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INSTRUMENT # 2003026728

**DECLARATION OF COVENANTS,  
CONDITIONS, EASEMENTS AND RESTRICTIONS  
FOR  
MAYFAIRE**

Prepared by Murchison, Taylor & Gibson, PLLC  
16 North Fifth Avenue  
Wilmington, North Carolina 28401

RETURNED TO *Don Burt*

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**DECLARATION OF COVENANTS, CONDITIONS,  
EASEMENTS AND RESTRICTIONS  
FOR  
MAYFAIRE**

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS (this "Declaration") is made this 2nd day of May, 2003, by Brody Zimmer, LLC, a North Carolina limited liability company ("Declarant"). Mayfaire Town Center, L.L.C., a North Carolina limited liability company ("Ground Lessee"), as the ground lessee under that certain ground lease with Declarant dated January 1, 2002, recorded in Book 3256 at Page 897 in the New Hanover County Registry (the "Town Center Ground Lease") joins herein for the purpose of subjecting and subordinating its interest under the Town Center Ground Lease to the lien of this Declaration.

**PART ONE: INTRODUCTION TO THE COMMUNITY**

*Brody Zimmer, LLC, as the developer of Mayfaire, has established this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, expansion, administration, maintenance and preservation of Mayfaire as a master planned community*

**Article 1      Creation of the Community**

1 1      Purpose and Intent.

Declarant, as the owner of the real property described in Exhibit A, intends by Recording this Declaration to establish a general plan of development for the planned community known as Mayfaire. This Declaration provides a flexible and reasonable procedure for Mayfaire's future expansion and provides for its overall development, administration, maintenance and preservation. An integral part of the development plan is the creation of Mayfaire Community Association, Inc., an association comprised of all owners of real property in Mayfaire, to own, operate and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents referenced in this Declaration.

1 2      Binding Effect

All property described in Exhibit A, and any additional property which is made a part of Mayfaire in the future by Recording one or more Supplemental Declarations, shall be owned, conveyed and used subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of Mayfaire, their heirs, successors, successors-in-title and assigns.

Subject to the terms of Section 19.4 herein, this Declaration, as it may be amended, shall remain in effect and shall be enforceable by Declarant, the Association, any Owner, and their

respective legal representatives, heirs, successors, and assigns, for a term of 89 years from the date this Declaration is Recorded. Notwithstanding this, if any provision of this Declaration would be unlawful, void, or voidable by reason of any North Carolina law restricting the period of time that covenants on land may be enforced, such provision shall expire 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

### 1.3 Governing Documents.

Mayfaire's Governing Documents consist of:

- this Declaration and any Supplemental Declarations applicable to portions of Mayfaire,
- the Association's Articles of Incorporation and By-Laws,
- the Restrictions and Rules described in Article 3;
- the Architectural Guidelines described in Article 4;
- the Conservation Easement (if applicable);
- the Town Center REA; and
- such resolutions as the Association's Board of Directors may adopt,

all as they may be amended.

Some Neighborhoods within Mayfaire may be subject to additional covenants, restrictions and easements, which a Neighborhood Association may administer. In such case, if there is a conflict between or among the Governing Documents and any such additional covenants or restrictions, or the governing documents or policies of any such Neighborhood Association, the Governing Documents shall control.

Nothing in this Section shall preclude any Supplemental Declaration or other Recorded covenants applicable to any portion of Mayfaire from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration and, in such case, the more restrictive shall control. The Association may, but shall not be required to, enforce any such covenants, restrictions or other instruments applicable to any Neighborhood.

The Governing Documents apply to all Owners and occupants of property within Mayfaire, as well as to their respective tenants, guests and invitees.

If any court should determine that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision

Throughout the Governing Documents there are diagrams to illustrate the concepts discussed and aid in the reader's comprehension. Such diagrams are for illustrative purposes only. In the event of a conflict between any diagram and the text of the Governing Documents, the text shall control.

## **Article 2      Concepts and Definitions**

The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below

**“Architectural Guidelines”**. The guidelines and standards for architecture, design, construction, landscaping and exterior items on Units adopted pursuant to Article 4, as they may be amended

**“Area of Common Responsibility”** The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, contracts, or agreements.

**“Articles”** Mayfaire Community Association, Inc.'s Articles of Incorporation, filed with the North Carolina Secretary of State, as they may be amended

**“Association”** Mayfaire Community Association, Inc., a North Carolina nonprofit corporation, its successors or assigns.

