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BOBBIE PUCKETT
REGISTER OF DEEDS
WAKE COUNTY

Prepared by and return to: Shipwash Development, Inc., 510 Hwy 42 West, Clayton, NC 27520

NORTH CAROLINA

WAKE COUNTY

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PHILLIPS POINTE SUBDIVISION

THIS DECLARATION, made this 13th day of November, 1998, by Shipwash Development, Inc., who is the owner of property hereinafter described, of Johnston County, North Carolina, hereinafter called "Declarant";

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Wake County, North Carolina, which is more particularly described as:

Being all that property shown on map entitled PHILLIPS POINTE PHASE 1, SHEETS 1, 2, and 3, dated October 21 & 22, 1998, said plats having been prepared by Thompson and Associates, P.A., , and now on file in the Office of the Register of Deeds of Wake County in Book of Maps 1998 at pages 2090, 2091, and 2092, to which plat reference is hereby made for a more particular description of same.

WHEREAS, Declarant desires to create on the above described properties a planned development community to be known as PHILLIPS POINTE SUBDIVISION, and to provide for the preservation of values, for the maintenance of common facilities and services, and for a vehicle for the administration and enforcement of covenants and restrictions; and

WHEREAS, Declarant has caused or will cause to be incorporated under the laws of the State of North Carolina, a non-profit corporation, HOMEOWNERS ASSOCIATION OF PHILLIPS POINTE SUBDIVISION, INC., for the purpose of exercising the functions aforesaid, and which are hereinafter more fully set forth;

WHEREAS, Declarant will convey the said property, subject to certain protective covenants, conditions, restrictions, liens and charges as hereinafter set forth;

NOW, THEREFORE, the Declarant hereby declares that all of the property described above shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property. These easements, restrictions covenants, and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described property or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

The following words and terms when used in this Declaration or any supplemental declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

Section 1. "Association" shall mean and refer to Homeowners Association of Phillips Pointe Subdivision , Inc., a North Carolina non-profit corporation, its successors and assigns.

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Section 2. "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 3. "Board of Directors" or "Board" means those persons elected or appointed and acting collectively as the Directors of the Association.

Section 4. "Bylaws" means the Bylaws of the Association as they now or hereafter exist.

Section 5. "Common Area" shall mean and refer to all real property owned by the Association, along with facilities and improvements thereon (including, without limitation, private streets, water, sewer, or other utility lines within the common area) , for the common use and enjoyment of all members of the Association.

The Association will not own any common area at the time of the conveyance of the first lot.

Section 6. "Declarant" shall mean and refer to Shipwash Development, Inc., its successors and assigns to whom the rights of declarant are expressly transferred, or if such successors or assigns should acquire more than one undeveloped lot or undeveloped acreage for the purpose of development or one otherwise denominated a "Declarant" hereby.

Section 7. "Lot" shall mean and refer to any plot of land, other than the common area, shown on a recorded subdivision map of the property.

Section 8. "Member" shall mean and refer to every person who is a member of the Association.

Section 9. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee or other legal entity.

Section 10. "Property" or "Properties" shall mean and refer to that certain real property hereinbefore described and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

ARTICLE II
EXISTING PROPERTY AND ADDITIONS

Section 1. Existing Property. All of the real property hereinabove described shall sometimes be referred to herein as the "Existing Property". The Declarant intends to develop the Existing Property in accordance with a Master Plan prepared in its Planning Department and placed on display in its Receipt and Sales Office, and other areas. The Declarant reserves the right to review and modify the Master plan at its sole option from time to time based upon its continuing research and design program. The Master Plan shall not bind the Declarant, its successors and assigns, to adhere to the Master Plan in the development of the land shown thereon.

Subject to its right to modify the Master Plan as stated herein, the Declarant shall convey to the Association certain properties designated on the Master Plan as Properties which may be transferred to the Association, as, in the reasonable exercise of its discretion, it so chooses without regard to the relative location of such portions or sections within the overall plan. Once conveyed to the Association, these properties shall become Common Properties. The Declarant shall not be required to follow any predetermined sequence or order of improvements and development; and, it may bring within the

plan of these covenants additional lands, and develop the same before completing the developing of the Existing Property. Other than as stated in this paragraph, the Declarant shall have full power to add to, subtract from, or make changes in the Master Plan regardless of the fact that such actions may alter the relative maximum potential voting strength of the various types of membership of the Association.

