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STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR KIRKWOOD AT ARRONDALE  
SECTION 1

THIS DECLARATION, made the 14th day of March, 2002, by FOGLEMAN SAFFO TURNER INC., a North Carolina Corporation (hereinafter referred to as "Declarant");

WHEREAS, Declarant is the owner or contract purchaser of certain property in New Hanover County, North Carolina, which is more particularly described as follows;

See exhibit "A" attached hereto and incorporated herein by reference.

AND, WHEREAS, Declarant desires to provide for a uniform development of said property so as to preserve its value and to protect the present and future owners thereof.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above 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 properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I  
DEFINITIONS

Section 1. Association and HOA shall be used interchangeably to mean and refer to KIRKWOOD AT ARRONDALE Homeowner's Association, Inc., a private, non-profit corporation formed or to be formed by the developer primarily as a Homeowners Association for the Lot owners in KIRKWOOD AT ARRONDALE, all of whom shall be members of the Association. Bylaws of the Association are attached as exhibit "B".

Section 2. Common Area shall mean all real property owned by the Association for the common use and enjoyment of the Owners. The Common area to be owned by the Association at the time of the conveyance of the first Lot as described as follows:

All real property of the development excluding that which is directly beneath each individual Lot.

Section 3. Declarant shall mean and refer to FOGLEMAN SAFFO TURNER INC. and its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development. The address of the Declarant is 1904 Eastwood Road, Suite 212, Wilmington, North Carolina 28403.

Section 4. Period of Declarant Control. Means the period commencing on the date hereof and continuing until the earlier of (a) five (5) years after the date of the first conveyance of a lot to an owner other than Declarant: (b) one hundred twenty (120) days after the conveyance of seventy-five percent (75%) of the lots (including any lots which may be created pursuant to special Declarant rights) to a lot owner other than Declarant: (c) two (2) years after Declarant has ceased to offer lots for sale in the ordinary course of business: (d) the date upon which Declarant voluntarily surrenders control of the development to the Lot Owners.

Section 5. Lot shall mean and refer to those portions of the subdivision property specifically allocated, platted and/or recorded as Lots for sale and/or use as single family or townhouse residences. Section 1 was recorded at Map Book 42, Page 104, New Hanover County Registry.

Section 6. Owner shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. Each Lot owner shall also be a member of the Association.

Section 7. 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 PROPERTY RIGHTS

Section 1. OWNERS' EASEMENTS OF ENJOYMENT. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- a. The right of Association to limit the number of guests of members;
- b. The rights of the Association to suspend the voting rights 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 sixty (60) days for any infraction of its published rules and regulations;
- c. The right of the Association to dedicate or transfer all or part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless any instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded;
- d. The right of the Association to impose regulations for the use and enjoyment of the

Common Area and improvements thereon, which regulations may further restrict the use of the Common Area.

Section 2. DELEGATION OF USE. Every Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area or facilities to the member of his family, his tenants, or contract purchasers who reside on the property.

### ARTICLE III EASEMENTS

Section 1. Easements are reserved as necessary in the Common Areas for installation and maintenance of underground utilities and drainage facilities.

Section 2. The Association, acting through its officers, agents, servants, and/or employees shall have the right of unobstructed access at all reasonable times to all properties as may be reasonably necessary to perform any exterior maintenance to be done.

Section 3. Each Lot and all common areas and facilities are hereby subjected to an easement for the landscaping, repair, maintenance, inspection, removal or other service of or to all electricity, television, telephone, water, sewer, utility, drainage, and painting of the exterior surfaces of all buildings and structures and the repair of all privacy fences on individual Lots or other common areas and facilities, whether or not the cause of any or all of those activities originates on the Lot in which the work must be performed.

Section 4. Ingress and egress is reserved for pedestrian traffic over, through and across sidewalks, paths, walks and lanes as the same from time to time may exist upon the common areas and facilities; and, for vehicular traffic over, through and across all streets as from time to time may be paved and intended for such purposes, for all Lot owners in KIRKWOOD AT ARRONDALE, their guests, families, invitees and lessees, the Association, the Declarant, its successors and assigns. Declarant hereby reserves alienable easements over all streets and other common areas as necessary to provide access for future development by Declarant or its successors and assigns of any properties adjoining the Project.

Section 5. An easement is hereby granted to all police, fire protection, ambulance, and all similar persons, companies or agencies performing emergency services to enter upon the Lots and common areas in performance of their duties.