**“Base Assessment”** Assessments levied against all Owners to fund Common Expenses for the general benefit of all Units, as determined in accordance with Section 8.1

**“Board of Directors” or “Board”** The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under North Carolina corporate law

**“Builder”**. Any Person who purchases one or more Units for the purpose of constructing improvements for later sale to consumers, or who purchases one or more parcels of land within Mayfaire for further subdivision, development, and/or resale in the ordinary course of its business

**“By-Laws”** The By-Laws of Mayfaire Community Association, Inc., as they may be amended. A copy of the initial By-Laws is attached to this Declaration as Exhibit D

“Class ‘C’ Control Period” The period of time during which the Declarant, as the Class ‘C’ Member, is entitled to appoint the members of the Board, as provided in the By-Laws. The Class ‘C’ Control Period shall terminate on the first to occur of the following:

(a) when 85% of the total number of Units permitted by the Master Plan for the property described in Exhibits A and B have certificates of occupancy issued thereon and have been conveyed either to Class ‘A’ Members other than Builders or Class ‘B’ Members other than Builders;

(b) December 31, 2041, or

(c) when, in its discretion, the Class ‘C’ Member so determines.

“Common Area” All real and personal property, including easements, which either (i) the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners or (ii) Declarant has designated for the common use and enjoyment of the Owners, including areas labeled as “Common Area” or “Common Open Space” on a Recorded subdivision plat or in any other Recorded instrument. The term shall include, without limitation, the Limited Common Area. The Conservation Area shall not be deemed to be Common Area hereunder.

“Common Expenses” The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents. Common Expenses shall not include any expenses incurred during the Class ‘C’ Control Period for initial development or other original construction costs unless approved by both (i) Voting Members representing a majority of the total Class ‘A’ vote of the Association and (ii) Voting Members representing a majority of the total Class ‘B’ vote of the Association. Payments due under leases of capital improvements such as street lights shall not be considered an initial development or original construction cost. Notwithstanding the foregoing to the contrary, Common Expenses shall not be deemed to include any costs or expenses incurred, or anticipated to be incurred, by the Association for the maintenance, repair and replacement from time to time of the Conservation Area.

“Community-Wide Standard” The standard of conduct, maintenance, or other activity generally prevailing at Mayfaire, or the minimum standards established pursuant to the Architectural Guidelines, Restrictions and Rules, and Board resolutions, whichever is a highest standard. Declarant shall establish initially such standard and it may contain both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and as the needs and desires within Mayfaire change.

**COMMUNITY-WIDE STANDARD**

*The higher of*

<b>MINIMUM STANDARDS</b>	<b>OR</b>	<b>PREVAILING STANDARD</b>
<i>Architectural Guidelines</i>		
<i>Restrictions and Rules</i>		
<i>Resolutions of Board</i>		-
<i>Example set by Declarant, Board</i>		

Diagram 2 1 Community-Wide Standard

“Conservation Area” The real property designated on Exhibit F attached hereto and incorporated herein by reference. The Conservation Area shall not be deemed to be included in Common Area or any Unit or Neighborhood hereunder.

“Conservation Easement” See Section 7 1(b) herein.

“Covenant to Share Costs” Any declaration of easements and covenant to share costs or similar instrument executed and Recorded by Declarant which creates certain easements for the benefit of the Association and the present and future owners of the real property subject to such Covenant to Share Costs and which obligates the Association and such owners to share the costs of maintaining certain property described in such Covenant to Share Costs.

“Declarant” Brody Zimmer, LLC, a North Carolina limited liability company, or any successor or assign who takes title to any portion of the property described in Exhibit A or B for the purpose of development and/or sale and who is designated as Declarant in a Recorded instrument that the immediately preceding Declarant executes

“Governing Documents”: A collective term referring to this Declaration and any applicable Supplemental Declaration, the By-Laws, the Articles, the Architectural Guidelines, the Conservation Easement (if applicable), the Restrictions and Rules, and Board resolutions, all as they may be amended from time to time

“Hecht’s” shall mean The May Department Stores Company, a New York corporation, and any successor Person thereto

“Hecht’s Lease” shall have the meaning provided in Section 7 12

“Hecht’s Property” shall mean that certain property described on Exhibit G attached hereto and incorporated herein by reference.

