case shall the City of Raleigh or other responsible agency, be responsible for failing to provide any emergency or regular fire, police, or other public service to the Property or to any of its occupants when such failure is due to the lack of access to such area due to inadequate design or construction, blocking of access routes, or any other factor within the control of the Declarant, the Association, the Owners or occupants. All conveyances of any portion of the Property shall be subject to these limitations on the City's or other agency's responsibilities.

Section 3. Easement to Use Adjoining Lot. The Owner of any Lot, on which a Building is constructed less than five (5) feet from the side lot line, shall have the right to go upon the adjoining Lot to the extent reasonably necessary to construct, reconstruct, maintain, improve, or make repair to improvements on said Lot. Such work shall be done expeditiously and, upon completion, such Owner shall restore as is reasonable practicable, the adjoining Lot to the same condition which prevailed prior to commencement of such work.

Section 4. Access Easement to Common Elements. An easement is established for the benefit of every Owner, as well as family member, tenant, guest and contract purchaser of every Owner residing on a Lot, to use as a right of access for ingress and regress to the Common Elements to be owned by the Association.

Section 5. Priority of Easements. Each of the easements here-in-above referred to shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Lots, and the Common Elements, as the case may be, superior to all other encumbrances which may hereinafter be applied against or in favor of the Property or any portion thereof.

Section 6. Right of Entry in Event of Emergency. Every Lot shall be subject to an easement for entry by police officers, fire fighters, ambulance personnel and similar emergency personnel in the performance of their respective duties.

ARTICLE XI INSURANCE

Section 1. Insurance to be Maintained by the Association. The following insurance coverage shall be maintained in full force and effect by the Association:

- (a). Public liability and property damage insurance in such amounts and in such forms as shall be required by the Association, but in an amount of at least \$1,000,000.00 for each occurrence for public liability insurance.
- (b). All liability insurance shall contain cross-liability endorsements to cover liability of the Owners as a group to an individual Owner.
- (c). Such other insurance coverage as it may determine to be desirable and necessary.

Section 2. Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association and charged ratably to Owners as Common Expense assessment according to the applicable provisions of this Declaration.

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Section 3. Insurance Beneficiaries. All such insurance policies shall be purchased by the Association for the benefit of the Association and the Owners.

ARTICLE XII
RIGHTS OF INSTITUTIONAL LENDERS

Section 1. Rights Reserved to Institutional Lenders. "Institutional Lender" or "Institutional Lenders", as the terms are used herein, shall mean and refer to banks, savings and loan associations, savings banks, insurance companies, Veterans Administration, Federal Housing Administration, Federal National Mortgage Association and other reputable mortgage lenders and insurers of first mortgages. So long as any Institutional Lender or Institutional Lenders shall hold any mortgage upon any Lot, or shall be the Owner of any Lot, such Institutional Lender or Institutional Lenders shall have the following rights:

- (a). to be furnished with at least one copy of the Annual Financial Statement and Report of the Association, including a detailed statement of annual carrying charges or income collected and operating expenses, such Financial Statement and Report to be furnished by April 15 of each calendar year.
- (b). to be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed Amendment to the Declaration, or the Articles of Incorporation and Bylaws of the Association, which notice shall state the nature of the amendment being proposed, and to be given permission to designate a representative to attend all such meetings.
- (c). to be given notice of default in the payment of assessments by any Owner of a lot encumbered by a mortgage held by the Institutional Lender or Institutional Lenders, such notice to be given in writing and to be sent to the principal office of such Institutional Lender or Institutional Lenders, or to the place which it or they may designate in writing to the Association.
- (d). to inspect the books and records of the Association during normal business hours.
- (e). to be given notice by the Association of any substantial damage to any part of the Common Elements.
- (f). to be given notice by the Association if any portion of the Common Elements, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority.