Section 2. Additions to Existing Property. Additional lands may become subject to, but not limited to, this Declaration in the following manner:

(a) Additions. During the period of development, which shall by definition extend from date of this Declaration to January 1, 2008, the Declarant, its successors and assigns shall have the right, without further consent of the Association, by Supplementary Declaration, to bring within the plan and operation of this Declaration additional property. Such property may be subjected to this Declaration as one parcel or as several smaller parcels at different times.

The additions authorized under this and the succeeding subsections shall be made by recording a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the Covenants and Restrictions of this Declaration to such additional property. The Supplementary Declaration may contain such complementary additions and/or modifications of the Covenants and Restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of the Declarant, to reflect the different character, if any, of the added properties and as are not inconsistent with the plan of this Declaration, but such modifications shall have no effect upon the Property described above, or upon any other additions to the Properties.

(b) Other Additions. Upon approval in writing of the Association pursuant to a simple majority of the vote of those present at a duly called meeting, the owner of any property who desires to add such property to the plan and operation of this Declaration and to subject it to the jurisdiction of the Association, shall record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the Covenants and Restrictions of this Declaration to such additional property.

The Supplementary Declaration may contain such complementary additions and/or modifications of the Covenants and Restrictions contained in this Declaration as may be necessary or convenient which are not inconsistent with the plan of this Declaration, but such modifications shall have no effect upon the property described above.

(c) Merger. Upon merger or consolidation of the Association with another association, as provided for in the Bylaws of the Association, its property rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or in the alternative, the properties, rights and obligations of another association nay, by operation of law, be added to the properties of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the Existing Property, together with the Covenants and Restrictions established upon any other properties, as one plan. No merger or consolidation shall effect any revocation, within the Existing Property, including, without limitation. the maximum limits on assessments and dues of the Association, or any other matter substantially affecting the interests of Members of the Association, or Institutional Lender.

(d) Name. Additional lands which become subject to this Declaration under the provisions of this Section may in the future be referred to as a part of PHILLIPS POINTE

SUBDIVISION. Also, the name PHILLIPS POINTE SUBDIVISION may be used by the Declarant to refer to other nearby properties not subject to this Declaration.

ARTICLE III
PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the common area, including the rights of ingress and egress, which shall be appurtenant to and shall pass with the title to every assessed lot, subject to each of 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 suspend the voting rights of, and right to use of the recreational facilities 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 take such steps as are reasonably necessary to protect the above-described properties against foreclosures;

(d) The right of Association to formulate, publish, and enforce rules and regulations as provided herein;

(e) The right of the Association, in accordance with its Articles and Bylaws, to borrow money from any lender for the purpose of improving and/or maintaining the common area and facilities, and providing services authorized herein and in aid thereof to mortgage said properties provided, however, that any such mortgage is with the prior consent of two-thirds (2/3) of the votes of each class of members of the Association entitled to be voted, which consent may be evidenced by petition or by an affirmative vote of such two-thirds (2/3) by Members voting in person or by proxy at a duly called meeting of the Association;

(f) The right of the Association, acting through its Board, to exchange Common Area pursuant to Article X, Section 11 of this Declaration, providing such exchange is agreed to by two-thirds (2/3) of each class of members as evidenced by a written instrument;

(g) The right of the Association to dedicate or transfer all or any part of the Common Area to any governmental or public agency, authority, or public or private utility for such purposes and subject to such conditions as may be agreed to by two-thirds (2/3) of each class of members as evidenced by a written instrument.