Section 6. In case of any emergency originating in or threatening any Lot or other structure or the common areas and facilities, regardless whether the Lot owner is present at the time of such emergency, the Board of Directors or any other person authorized by it, shall have the right to enter any Lot for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the Lot owners, and such right of entry shall be immediate.

Section 7. All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any owner, purchaser, mortgagee and other person having any interest in said land, or any part or portion thereof, regardless of whether or not reference to said easement is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence or obligation, to the easements and rights described in this Declaration.

Section 8. The Declarant reserves the right to subject the real property in this subdivision to a contract with Carolina Power & Light Company for the installation of street lighting, which contract requires or will require a continuing monthly payment to Carolina Power & Light Company for each residential customer for street lighting service.

#### ARTICLE IV MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Each Lot Owner shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

#### ARTICLE V COVENANTS FOR ASSESSMENTS

Section 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENT. The Declarant, for each Lot owned within the Properties, hereby covenants, and each owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- a. Annual assessments or charges, with each Lot owner being responsible for paying 1/7 of the operating expenses for common areas and facilities and maintaining the landscaping on all Lots; and
- b. Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and

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 assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for

delinquent assessments shall pass to the obligor's successors in title.

**Section 2. PURPOSE OF ASSESSMENTS.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvements and maintenance of the Common Area, the payment of any taxes due on the common areas, the repair of all privacy fences installed by the Declarant, if any, the repair, maintenance and upkeep of the detention pond, drainage structures, drainage easements, Stormwater Management Permit #SW8 000530, the entrance to Arrondale on Carolina Beach Road and all private streets situated upon the properties until such time as the North Carolina Department of Transportation takes over maintenance of those streets.

**Section 3. 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 Four Hundred Twenty and No/100s Dollars (\$420) per Lot.

a. 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 each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership.

b. 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 ten percent (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.

**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 the year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Lot Owners who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 5. INSURANCE.** It shall be the duty of the Association to maintain in effect casualty and liability insurance upon the Common Areas and facilities, including the private streets, as follows:

a. **Amount and Scope of Insurance.** All insurance policies upon the Common Areas and, etc., shall be secured by the Board of Directors. Properties shall be secured by the Board of Directors, or its designee on behalf of the Association with full authority which shall obtain such insurance against (1) loss or damage by fire or other hazards normally insured against, and (2) such other risks, including public liability insurance, as from time to time shall be customarily required by private institutional Mortgage Investors for

projects similar in construction, location and use as the properties and the improvements thereon all under such terms and conditions as the responsible authority shall determine. However, such liability coverage shall be for a least \$1,000,000.00 for bodily injury, including death of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insured for property damage, bodily injuries, and deaths of persons in connection with the operation, or maintenance or use of the common areas and legal liability arising out of lawsuits relating to employment contracts of the Association.

b. **Insurance Provisions.** The Board of Directors shall make diligent efforts to ensure that said insurance policies provide for the following:

- (1) A waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the Lot Owners and their employees, agents, tenants and invitees.
- (2) A waiver by the insurer of its right to repair and reconstruct instead of paying cash.
- (3) Coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty days prior written notice to the name insured and all mortgagees.
- (4) Coverage will not be prejudiced by act or neglect of the Lot Owners when said act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the property over which the Association has no control.
- (5) The insurance coverage on the property cannot be canceled, invalidated or suspended on account of the conduct of any one or more individual Lot owners.
- (6) The insurance coverage on the property cannot be canceled, invalidated or suspended on account of the conduct of any officer or employee of the Board of Directors without prior demand in writing that the Board of Directors cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, any Lot owner or any mortgagee.

c. **Premiums.** All insurance policy premiums on the property for the benefit of the Association purchased by the Board of Directors or its designee and any deductibles payable by the Association upon loss shall be a common expense and the Association shall levy against the Owners equally as an additional annual assessment, (herein called "Insurance Assessment") which shall be in addition to the amounts provided for under Section 3 above, an amount sufficient to pay the annual cost of all such insurance premiums.

d. **Proceeds.** All insurance policies purchased pursuant to these provisions shall provide that all proceeds thereof shall be payable to the Board as insurance trustee or to such attorney-at-law or institution with trust powers as may be approved by the Board of

Directors.

e. Policies. All insurance policies purchased by the Board of Directors shall be with a company or companies permitted to do business in the State of North Carolina and holding a rating of "A" or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Association and the Board of Directors thereof, as their respective interest may appear, and shall provide that all proceeds thereof shall be payable to the Board of Directors.