Whenever any Institutional Lender desires the benefits of the provisions of this section, such Lender shall serve written notice of such fact upon the Association by Registered Mail or Certified Mail addressed to the Association and sent to its address stated herein, or to the address of the Property, identifying the Lot upon which any such Institutional Lender or Institutional Lenders hold any mortgage or mortgages, or identifying any Lot owned by them, or any of them, together with sufficient pertinent facts to identify any mortgage or mortgages which may be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such Institutional Lender.

ARTICLE XIII GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 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. General Amendments. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners.

Section 4. Amendments Permitted Without Membership Approval. The following amendments may be effected by the Declarant, or the Board, as the case may be, without consent of the members: (A) Prior to the sale of the first Lot, this Declaration may be amended by the Declarant. (B) Declarant may amend this Declaration upon annexation of additional lands as specified in Article VII, Section 2 herein. (C) The Board may amend this Declaration to correct any obvious error or inconsistency in drafting, typing or reproduction. (D) The Declarant, so long as it shall retain control of the Association, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property or to qualify the Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to,

sponsored by, or under the substantial control of, the United States Government, the State of North Carolina or the City of Raleigh regarding purchase or sale in such lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of Property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration, U.S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion. (E) The Declarant, for so long as it shall retain control of the Association, and, thereafter, the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any owner, to qualify the Association or the Property, or any portion thereof, for the tax-exempt status.

Section 5. Governmental Authority Amendments. No amendment shall become effective until submitted to and approved by those authorities set out in Article XII, Section 4 above and the Raleigh City Attorney or his deputy; provided, however, if that authority fails to approve or disapprove such amendment within thirty (30) days after the same has been submitted in writing to it, such approval shall not be required and this covenant shall be deemed to have been fully complied with.

Section 6. Fidelity Bonds. The Association shall maintain blanket fidelity bonds for all officers, directors, trustees and employees of the Association and for all other persons handling or responsible for funds of or administered by the Association. Where the Association has delegated some or all of the responsibility for the handling of funds to a management agent, fidelity bonds shall be required for such management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association.

The total amount of fidelity bond coverage shall not be less than the estimated maximum of funds, including reserve funds, in the reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event shall the aggregate amount of such fidelity bonds be less than a sum equal to the three month's aggregate assessments on all units plus reserve funds.

Fidelity bonds required herein shall:

1. name the Association as an obligee;

2. contain waivers by the insurers of the fidelity bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms of expressions; and

3. provide that they may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least 10 days prior written notice to the Association, to any such agent as the Association shall designate to negotiate settlement of insurance claims on behalf of the Association, and to any institutional lender servicing on behalf of the Federal National Mortgage Association any loan secured by any unit.

The premiums on all such fidelity bonds for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a common expense.

Section 7. FHAVA Approval. As long as there is a Class B membership, and if Declarant determines to qualify this Property for Federal Housing Administration or Veterans Administration approval the following actions will require the prior written approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional property, dedication of Common Elements, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 8. Recordation. No amendment shall be effective until recorded in the Wake County Registry and is approved by the City Attorney or his deputy.

Section 9. Landscaping of Island(s). Landscaping of island(s) within the right(s)-of-way of public street(s) shall be the responsibility of the Association as set out in Article I, Section 6(h). Such area(s) shall remain neat, clean, attractive and safe. Damaged, unsafe or dead plants must be removed by the Association. Neither the City nor the State will be liable for any accidents or damage caused by such encroachment within the right(s)-of-way and the Association shall hold harmless the public and indemnify the City and State from such liability.

Section 10. Condemnation. As long as Declarant owns any Lot, Declarant reserves the right to be given notice of any condemnation or casualty loss that affects a material portion of the Properties, any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association or any proposed action that requires the consent of a specified percentage of mortgage holders.