The instrument effecting such dedication, transfer, conveyance, exchange or mortgage shall be sufficient if executed by appropriate officers of the Association containing a recital that the provisions regarding assent of two-thirds (2/3) of each class of members as evidenced by a written instrument has been complied with.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the Bylaws, his right of enjoyment to the common area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Title to Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title, at no cost to the Association, and subject to (i) this Declaration of Covenants and Restrictions (ii) all other restrictions and limitations of record at the time of conveyance (iii) any restrictions, limitations, conditions, or determinations as to the purposes and uses of the conveyed properties as stipulated in said Deed, those common properties described in ARTICLE I, except such common Properties as are required to be deeded to any governmental agency as designated in the Master Plan, to the Association, free and clear of all liens and encumbrances, at the time of or prior to the conveyance of the first lot in each respective parcel, except, utility, drainage and access easements and easements to governmental authorities.

Similarly, the Declarant will convey to the Association Common Area which are parts of Phillips Pointe Subdivision as those portions are annexed in the future.

ARTICLE IV
MEMBERSHIP

Every person who is record owner of a fee or undivided fee interest in any lot which is subject to assessment by the Association, including contract sellers, but excluding persons who hold an interest merely as security for the performance of any obligations, shall be a member of Homeowners Association of Phillips Pointe Subdivision, Inc. Ownership of such interest shall be the sole qualification for such membership. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment. The Board of Directors may make reasonable rules regarding proof of ownership.

ARTICLE V
VOTING RIGHTS

Section 1. Classes. The Association shall have the following two classes of voting membership:

(a) Class A. Class A members shall be all owners, other than Declarant; however, Declarant shall be a Class A member to the extent provided in (b) hereinafter. Class A members shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot the vote for such lot shall be exercised as the owners thereof determine, but in no event shall more than one vote be cast with respect to any lot, and no fractional vote may be cast with respect to any lot.

(b) Class B. The Class B member shall be the Declarant, and it shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(1) 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 (2) below, additional lands are annexed to the Properties without the assent of Class A members as provided for in this Declaration, if such additional lands would cause the total outstanding votes for Class B membership to exceed the total votes outstanding for Class A membership); or

(2) On January 1, 2008.

ARTICLE VI
COVENANT FOR 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 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;
(b) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

Such assessments shall be fixed, established, and collected from time to time as hereinafter provided.

The annual and special assessments, together with such interest thereon and costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the lot and improvements 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 the lot at the time the assessment fell due. The personal obligation of an owner for 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 promoting the recreation, health, safety, and welfare of the residents and for the improvement and maintenance of the Common Area; enforcing these covenants and the rules of the Association; and providing the services and facilities as provided for herein.

Section 3. Amount of Assessment.

(a) Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be One Hundred Twenty and no/100 Dollars ($120.00) per Lot.

(b) Increase by Association. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment effective for any year may be increased by 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 January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 10% by a 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 this purpose.

(d) Criteria for Establishing Annual Assessment. The Association is required to set the annual assessment high enough to enable the Association to establish and maintain an adequate reserve fund out of the annual assessments for the periodic maintenance, repair and replacement of improvements to the common areas. In establishing the annual assessment for any assessment year, the

Board of Directors shall set the annual assessment high enough to cover all current costs and expenses of the Association, any accrued debts, and reserves for future needs.

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 costs of construction or reconstruction, repair or replacement, of a capital improvement upon the common area, including fixtures and personal property related thereto, 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. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots, on a per lot basis, and may be collected on a monthly basis.

Section 6. Quorum for any Action Authorized Under Section 3, and 4. At the first meeting called, as provided in Sections 3 and 4 hereof, the presence at the meeting of members or of proxies entitled to cast sixty percent (60%) of all of 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 requirement set forth in Sections 3 and 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Working Capital Fund. Simultaneously with the closing of the sale of each unit for residential purposes, the purchaser shall remit to the Association one-sixth (1/6) of the full annual assessment then in effect to be held as a working capital fund. The purpose of this fund is to insure that the Association Board will have adequate cash available to meet unforeseen expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the fund shall not be considered advance payment of regular assessments.

Section 8. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall be paid in equal monthly installments and the assessment shall commence as to each lot upon its occupancy by a resident thereof. 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, upon demand at any time, shall 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 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 its issuance.