“Initial Plat” That certain plat of Mayfaire by Michael Underwood and Associates, PA designating certain Neighborhoods, Common Area and Limited Common Area recorded in Map Book ~~44~~ at Pages ~~27~~ through ~~39~~ in the Office of the New Hanover County Register of Deeds

“Limited Common Area” A portion of the Common Area primarily benefiting one or more, but less than all, Neighborhoods, as more particularly described in Article 12

“Master Plan” The land use and zoning plan for the development of Mayfaire approved by the City of Wilmington, as it may be amended, which includes all of the property described in Exhibit A and all or a portion of the property described in Exhibit B. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to

this Declaration, nor shall the omission of property described in Exhibit B from the Master Plan bar its later submission to this Declaration as provided in Article 9

“Mayfaire” The real property described in Exhibit A, together with such additional property as is subjected to this Declaration in accordance with Article 9

“Member” A Person subject to membership in the Association pursuant to Section 6.2

“Mortgage” A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit. The term “Mortgagee” shall refer to a beneficiary or holder of a Mortgage.

“Neighborhood”. A group of Units or portion of Mayfaire designated as a separate Neighborhood under this Declaration or pursuant to Section 6.4 for purposes of sharing Limited Common Areas and/or receiving other benefits or services from the Association which are not provided to all Units, and/or for the purpose of electing Voting Members. A Residential Neighborhood may be comprised of more than one housing type, and a Nonresidential Neighborhood may be comprised of more than one type of business. A Neighborhood may also include noncontiguous parcels of property. If the Association provides benefits or services to less than all Units within a particular Neighborhood, then the benefited Units shall constitute a sub-Neighborhood for purposes of determining and levying Neighborhood Assessments for such benefits or services.

Where the context permits or requires, the term Neighborhood shall also refer to the Neighborhood Committee (established in accordance with the By-Laws) or Neighborhood Association, if any, having concurrent jurisdiction over the property within the Neighborhood. Neighborhood boundaries may be established and modified as provided in Section 6.4.

“Neighborhood Assessments” Assessments levied against the Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as described in Section 8 2.

“Neighborhood Association” A condominium association or other owners association, if any, having jurisdiction over any Neighborhood concurrent with (but subject to) the jurisdiction of the Association. Nothing in this Declaration shall require the creation of any Neighborhood Associations.

“Neighborhood Expenses” The actual and estimated expenses which the Association incurs or expects to incur for the benefit of Owners within a particular Neighborhood or Neighborhoods, which may include reasonable reserves for various purposes and a reasonable administrative charge, as may be authorized pursuant to this Declaration or in the Supplemental Declaration(s) applicable to such Neighborhood(s).

“Nonresidential Neighborhood” A Neighborhood comprised exclusively of Nonresidential Units

**“Nonresidential Unit”** A portion of the real property comprising Mayfaire which is (i) intended for independent ownership, development and use for any permitted nonresidential purpose, including, without limitation, offices, retail stores, neighborhood businesses, hotels, motels, churches, schools and retirement or assisted living facilities or (ii) intended for residential purposes as a rental apartment development or congregate care facility containing multiple apartments or residences with shared facilities, provided all of such apartments or residences are owned by a single owner and leased or otherwise operated on a commercial basis, whether or not for profit.

**“Owner”** One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. The owner of the Conservation Area (if other than Declarant) shall not be deemed an Owner hereunder unless such party owns other property within Mayfaire which would entitle such party to status as an Owner hereunder.

**“Person”**. A natural person, a corporation, a partnership, a limited liability company, a trustee, or any other legal entity.

**“Private Amenities”** Certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within Mayfaire, which are privately owned and operated by Persons other than the Association for recreational and related purposes, on a club membership basis or otherwise. Notwithstanding the foregoing, recreational amenities which are (i) owned by a Neighborhood Association of a condominium development within Mayfaire, (ii) provided for the sole benefit of residents of such condominium development and (iii) fully supported and maintained by the applicable condominium owners’ association, shall not be deemed Private Amenities hereunder.