Section 6. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At any such meeting called, the presence of members or of proxies entitled to cast fifty percent (50%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present at any such meeting, the members entitled to vote shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. UNIFORM RATE OF ASSESSMENT. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 8. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS AND 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 Lot by Declarant to a purchaser for value, except that annual assessments shall not commence for any Lot until a certificate of occupancy has been issued for such Lot. 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 to 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 and the Board of Directors shall have the authority to require the assessments to be paid in pro rata monthly installments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 9. EFFECT OF NONPAYMENT OF ASSESSMENTS AND REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 10. **SUBORDINATION OF THE LIEN TO MORTGAGES.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. 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.

Section 11. **WORKING CAPITAL ASSESSMENT.** At the time title to a Lot is conveyed to any owner, each owner shall contribute to the Association as a working capital reserve an amount equal to a two months estimated common area assessment. Such funds shall be used solely for initial operating and capital expenses of the Association, such as pre-paid insurance, supplies and for the common areas and facilities, furnishings and equipment, etc. Amounts paid into the working capital fund are not to be considered as advance payment of regular assessments. Any working capital funds remaining at the end of the first full operating year shall be transferred to and become part of the general funds of the Association, at the discretion of the Board of Directors.

## **ARTICLE VI FIDELITY BONDS**

Section 1. **GENERAL.** The Association shall maintain blanket fidelity bonds for all officers, directors, employees and all other persons handling or responsible for funds of the Association. If the Association shall delegate some or all the responsibility for the handling of its funds to a management agent, such fidelity bonds shall be maintained by such management agent for its officers, employees and agents handling or responsible for funds of or administered on behalf of the Association.

Section 2. **AMOUNT OF COVERAGE.** The total amount of fidelity bond coverage required shall be based upon best business judgment and shall not be less than the estimated maximum of funds, including 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 may the aggregate amount of such bonds be less than a sum equal to three months aggregate assessments on all Lots plus reserve funds.

Section 3. **OTHER REQUIREMENTS.** Fidelity bonds required herein must meet the following requirements:

- a. Fidelity bonds shall name the Association as an obligee.
- b. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of

"employees", or similar terms or expressions.

c. The premiums on all bonds required herein 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.

d. The bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least a ten (10) day prior written notice to the Association, to any insurance trustee and each eligible mortgage holder.

## ARTICLE VII ARCHITECTURAL CONTROL

Section 1. No building, fence, wall 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, heights, color, 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 a majority of the Board of Directors of the Association or 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 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 fully complied with.

Section 2. No house plans will be approved unless the proposed house shall have a minimum of 900 square feet of enclosed dwelling area. The term "enclosed dwelling area" as used in the minimum requirements shall be the total enclosed area within a dwelling; provided, however, that such term does not include garages, terraces, decks, open porches, and like areas; provided, further, that shed type porches, even though attached to the house are specifically excluded from the definition of the aforesaid term "enclosed dwelling area".

Section 3. Since the establishment of inflexible building setback lines for locations of houses on Lots tends to force construction of houses directly to the side of other homes with detrimental effects of privacy, view, preservation of important trees and other vegetation, ecological and related considerations, no specific setback lines are established by these Restrictions. In order to assure, however, that the foregoing considerations are given maximum effect, the site and location of any house or dwelling or other structure upon any Lot shall be controlled by and must be approved absolutely by the architectural control committee.

Section 4. The exterior of all houses and other structures must be completed within twelve (12) months after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the owner or builder, due to

strikes, fires, national emergency or natural calamities. During construction each Lot must be cleared of all unnecessary debris at least once a week.

Section 5. No structure, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any Lot other than a single family dwelling not to exceed two stories in height, unless the architectural control committee approves in writing a structure of more than two stories pursuant to these Declarations, provided the use of such dwelling or accessory building does not in the opinion of the architectural control committee overcrowd the site, and provided further, that such buildings are not used for any activity normally conducted as a business.

Section 6. Service utilities, fuel tanks, clothes lines, wood piles and trash and garbage accumulations are to be enclosed within the Lot so as to preclude the same from causing an unsightly view from any highway, street or way within the subdivision, or from any other residence within the subdivision.

Section 7. Off street parking for not less than two (2) passenger automobiles must be provided on each Lot prior to the occupancy of any dwelling constructed on said Lot, which parking areas and the driveways thereto shall be constructed of concrete, brick, or asphalt. On street parking shall be limited to guest parking.

Section 8. All duties and responsibilities conferred upon the Board or the Architectural Control Committee by this Declaration or the Bylaws of the Association shall be exercised and performed by the Declarant or its Designee, so long as Declarant shall own any Lot in the Properties or any additions annexed thereto by Supplemental Declaration or Amendment to this Declaration.