Section 9. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments or portion thereof which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the same shall bear interest from the date of delinquency at the rate of eight (8%) percent per annum or the maximum lawful rate, whichever is less. The Association may bring an action against the owner personally obligated to pay the same, or foreclose the lien against the property, and, in either event, interest and costs of any such action, including reasonable attorney's fees, shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the common area or abandonment of his lot.

Section 10. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the

assessments provided for herein on any lot shall be subordinate to the lien of the first mortgage, and ad valorem taxes on such lot. Sale or transfer of any lot shall not affect the assessment lien; however, the sale or transfer of any lot pursuant to mortgage 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.

ARTICLE VII
ARCHITECTURAL CONTROL

No building, fence, wall, swimming pool, tennis court, or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to, or change, or alteration therein be made until the plans and specifications showing the nature, kind, shape, color, heights, quality, materials, and location of the same shall have been submitted to and approved in writing 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 render its approval or disapproval within thirty (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 duly complied with. The Board may set a reasonable review fee for any submission for review.

It is the intent of this Declaration that all buildings and structures within the Properties shall be constructed of attractive exterior materials of high quality. In its review of submissions, the Architectural Review Board shall evaluate the construction standards and building materials for all proposed construction on the Lots to insure that they are in conformance with such objectives. Accessory buildings, enclosures, appurtenant structures to, or extrusions from any building or structure on any lot shall be of similar or compatible materials, design and construction. Exterior finishes once approved shall not be altered without the express consent of the Architectural Review Board.

ARTICLE VIII
FUNCTIONS OF ASSOCIATION

Section 1. Ownership and Maintenance of Properties. The Association shall be authorized to own and/or maintain Common Properties, equipment, furnishings and improvements devoted to the following uses:

(a) For roads, roadways, roadway medians, roadway islands, and parkways along said roads or roadways, cul-de-sac islands and neighborhood or other area entrances (including signs) through the Properties;

(b) For sidewalks, walking paths or trails, bicycle paths, pedestrian underpasses, and bridle paths through the Properties;

(c) For transportation facilities throughout the Properties other than privately owned automobiles, e.g., buses, electric vehicles, etc.;

(d) For security and fire protection services including security stations, guardhouses, police equipment, fire stations and fire fighting equipment, and buildings used in maintenance functions;

(e) For emergency health care including ambulances, rescue squad facilities, emergency care medical facilities, and the equipment necessary to operate such facilities;

(f) For providing any of the services which the Association is authorized to offer under this Declaration;

(g) For purposes set out in deeds by which Common properties are conveyed to the Association;

(h) For indoor and outdoor recreational and community facilities, including, but not limited to, tennis courts, platform tennis courts, handball courts, squash courts, basketball courts, swimming pools, and any showers, locker rooms, or other club facilities associated with such uses, putting greens, playgrounds, ball fields, spectator viewing pavilions, gazebos, picnic shelters, picnic tables, parks, walking trails, bike trails, boardwalks, decks, wildlife conservancies and feeding stations, nature interpretive areas, amphitheaters, community meeting facilities and all rest room facilities, parking lots, boat storage, service buildings, and concession-type food services associated with all such uses;

(i) For water and sewage facilities and any other utilities, if not adequately provided by a private utility, Wake County or the City of Fuquay Varina;

(j) For the cleaning, landscaping and maintenance of all roadway medians and islands, parkways along said roadways, cul-de-sac islands and neighborhood and other area entrances (including signs).

Section 2. Services. The Association shall be authorized, but not required except as specified in section 3, to provide the following services:

(a) cleaning and maintenance of all roads, roadways, parkways, lakes, parks, sidewalks, walking trails, bike trails, Common Properties, and also all public properties which are located within or in a reasonable proximity to the Properties such that their deterioration would affect the appearance of the Properties as a whole;

(b) Landscaping and beautification of roads, roadways, parkways, lakes, parks, sidewalks, walking paths, bike trails, Common properties;

(c) Transportation facilities other than privately owned automobiles, e.g. buses, electric vehicles, ferry boats, etc.;

(d) Lighting of roads, signs, landscaping, sidewalks, walking paths, bike trails, parking lots and any recreational and community facilities located within the properties;