**“Record,” “Recording,” or “Recorded”**: The filing of a legal instrument in the Office of the New Hanover County Register of Deeds or such other place as may be designated as the official location for recording deeds, plats, and similar documents affecting title to real estate.

**“Residential Neighborhood”**: A Neighborhood comprised exclusively of Residential Units.

**“Residential Unit”** A portion of Mayfaire, whether developed or undeveloped, intended for development, use, and occupancy as an attached or detached residence for a single family in a manner consistent with this Declaration and any applicable Supplemental Declaration. Notwithstanding the foregoing, the term “Residential Unit” shall not include any Unit classified as a Nonresidential Unit herein (notwithstanding any residential use of such Unit). Except as otherwise provided herein, “Residential Unit” shall include (by way of illustration, but not limitation) condominium units, townhouse units, cluster homes, patio or zero lot line homes and single-family detached houses on separately platted lots, as well as vacant land intended for development as such. In the case of a structure containing multiple dwellings (with the exception of any such structure that would be deemed a Nonresidential Unit hereunder), each dwelling shall

be deemed a separate Residential Unit. The term shall include all portions of the lot owned as well as any structure thereon

A parcel of vacant land under single ownership shall be considered a single Residential Unit until such time as a subdivision plat or a condominium instrument is Recorded in the public records relating to all or a portion of such parcel, after which the portion which is the subject of such plat or condominium instrument shall be deemed to contain that number of Residential Units reflected therein and the remaining portion, if any, shall continue to be treated as a single parcel

“Restrictions and Rules”. The initial restrictions and rules set forth in Exhibit C, as they may be supplemented, modified, and repealed pursuant to Article 3. The fact that the Restrictions and Rules are set forth in an exhibit attached hereto shall have no effect on the enforceability of such Restrictions and Rules (which shall be binding upon the Owners as if fully set forth in the body of this Declaration)

“Single Family Neighborhood I” The Neighborhood containing approximately 30.59 acres designated as “Single Family Neighborhood I” on the Initial Plat.

“Single Family Neighborhood II”. The Neighborhood containing approximately 30.06 acres designated as “Single Family Neighborhood II” on the Initial Plat.

“Special Assessment” Assessments levied in accordance with Section 8.5

“Specific Assessment”. Assessments levied in accordance with Section 8.6.

“Supplemental Declaration”. An instrument Recorded pursuant to this Declaration which subjects additional property to this Declaration, designates Neighborhoods, and/or creates or imposes additional easements, restrictions and obligations on the land described in such instrument. The term shall also refer to an instrument Declarant Records pursuant to Section 6.4(c) which designates Voting Groups

“Town Center” The Neighborhood containing approximately 76.38 acres designated as the “Mayfaire TownCenter” on the Initial Plat. The Town Center shall not be deemed to include Parcels A-1, A-2 and A-3 as shown on the Initial Plat.

“Town Center REA” shall have the meaning provided in Section 7.12 herein.

“Unit” An inclusive term referring to both Residential Units and Nonresidential Units, or to either one of them. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. Notwithstanding anything herein to the contrary, the Conservation Area shall not be deemed a Unit hereunder for any purposes

Units may be combined, further subdivided, and/or recombined, and boundary lines of Units may be changed, only by the Recording of a plat or other legal instrument further

subdividing or resubdividing the parcel of property (which subdivision shall be subject to such other restrictions as may be set forth in this Declaration or rules of the Association, including, without limitation, the restriction provided in Paragraph 1(m) of Exhibit C attached hereto) In the absence of Recording such a legal instrument, ownership of adjacent Units by the same Owner shall not permit such Units to be treated as a single Unit for purposes of voting and assessment, notwithstanding that such Units may be improved with a single structure

“Voting Group” One or more Voting Members who vote on a common slate for election of Board members, as more particularly described in Section 6 4(c) or, if the context so indicates, the group of Members whose Units are represented by such Voting Members.