BK 8274 PG 0784

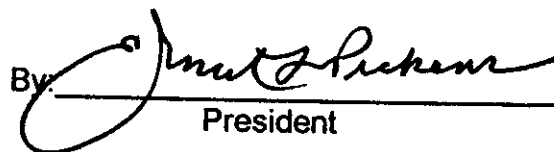
Section 11. Exchange of Property With Adjoining Property Owners. The Declarant, with the assent of two-third (2/3) of the votes of the entire Class A membership of the Association, acting through its Board, may exchange with adjoining property owners, a portion or portions of real estate owned by the Declarant when such exchange promote the overall development scheme of the subdivision. If the real property or any part thereof so acquired by the Declarant is to become a part of the Common Elements, it shall be free and clear of all encumbrances except this Declaration and easement for drainage, utilities and sewers. That portion or portions of real estate so acquired by the Declarant without further act of the Association membership, shall be subject to those provisions of the Declaration that are applicable to real property owned by the Declarant.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 11th day of December, 1998.

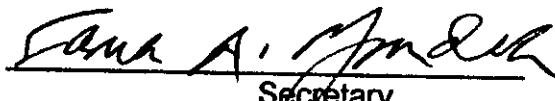
SHAW DEVELOPMENT CORPORATION

A North Carolina Corporation

By


President

ATTEST:


Secretary



(SEAL)

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STATE OF NORTH CAROLINA

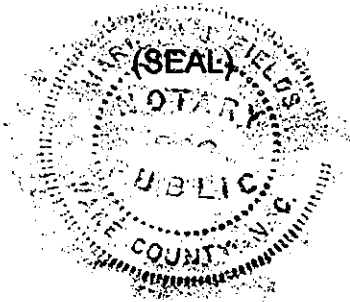
COUNTY OF WAKE

I, MARTLYN J. FIELDS, Notary Public of the County and State aforesaid, certify that SAMA A. MONDEH, personally appeared before me this day and acknowledged that he is _____ Secretary of Shaw Development Company, a North Carolina corporation, and that by authority duly given and as an act of the corporation, the foregoing instrument was signed in its name by its _____ President, sealed with its corporation seal and attested by SAMA A. MONDEH as its _____ Secretary.

Witness my hand and Notarial Stamp/Seal, this 11th day of December, 1998.