(e) Police protection and security, including, but not limited to the employment of police and security guards, maintenance of electronics and other security devices and control centers for the protection of persons and property within the property, and assistance in the apprehension and prosecution of persons who violate the laws of the state of North Carolina or the County of Wake and City of Fuquay Varina, North Carolina, within the Properties;

(f) Fire protection and prevention;

(g) Garbage and trash collection and disposal;

(h) Insect and pest control to the extent that it is necessary or desirable in the judgment of the Board of Directors of the Association to supplement the service provided by the state and local governments;

(i) The services necessary or desirable in the judgment of the Board of Directors of the Association to carry out the Association's obligations and business under the terms of this document;

(j) To take any and all actions necessary to enforce all Covenants and Restrictions affecting the properties and to perform any of the functions or services delegated to the Association in any Covenants or Restrictions applicable to the properties;

(k) To set up and operate an Architectural Review Board of the purposes outlined herein;

(l) To provide day care and child care services;

(m) To conduct instructional, recreational, sports, crafts, social and cultural programs of interest to Members, their families and guests;

(n) To provide legal and scientific resources for the improvement of air and water quality within the Properties;

(o) To provide safety equipment for storm emergencies;

(p) To support the operation of transportation services between key points of the properties and the airports, other public transportation terminals and public centers serving the area surrounding the Properties;

(q) To construct improvements on Common properties for use for any of the purposes authorized in this Article, or as may be required to provide any of the services authorized in this Article;

(r) To provide administrative services, including, but not limited to, legal, accounting, and financial; and communication services, including, but not limited to, community newsletters and newspapers to inform Members of activities, notices of meetings, referendums, and other issues and events of community interest;

(s) To provide liability and hazard insurance covering improvements and activities on the Common Properties;

(t) To provide water, sewage, and any necessary utility services not provided by a public body, private utility or the Declarant;

(u) To provide, conduct, or maintain water pollution and shoreline erosion abatement measures including, without limitation, maintenance and repair of shore revetments and groin;

(v) To construct mailboxes, signs, and other standard features for use throughout the Properties;

(w) To provide any or all of the above listed services to another association of owners of

real property under a contract, the terms of which must be approved by the Board of Directors.

Section 3. Minimum List of Functions and Services. The "Minimum List of Functions and Services" shall establish and define the minimum level of functions and services which the Association must furnish or cause to be furnished to its Members. So long as the Declarant is engaged in the development of Properties which are subject to the terms of this Declaration, the Association shall not reduce the level of functions and services it furnishes to its Members below such minimum level without the proper written consent of the Declarant. The "Minimum List of Functions and services" is as follows:

(a) The Association shall provide or procure the administrative services necessary to carry out the Association's obligations and business under the terms of this Declaration, the Articles of Incorporation of the Association and the Bylaws of the Association, including, but not limited to, legal, accounting, financial and communications services;

(b) The Association shall administer and enforce the Covenants and Restrictions established in this Declaration, including, but not limited to, the following:

(i) The Association shall set assessments, levy cash assessments, notify the Members of such assessments, and collect such assessments;

(ii) The Association shall prepare accurate indexes of Members, Property Classifications, Votes, Assessments, the Cumulative Maximum Number of Residential Lots and Family Dwelling Units Authorized in the Properties, and the Maximum Regular Assessment;

(iii) The Association shall operate an Architectural Review Board;

(iv) The Association shall maintain and operate all Common Properties;

(v) The Association shall hold Annual Meetings, Special Meetings, and Referendums as required, hold elections for the Board of Directors as required and give members "'proper notice" as required;

(vi) The Association shall prepare Annual Statements and Annual Budgets and shall make the financial books of the Association available for inspection by members at all reasonable times;

(c) The Association shall provide appropriate liability and hazard insurance coverage for improvements and activities on all Common Properties;

(d) The Association shall provide appropriate directors' and officers' legal liability insurance, and indemnify persons pursuant to the provisions of the Bylaws of the Association;

(e) The Association shall keep a complete record of all its acts and corporate affairs;

(f) The Association shall (except where such services are adequately provided by governmental agencies) provide regular cleanup of all roads, roadways, roadway medians, roadways islands, parkways, cul-de-sac islands, neighborhood and other entrances, greenways,

open space, and walking trails throughout the Properties, including, but not limited to, mowing grass on all roadsides, cul-de-sac and roadway islands, entrances, parks, greenways, walking trails; sweeping all roads, landscape maintenance on all roadsides, cul-de-sac and roadways islands, entrances, parks, greenways, walking trails; pickup and disposal of trash.