“Voting Member” The representative selected by the Members within each Neighborhood pursuant to Section 6 4(b) to cast the votes attributable to their Units on all matters requiring a vote of the membership (except as otherwise specifically provided in this Declaration and in the By-Laws) The term “Voting Member” shall also refer to alternate Voting Members acting in the absence of the Voting Member and any Owners authorized personally to cast the votes for their respective Units pursuant to Section 6 4(b)

## **PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS**

*The standards for use and conduct, maintenance, architecture, landscaping and other aesthetic matters at Mayfaire are what give the community its identity and make it a place that people want to call “home ” Each Owner and resident in upholding such standards can take pride in the results of that common effort This Declaration establishes procedures for adopting, modifying, applying, and enforcing such standards while providing the flexibility for the community standards to evolve as Mayfaire changes and grows over time*

### **Article 3 Use and Conduct**

#### **3 1 Framework for Regulation.**

The Governing Documents establish, as part of the general plan of development for Mayfaire, a framework of affirmative and negative covenants, easements, and restrictions which govern Mayfaire Within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends, and technology Therefore, this Article establishes procedures for modifying and expanding the initial Restrictions and Rules set forth in Exhibit C This Article is not intended to apply to rules and regulations relating to use and operation of the Common Area which the Board may adopt by resolution pursuant to Section 7 1(c), nor to administrative policies which the Board may adopt to interpret, define or implement the Restrictions and Rules.

#### **3 2 Authority to Modify and Amend Restrictions and Rules**

(a) Subject to the terms of this Article and the Board’s duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may

modify, cancel, limit, create exceptions to, or expand the Restrictions and Rules. The Board shall send notice to all Owners concerning any proposed action at least five business days prior to the Board meeting at which such action is to be considered. Voting Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

If such action applies only to Class "A" Members, such action shall become effective, after compliance with Section 3.2(c), if approved at a meeting by (i) Members representing at least 67% of the total Class "A" votes in the Association and (ii) the Class "C" Member, if any. If such action applies only to Class "B" Members, such action shall become effective, after compliance with Section 3.2(c), if approved at a meeting by (i) Members representing at least 67% of the total Class "B" votes in the Association and (ii) the Class "C" Member, if any. If such action applies to both Class "A" Members and Class "B" Members, such action shall become effective, after compliance with Section 3.2(c), if approved at a meeting by (i) Members representing at least 67% of the total Class "A" votes in the Association, (ii) Members representing at least 67% of the total Class "B" votes in the Association and (iii) the Class "C" Member, if any. The Board's determination as to issues which affect Class "A" Members and/or Class "B" Members shall be conclusive, although an issue must be deemed to affect both Class "A" Members and Class "B" Members if such issue substantially affects the overall appearance of Mayfaire or substantially affects living conditions of Owners within both classes of membership.

Notwithstanding the foregoing, any modification, amendment or expansion by the Board to the Restrictions and Rules which would materially increase the burden of such Restrictions and Rules on the Residential Units within Single Family Neighborhood II shall not be applicable to Single Family Neighborhood II unless and until such action has also been approved by Members representing at least 67% of the total Class "A" votes within Single Family Neighborhood II.

(b) Alternatively, Voting Members may, at an Association meeting duly called for such purpose, vote to adopt rules which modify, cancel, limit, create exceptions to, or expand the Restrictions and Rules then in effect. Any such action shall require approval of Voting Members representing more than 67% of the total votes in each class of membership whose Units are or will be subject to the rule in question and by the Class "C" Member, if any. Notwithstanding the foregoing, any modification or expansion by the Voting Members to the Restrictions and Rules which would materially increase the burden of such Restrictions and Rules on the Residential Units within Single Family Neighborhood II shall not be applicable to Single Family Neighborhood II unless and until such action has also been approved by Members representing at least 67% of the total Class "A" votes within Single Family Neighborhood II.

(c) Prior to any action taken under this Section becoming effective, the Board shall send a copy of the new rule or explanation of any changes to the Restrictions and Rules to each Owner affected thereby. The effective date shall be not less than 30 days following distribution to Owners. The Association shall provide, without cost, a copy of the Restrictions and Rules then in effect to any requesting Member.

(d) No action taken under this Article shall have the effect of modifying, repealing or expanding the Architectural Guidelines or any provision of this Declaration other than the initial Restrictions and Rules set forth in Exhibit C. In the event of a conflict between the Architectural Guidelines and the Restrictions and Rules, the Architectural Guidelines shall control.