Martlyn J. Fields
NOTARY PUBLIC

My Commission Expires: 12-22-2002



NORTH CAROLINA — WAKE COUNTY

The foregoing certificate of Martlyn J. Fields

Notar(y)(ies) Public

is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

LAURA M. RIDDICK, Register of Deeds

By P. Anne Redd
Asst./Deputy Register of Deeds

BK 8274 PG 0786

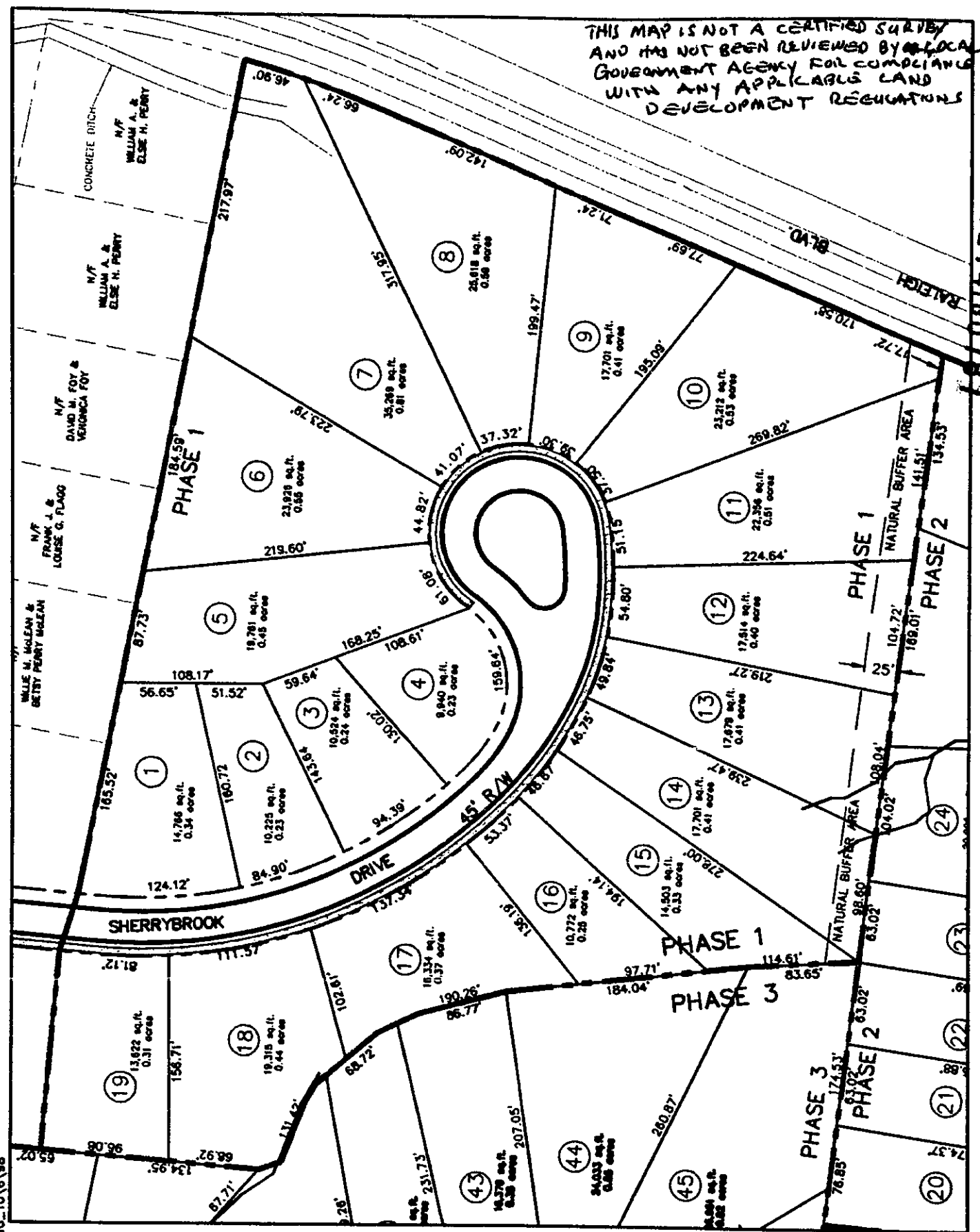
EXHIBIT "A"

BEING Lots 1 – 19, of the TUPPER PLACE Subdivision as recorded in
Book of Maps 1999 at Page 450, Wake County Registry.

a:\Share\CEF\Documents\Res-Cov.doc

BK8274P0787

THIS MAP IS NOT A CERTIFIED SURVEY
AND HAS NOT BEEN REVIEWED BY A LOCAL
GOVERNMENT AGENCY FOR COMPLIANCE
WITH ANY APPLICABLE LAND
DEVELOPMENT REGULATIONS



32200P03.DWG_10/6/98



TUPPER PLACE SUBDIVISION
PHASE 1
BY SHAW DEVELOPMENT CORP

EXHIBIT B

FIGURE

THIS DOCUMENT, TOGETHER WITH THE CONCEPTS AND DESIGNS PRESENTED HEREIN, AS AN INSTRUMENT OF SERVICE, IS INTENDED ONLY FOR THE SPECIFIC PURPOSE AND CLIENT FOR WHICH IT WAS PREPARED. REUSE OF AND IMPROPER RELIANCE ON THIS DOCUMENT WITHOUT WRITTEN AUTHORIZATION AND ADAPTATION BY HILEY-HORN AND ASSOCIATES, INC. SHALL BE WITHOUT LIABILITY TO HILEY-HORN AND ASSOCIATES, INC.