Section 4. Mortgage and Pledge. The Board of Directors of the Association shall have the power and authority to mortgage the property of the Association and to pledge the revenues of the Association as security for loans made to the Association which loans shall be used by the Association in performing its authorized functions and services; provided that any such mortgage is with the prior consent of two-thirds (2/3) of each class of the members of the Association, which consent may be evidenced by petition or by an affirmative vote of said two-thirds of the Association. Provided that if ingress or egress to any residence is through the common area, any conveyance or encumbrance of such area is subject to lot owner's easement.

Section 5. Review Board. The Architectural Review Board shall be composed of at least three (3) but not more than nine (9) members, all of whom shall be appointed by the Board of Directors of the Association. At least one (1) member of the Association other than the Declarant shall be a Member of the Architectural Review Board at all times.

Section 6. Limited Liability. In connection with all reviews, acceptances, inspections, permissions, consents or required approvals by or from Declarant and/or the Association contemplated under this Declaration, Declarant and/or the Association shall not be liable to an Owner or to any other person on account of any claim, liability, damage, or expense suffered or incurred by or threatened against an Owner or such other person and arising out of or in any way relating to the subject matter of any review, acceptances, inspections, permissions, consents or required approvals, whether given, granted or withheld.

Section 7. Management and Contract Rights of Association. Declarant may enter into a contract with a management company or manager for the purposes of providing all elements of the operation, care, supervision, maintenance, and management of the property. However, no such contract shall be binding upon the Association except through express adoption or ratification of the terms and conditions of such contract. Any contract or lease entered into by Declarant or by the Association while the Declarant is in control thereof shall contain a provision allowing the Association to terminate such contract without justification or penalty after transfer of management by the Declarant to the Association.

ARTICLE IX
RIGHTS OF FIRST MORTGAGEES

Any institutional holder of a first mortgage on a Lot will, upon request in writing to the Association, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive written notice of all meetings of the Association and the right to designate a representative to attend all such meetings (c) receive written notice of any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage, (d) receive written notice of any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Lot on which it holds the mortgage, (e) receive written notice of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, (f) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, and (g) be furnished with a copy of any insurance policy owned by the Association, and (h) to be furnished with at least one copy of the annual Financial Statement and Report of the Association. The Association may require the payment of expenses incurred in preparing copies and mailing of documents

furnished to first mortgage holders pursuant to this Article.

ARTICLE X
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 provision which shall remain in full force and effect.

Section 3. Duration and Amendment. 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 unless, and until a majority of the ten owners of the lots covered by these covenants should vote to amend or terminate these covenants. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than two-thirds (2/3) of the Lot Owners. Any amendment must be recorded.

Section 4. Dwelling Size. No dwelling shall be erected or allowed to remain on any lot if the floor area of the main structure, exclusive of one-story open porches and garages, shall be less than 1,200 square feet. Any multi-story dwelling house shall have at least 600 square feet of heating area on the first floor, with a total of at least 1,200 square feet of heated living area overall. The Architectural Review Board shall have the right to allow a 10% deviation from this requirement.

Section 5. Land Use and Building Type. No structure shall be erected, altered, placed or permitted to remain on any Lot other than for use as a single-family residential dwelling and only one single-family residential dwelling shall be erected or permitted to remain upon any Lot. A private garage and outbuildings as herein expressly permitted, not rented, leased or utilized for any remuneration are permitted. No outbuilding shall be erected upon any Lot unless same is incidental to the residential use of said Lot. It is provided, however, that the Declarant or assigns, during the development stage, may maintain dwellings for use as model homes to aid sales in the subdivision. After development has been completed, no such model home may be maintained in the subdivision.