(e) The procedures required under this Section 3.2 shall not apply to the enactment and enforcement of administrative rules and regulations governing use of the Common Area unless the Board chooses in its discretion to submit to such procedures. Examples of such administrative rules and regulations which are not subject to the terms of this Section 3.2 shall include, but not be limited to, hours of operation of a recreational facility, speed limits on private roads, and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times. The Board shall exercise business judgment in the enactment, amendment, and enforcement of such administrative rules and regulations.

### 3.3 Owners' Acknowledgment and Notice to Purchasers.

All Owners are given notice that use of their Units and the Common Area is limited by the Restrictions and Rules as they may be amended, expanded and otherwise modified from time to time. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by this provision and that the Restrictions and Rules may change from time to time. All purchasers of Units are on notice that the Association may have adopted changes. Copies of the current Restrictions and Rules may be obtained from the Association.

### 3.4 Protection of Owners and Others

Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Restrictions and Rules set forth in Exhibit C, all Restrictions and Rules shall comply with the following provisions:

(a) Similar Treatment. Similarly situated Owners shall be treated similarly, however, the Restrictions and Rules may vary by Neighborhood by uses within neighborhoods, subject to the right of Voting Members representing each class of Members to veto or withhold approval of proposed actions affecting their Units pursuant to Section 3.2.

(b) Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Units shall not be abridged, except that the Association may adopt time, place, and manner restrictions with respect to displays visible from outside the structure.

No rules shall regulate the content of political signs; however, rules may regulate the time, place and manner of posting such signs (including design criteria).

(c) Household Composition. No rule shall interfere with the freedom of Owners to determine the composition of their households, except that the Association shall have the power

(to the extent permitted by law) to require that all occupants of Residential Units be members of a single housekeeping unit and to limit the total number of occupants permitted in each Residential Unit on the basis of the size and facilities of the Residential Unit and its fair use of the Common Area.

(d) Activities Within Units. No rule shall interfere with the activities carried on within the confines of the structures on Units, to the extent in compliance with local laws and ordinances, except that (i) the Association may prohibit activities within Residential Units which are not normally associated with property restricted to residential use, and (ii) the Association may restrict or prohibit any activities within any Units that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible from outside of the structures on Units, that create an unreasonable source of annoyance to persons outside of the Unit or that are not consistent with the Community-Wide Standard (as determined in the Board's discretion)

(e) Allocation of Burdens and Benefits Except as otherwise provided herein, no rule shall materially, adversely alter the rights to use the Common Area to the detriment of any Owner unless such rule has been enacted or amended pursuant to Section 3 2 herein. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Article 8

(f) Alienation. No rule shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit, provided, however, the Association or the Board may require a minimum lease term of up to 12 months (although lease terms as short as 6 months may be permitted in Residential Units consisting of multi-family apartments in the discretion of the Board). The Association may require that Owners use lease forms approved by the Association but shall not impose any fee on the lease of any Unit greater than an amount reasonably based on the costs to the Association of administering that lease. The restrictions of this Section 3 4(f) shall not be construed to prohibit the short-term leasing or rental of Residential Units for the purposes of marketing such Residential Units for sale, although such activities shall be subject to such reasonable rules and restrictions as the Association may provide from time to time. Notwithstanding the foregoing, the leasing restrictions of this Section 3 4(f) shall not apply to (i) Single Family Neighborhood I or Single Family Neighborhood II unless more than ten percent (10%) of the Units within such Neighborhood(s) are being leased by the Owners thereof or (ii) the Town Center

(g) Abridging Existing Rights. No rule shall require an Owner to dispose of personal property that was in or on a Unit prior to the adoption of such rule if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Owner's ownership of the Unit, and shall not apply to subsequent Owners who take title to the Unit after adoption of the rule

(h) Reasonable Rights to Develop No rule or action by the Association or Board shall unreasonably impede Declarant's right to develop Mayfaire or other properties in the vicinity of Mayfaire

The limitations in subsections (a) through (h) of this Section 3 4 shall only limit rulemaking authority exercised under Section 3 2; they shall not apply to amendments to this Declaration adopted in accordance with Article 19