Section 9. The impervious surface limitation coverage proposed on each Lot is consistent with the requirements of the Department of Environmental Management coastal storm water regulations. Each Lot shall contain impervious surfaces as defined by said regulations not in excess of 3500 square feet. This allotted amount includes any built-upon area constructed within the property boundaries and that portion of the right-of-way between the front lot line and the edge of the pavement. Built-upon area includes but is not limited to structures, asphalt, concrete, gravel, brick, stone, slate, coquina and parking areas but does not include raised, open wood decking or the water surface of swimming pools. At no time shall the total impervious surface coverage on all Lots which have construction existing or approved thereon exceed the amount of impervious surfaces determined by multiplying the number of such improved lots by 3500 square feet. The impervious surface of the pool and club area will not exceed 10,200.

Section 10. All runoff from the built-upon areas of the lot must drain into the permitted system. This may be accomplished through roof drain gutters which drain to the street, grading the lot to drain toward the street or grading perimeter swales and directing them into the pond or street. Lots that will naturally drain into the system are not required to provide these measures.

Lots 105-119 are to be graded such that one-half of the flow drains toward the front of the lot and one-half of the flow drains toward the back of the lot and all other lots must be graded such that all runoff drains toward the front of the lot.

Section 11. These covenants are intended to ensure the ongoing compliance with State Storm Water Management Permit Number SW8 000530, as issued by the Division of Water Quality under NCAC 2H.1000. The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the storm water management permit. Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the State.

## ARTICLE VIII USE RESTRICTIONS

Section 1. **LAND USE AND BUILDING TYPE.** All land shall be used for residential purposes except that so long as the Declarant shall retain ownership of any Lots, it may utilize any such Lot or Lots for sales or rentals, offices, models or other usage for the purposes of selling or renting Lots within said project. The Declarant may assign this limited commercial usage right to any other person or entities as it may choose; provided, however, that when all Lots have been sold, this right of commercial usage by the Declarant, its successors and assigns shall immediately cease. No Building shall be erected, altered, placed or permitted to remain on any Lot other than one single family dwelling not to exceed one story in height. Any building erected, altered, placed or permitted to remain on any Lot shall be subject to the provisions of Article VII of this Declaration of Covenants, Conditions and Restrictions relating to architectural control.

Section 2. **NUISANCES.** No noxious or offensive activity shall be carried on, in or around any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 3. **JUNK VEHICLES.** No inoperable vehicle or vehicle without current registration and insurance will be permitted on the premises. The Associations shall have the right to have all such vehicles towed away at the owner's expense.

Section 4. **FOR SALE SIGNS PROHIBITED.** No "For Sale" signs or any other signs shall be permitted on any Lot or in the common areas and facilities, except that a "For Sale" sign or signs may be displayed by the Declarant on any Lot or Lot in the project so long as Declarant owns any Lot in the Properties unless approved by the Declarant..

Section 5. **TEMPORARY STRUCTURES.** No structure of a temporary character, trailer, basement, tent, shack, garage, barn, doghouse, or other outbuilding shall be used on any Common Area any time either temporarily or permanently except during construction by the developer.

Section 6. RECREATIONAL VEHICLES. No boat, motor boat, camper, trailer, motor or mobile homes, or similar type vehicle, shall be permitted to remain on any Lot yard or in parking spaces, at any time, unless by consent of the Association, and if properly stored out of sight in garages.

Section 7. 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 provided further that they are not allowed to run free and are at all times properly leashed and personally escorted.

Section 8. OUTSIDE ANTENNAS. No outside radio or television antennas shall be erected on any Lot or dwelling Lot within the Properties unless and until permission for the same has been granted by the Board of Directors of the Association or its architectural control committee.

Section 9. EXTERIOR LIGHTS. All light bulbs or other lights installed in any fixture located on the exterior of any building or any Lot shall be clear, white, or non-frost lights or bulbs as approved by the KIRKWOOD AT ARRONDALE Homeowner's Association.

Section 10. MAIL AND PAPER BOXES. Each Lot shall have one mail box at the common post office cluster box and one paper box which design shall be approved by the Association.

Section 11. YARD MAINTENANCE. Each Lot Owner will keep their front, rear and side yards in a neat and orderly manner.