Section 6. Re-subdivision. No lot shall be resubdivided nor shall a fractional part of any lot be sold without the consent of Declarant, which consent shall not be unreasonably withheld. In the event either of the foregoing is approved, then the assessment attributable to the Lot so subdivided shall be prorated between the resulting Lots. Declarant reserves the right to alter the lot size of any lots and to utilize portions thereof as a street or road for access to future development and to recombine or alter portions of any other lots.

Section 7. Invalidation. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

Section 8. Easement to Governmental Agencies, Public/Private Utility Agencies. An easement is hereby established for municipal, state agencies or public or private utilities serving Phillips Pointe, their agents and employees over all common properties hereby or hereafter established for setting, removing,

and reading utility meters, maintaining and replacing utility or drainage connections, and acting with other purposes consistent with the public safety and welfare, including, without limitation, police and fire protection.

The Association shall have the power and authority to grant and to establish in, over, upon and across the common area conveyed to it such further easements as are requisite for the convenient use and enjoyment of the property.

Section 9. Reserved Easements. Easements for installation and maintenance of utilities and drainage facilities, including but not limited to, utility lines, underground or above ground, including electric lines, drainage ways, water lines, sewer lines, cablevision lines, telecommunications lines, telephone lines, and gas lines, are reserved as shown on the recorded plat and over five (5) feet along each side property line and five (5) feet along the rear property line of each Lot. A ten (10) foot easement along the front lot lines of all lots is reserved for drainage, utilities and slopes. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements; however, driveways may cross the easement as located by approval of the Architectural Committee. Service to the individual residences shall be underground.

Section 10. Emergencies. Every Lot shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency conditions which arises upon any Lot and that endangers any Building or portion of the Common Area.

Section 11. Exchange of Common Area. With approval as set forth in Article III, section 1(f) of this Declaration, the Association, acting through its Board, from time to time, may exchange with Declarant or any Member a portion of the Common Area for a portion of the real property owned by such Member within Phillips Pointe, provided that the real property acquired by the Association in the exchange: (a) is free and clear of any encumbrances except the Declaration, and easements for drainage, utilities and sewers; (b) has approximately the same area and utility as the portion of the Common Area exchanged. The real property so acquired by the Association shall be a part of the Common Area, and, without further act of the Association or membership, shall be released from any provisions of the Declaration except those applicable to the Common Area. The portion of the Common Area so acquired by Declarant or a Member, without further act of the Association or membership, shall cease to be Common Area and shall be subject to those provisions of the Declaration that were applicable to the real property conveyed to the Association by the Member. Provided, that if ingress or egress to any residence is through the common area, any conveyance or encumbrance of such area is subject to lot owner's easement.

Section 12. Miscellaneous.

(a) Each owner shall maintain and keep his Lot in good order and repair and shall do nothing which would be in violation of law;

(b) No noxious or offensive activities shall be carried on upon any portion of the Properties, nor shall anything be done thereon that may be or become a nuisance or annoyance to the neighborhood. No exterior lighting shall be directed outside the boundaries of a lot or other parcel;

(c) There shall be no obstruction of any portion of the Common property or any

storage or construction or planting thereon by an Owner. No clothes, laundry or other articles or equipment shall be placed, hung, exposed or stored in any portion of the Common property or in any portion of the exterior or yard area of any Lot or on or about the exterior of any building;

(d) No animals, including pigs, horses, fowl, poultry, cattle or livestock of any kind shall be brought onto or kept on the Properties, except that no more than two dogs, cats, or other household pets (except house pets with vicious propensities) may be kept or maintained on any Lot, provided that such pets not be kept for any commercial purpose and provided that such pets are at all times leashed and no "runs" or other outside structures are erected or installed therefor. The keeping of any pet which by reason of its noisiness or other factor is a nuisance or annoyance to the neighborhood is prohibited;

(e) Adequate off-street parking shall be provided by the owner of each lot for the parking of automobiles owned by such owner or members of his family living with him in the household situate upon the premises;

(f) No abandoned cars, motorcycles, jeeps, trucks or motor vehicles of any kind whatsoever that are unable to move under their own power may be stored or suffered to remain upon any of the Common Property or on any Lot. If any such motor vehicle is so stored or remains on the aforesaid premises, the Association may take the necessary steps to remove the same at the Owner's expense;

(g) No fence, wall, tree, hedge or shrub planting shall be maintained in such a manner as to obstruct sight lines for vehicular traffic.