#### **Article 4      Architecture and Landscaping**

##### **4 1      General**

No structure, improvement, fixture or appurtenance shall be placed, erected, or installed upon any Unit and no improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place within Mayfaire, except in compliance with this Article and the Architectural Guidelines. For purposes of this Article 4, "structure, improvement, fixture or appurtenance" shall include, but not be limited to, any dwelling, garage, fence, wall, sidewalk, hedge, mass planting, change in grade or slope, drainage pipe, drainage canal, ditch, swale, catch basin, swimming pool, treehouse, playhouse, sign, flag pole, exterior illumination, monument or marker, outdoor statuary, exterior light, security light, storm door, well, utility facility, mailbox, patio, deck, screening for outdoor trash cans or other purposes, sprinkler system, driveway, outdoor decorative objects, shrubbery or landscaping

No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications Any Owner may remodel, paint or redecorate the interior of his or her Unit without approval (except to the extent the result of such remodeling, painting or redecorating would be visible from the exterior of a Unit) Modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structure shall be subject to approval

All structures constructed on any portion of Mayfaire shall be designed by and built in accordance with the plans and specifications of a licensed architect unless Declarant or its designee otherwise approves in its sole discretion.

This Article shall not apply to (i) Declarant's activities, (ii) activities of the Association during the Class "C" Control Period or (iii) activities within the Town Center during any period that more than 50% of the acreage within such Neighborhood is owned by Brody Zimmer, LLC and/or an affiliate thereof (including, without limitation, any ground lessee of Brody Zimmer, LLC relative to such property).

##### **4 2      Architectural Review**

(a) By Declarant. Each Owner, by accepting a deed or other instrument conveying any interest in any portion of Mayfaire, acknowledges that, as the developer of Mayfaire and as an owner of portions of Mayfaire as well as other real estate within the vicinity of Mayfaire, Declarant has a substantial interest in ensuring that the improvements within Mayfaire enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell, or lease its property. Therefore, each Owner agrees that no activity within the scope of this Article shall be commenced on such Owner's Unit unless and until Declarant or its designee has given its prior written approval for such activity, which approval may be granted or withheld in the Declarant's or its designee's sole discretion

In reviewing and acting upon any request for approval, Declarant or its designee shall be acting solely in Declarant's interest and shall owe no duty to any other Person. Declarant's rights reserved under this Article shall continue so long as Declarant owns any portion of Mayfaire or any real property adjacent to Mayfaire, unless earlier terminated in a written instrument which Declarant has executed and Recorded.

Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder

Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this Article to (i) an architectural review committee appointed by the Board of Directors (the "ARC"), or (ii) a committee comprised of architects, engineers or other persons who may or may not be Members of the Association. Any such delegation shall be in writing specifying the scope of responsibilities delegated and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated, and (ii) Declarant's right to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of the foregoing entities shall be limited to such matters as Declarant specifically delegates to them

(b) Architectural Review Committee Upon delegation by Declarant or upon expiration or termination of Declarant's rights under this Article, the Association, acting through the ARC, shall assume jurisdiction over architectural matters. The ARC, when appointed, shall consist of seven persons. Three committee members shall be appointed, and may be removed and replaced, by the directors representing Class "A" Members and shall constitute the "Residential Subcommittee" Three committee members shall be appointed, and may be removed and replaced, by the directors representing the Class "B" Members and shall constitute the "Nonresidential Subcommittee" The seventh committee member shall be an independent architect, engineer or similar professional, whose compensation, if any, shall be established from time to time by the Board. The members of the ARC need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, who may be compensated in such manner and amount if any, as the Board may establish

Unless and until such time as Declarant delegates all or a portion of its reserved rights to the ARC or Declarant's rights under this Article terminate, the Association shall have no jurisdiction over architectural matters

(c) Fees, Assistance. For purposes of this Article, the entity having jurisdiction in a particular case shall be referred to as the "Reviewer." The Reviewer may establish and charge reasonable fees for review of applications and may require such fees to be paid in full prior to review of any application. Such fees may be (but need not be) based on square footage of the proposed improvements being reviewed, and such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget. Notwithstanding the foregoing, the total fees charged for the review of applications relative to Units within Single Family Neighborhood I shall not exceed the amount obtained by multiplying \$500.00 by the total number of Units within such Neighborhood.

#### 4.3 Guidelines and Procedures.

(a) Architectural Guidelines Declarant may prepare the initial Architectural Guidelines, which may contain general provisions applicable to all of Mayfaire as well as specific provisions which vary from Neighborhood to Neighborhood. The Architectural Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Reviewer in considering applications. The Architectural Guidelines are not the exclusive basis for decisions of the Reviewer and compliance with the Architectural Guidelines does not guarantee approval of any application.