#### ARTICLE IX ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Except as provided in Sections 2 and 3, below, annexation of additional property shall require the assent of two-thirds (2/3) of the Lot Owners, if any, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

Section 2. If the Declarant, its successors or assigns, shall develop all or any portion of any land contiguous to or within one mile from the property which is subject to this Declaration, such additional tract or tracts may be annexed to said Properties without the assent of the Lot Owners, provided however, the development of the additional tract described in this section shall be in accordance with the same general scheme of development as Section 1 of KIRKWOOD AT ARRONDALE including patio homes, townhouses and condominiums..

Section 3. The rights of Declarant reserved in Section 2 above shall expire automatically five (5) years from the date of filing these Declarations, if not exercised prior thereto.

## ARTICLE X GENERAL PROVISIONS

Section 1. **WATER, SEWER SERVICE AND OTHER UTILITIES.** City of Wilmington, New Hanover County or a private utility company sewer service and water service for the development shall be provided and no private well shall be permitted on any Lot except for irrigation purposes approved by the KIRKWOOD AT ARRONDALE Homeowner's Association, and then only with the consent of the utility company, its successors or assigns.

Section 2. **ENFORCEMENT.** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by an owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to remedy any breach of these Declarations and assess costs against the offender as a special assessment.

Section 3. **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 4. **LOTS SUBJECT TO DECLARATION.** All present and future owners, tenants and occupants of dwellings and their guests or invitees, shall be subject to and shall comply with the provisions of the Declaration, and as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such owner, tenant or occupant. The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot, their respective legal representatives, heirs, successors and assigns, and shall run with and bind the land and shall bind any person having at any time any interest or estate in any Lot as though such provisions were made a part of each and every deed of conveyance or lease.

Section 5. **BOAT AND RECREATIONAL VEHICLE STORAGE.** Lot Owners may have to the right to store boats on trailers and recreational vehicles at a location designated on the recorded plat of KIRKWOOD AT ARRONDALE, if any, subject to the rules and regulation established by the Declarant or its successors.

Section 6. **POOL CLUB.** Lot Owners will automatically become members of the Kirkwood at Arrondale Pool Club, subject to the rules and regulations established by the

Declarant or its successors. The dues for the Pool Club will be part of the Lot Owner's HOA dues. The Declarant will have the right to sell forty (40) non Lot Owner memberships in the Pool Club. The Declarant will have the right to charge a non-refundable initiation fee, paid to Declarant, for these non Lot Owner memberships. The initial monthly dues for non Lot Owner members will be Thirty and No/100 Dollars (\$30.00). If a non Lot Owner members does not pay their dues for two (2) consecutive months, their membership will be automatically terminated. The non Lot Owner membership is not transferable.

Section 7. STORM WATER PERMIT AND MAINTENANCE. When control of the Homeowners Association passes to the property Owners from the Declarant, the Storm Water Permit from the State of North Carolina and its maintenance will be taken over by the Homeowners Association

Section 8. AMENDMENT OF DECLARATION. The covenants and restrictions of this Declaration may be amended by an instrument duly recorded in the Office of the Register of Deeds of New Hanover County signed by not less than sixty-seven (67%) percent of the Lot Owners; provided that no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein. In no event may the Declaration be amended so as to deprive the Declarant of any rights herein granted or reserved unto Declarant, including the right of Declarant to develop contiguous and to extend the scheme of this Declaration to such other property by the recording of subsequent Declarations as herein provided. Notwithstanding the foregoing, the Declarant shall have the right to make amendments to this Declaration, without the other Lot Owners consent, as long as the Declarant's interest represents sixty-seven (67%) percent of the votes of the Association. Notwithstanding the foregoing, the provision of the covenants pertaining to stormwater, may not be altered or rescinded without the express written consent of the State of North Carolina Division of Water Quality.

Section 9. MORTGAGE OF COMMON AREAS. The common areas may not be mortgaged without the approval of 67% of the lot owners excluding the Declarant.

IN WITNESS WHEREOF, FOGLEMAN SAFFO TURNER INC., the Declarant, has caused this instrument to be executed by its proper corporate officers, this the \_\_\_\_\_ day of \_\_\_\_\_, 2002.

DECLARANT:

FOGLEMAN SAFFO TURNER INC.

BY: [Signature]  
F. M. FOGLEMAN - President

ATTEST: [Signature]  
TERRY F. TURNER - Secretary



STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, **STEVEN F. SIEGEL**, a Notary Public of the County and State aforesaid certify that TERRY F. TURNER personally came before me this day and acknowledged that he is the Secretary of FOGLEMAN SAFFO TURNER INC., 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 corporate seal and attested by him as its Secretary.

Witness my hand and official stamp or seal, this the 14th day of March, 2002.

My Commission Expires:

\_\_\_\_\_

[Signature]  
Notary Public