(h) No structure of a temporary character, trailer, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence, either temporarily or permanently;

(i) No signs, advertisements, billboards, or advertising structures of any kind may be erected, maintained or displayed on any Lot; provided, however, that nothing herein shall prohibit signs erected or displayed by Declarant in connection with the development of the Properties and the marketing and sale of residences therein, and nothing herein shall prohibit a sale sign erected by any future Owner or their agent attempting to market their individual house, provided such sign is not in excess of six (6) square feet. Written approval of the Architectural Review Board shall also be required prior to erecting, placing or altering mailboxes, permanent signs, newspaper boxes or any outdoor lighting upon any Lot. All driveways and walkways must be paved with concrete, asphalt or brick unless approved by the Architectural Review Board;

(j) No rubbish, trash or garbage receptacle shall be placed on the exterior of a Lot except on the day of regularly scheduled collection, unless such receptacle is completely recessed into the ground and equipped with a permanent cover, or unless an above-ground receptacle is approved by the Architectural Review Board;

(k) No fences or screening of any kind shall be erected or maintained on any lot between the rear of the residence constructed on such Lot and the street which such Lot fronts. Fences may be maintained on other portions of the Lots only with written consent of the Architectural Review Board as to location, material and heights, and the decision of such Committee to approve or reject a fence shall be conclusive Nothing herein contained shall prevent placement of fences by the Declarant or Association on the Common Properties There will be no chain link fences of any kind except in the recreation area;

(l) No exterior television or radio antennae, towers, satellite dishes, or similar structures will be allowed on any Lot in the Properties, except small dishes attached to the residence;

(m) There shall be no above-ground swimming pools on any Lot in the Properties;

(n) A storage shed may be permitted at the rear of each lot upon approval of the Architectural Review Board after the plans and specifications or a photograph and a plot plan showing the proposed location have been submitted for approval;

(o) No hedge or screen planting shall be erected or permitted to remain on any lot closer to the front line than the front of the dwelling erected on said lot;

(p) It has been determined that it is in the best interest of the Subdivision that all mailboxes be uniform in style and appearance. Therefore, all mailboxes are to be initially installed by the Builder and can be purchased through the Developer. Any changes or replacements must be approved by the Architectural Committee.

Section 13. Waiver. In order to execute the intent of this Declaration and to provide flexibility, the Architectural Review Board is hereby granted the authority by a two-thirds (2/3) vote of its membership to waive any specific restriction as to any Lot or Lots, provided, that, this Waiver shall not apply where a vote of the Members of the Association is required.

Section 14. FHA/VA Approval. As 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: Annexation of additional properties, dedication of Common Areas, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned Declarant has hereunto set its name and seal, or caused this instrument to be executed in its corporate name by its duly authorized officers and its corporate seal to be hereunto affixed, this the day and year first above written.

SHIPWASH DEVELOPMENT, INC.

By: _____
President

ATTEST:

_____
Secretary

(Corporate Seal)

STATE OF NORTH CAROLINA
COUNTY OF JOHNSTON

I, the undersigned notary public, in and for the County and State aforesaid, do hereby certify that MARICA H. SHIPWASH appeared before me and acknowledged that she is the ____ Secretary of Shipwash Development, Inc., 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 corporate seal and attested by her as its ___ Secretary.

Witness my hand and notarial stamp or seal, this the 13th day of November, 1998.

My Commission Expires:
1-30-2000

Kim Harden
NOTARY PUBLIC

KIM HARDEN NOTARY PUBLIC JOHNSTON COUNTY, N.C.

NORTH CAROLINA — WAKE COUNTY

The foregoing certificate___of _____

Kim Harden

_____ 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 Sandra A Inscoe
~~Asst.~~/Deputy Register of Deeds