Declarant shall have sole and full authority to amend the Architectural Guidelines as long as it owns any portion of or has a right to expand Mayfaire pursuant to Section 9.1, notwithstanding a delegation of reviewing authority to the ARC, unless Declarant also delegates the power to amend the Architectural Guidelines to the ARC. Upon termination or delegation of Declarant's right to amend the Architectural Guidelines, the ARC shall have the authority to amend the Architectural Guidelines with the consent of the Board.

Any amendments to the Architectural Guidelines shall be prospective only and shall not require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Architectural Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Architectural Guidelines less restrictive.

The Reviewer shall make the Architectural Guidelines available to Owners and Builders who seek to engage in development or construction within Mayfaire. In Declarant's discretion, such Architectural Guidelines may be Recorded, in which event the Recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Architectural Guidelines was in effect at any particular time.

(b) Procedures Except as otherwise specifically provided in the Architectural Guidelines, no activities shall commence on any portion of Mayfaire until an application for approval has been submitted to and approved by the Reviewer. Such application shall include plans and specifications showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Architectural Guidelines and/or the Reviewer may require the submission of such additional information as may be reasonably necessary to consider any application.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations shall not be subject to review so long as made in good faith and in accordance with the procedures set forth herein; provided, however, the Reviewer agrees not to unreasonably withhold approval of an application if it is consistent with the Architectural Guidelines and the then-existing development within Mayfaire.

The Reviewer shall make a determination on each application within twenty (20) days after receipt of a completed application and all required information. The Reviewer may (i) approve the application, with or without conditions, (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. With respect to applications for which the ARC is the Reviewer under this Article, the Residential Subcommittee shall initially review and make recommendations to the full ARC regarding all applications and submissions relating to Residential Units, and the Nonresidential Subcommittee shall initially review and make recommendations to the full ARC regarding all applications and submissions relating to Nonresidential Units. The ARC shall consider the recommendation of the reviewing subcommittee in making the final determination on any application hereunder.

Until expiration of Declarant's rights under this Article, the ARC shall notify Declarant in writing within three (3) business days after the ARC has approved any application within the scope of matters delegated to the ARC by Declarant. The notice shall be accompanied by a copy of the application and any additional information which Declarant may require. Declarant shall have seven (7) days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the ARC.

The Reviewer shall notify the applicant in writing of the final determination on any application within five (5) days thereafter or, with respect to any determination by the ARC subject to Declarant's veto right, within five (5) days after the earlier of (i) receipt of notice of Declarant's veto or waiver thereof, or (ii) expiration of the seven (7) day period for exercise of Declarant's veto (provided that such seven (7) day period shall not commence until Declarant has actually received the notice referenced in the immediately preceding paragraph). In the case of

disapproval, the Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections

In the event that the Reviewer fails to respond in a timely manner, approval shall be deemed to have been given, subject to Declarant's right to veto pursuant to this Section. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Architectural Guidelines unless a written variance has been granted pursuant to Section 4.5. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U S Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

If construction does not commence on a project for which plans have been approved within one year after the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement (or within two years after commencement if such application relates to the initial construction or total reconstruction of an office building) unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant or any aggrieved Owner.

The Reviewer may, by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

Notwithstanding the foregoing to the contrary, after the initial construction of improvements within Single Family Neighborhood II (which improvements shall be subject to review in accordance with the terms of this Article 4), subsequent applications submitted to the Reviewer relative to the reconstruction, repair, modification, alteration, expansion or contraction of such improvements within Single Family Neighborhood II shall be approved by the Reviewer unless the Reviewer determines, in the Reviewer's reasonable discretion, that the work and/or improvements described in such application is not architecturally and aesthetically consistent and compatible with the improvements originally constructed within Single Family Neighborhood II.

#### 4.4 No Waiver of Future Approvals

Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications,

plans, or other matters subsequently or additionally submitted for approval. Notwithstanding the foregoing to the contrary, if the Reviewer has approved an application under this Article and the improvements have been constructed in accordance with the approved application, the Reviewer shall not be entitled to require changes to the improvements after the work is completed unless such change, in the Reviewer's reasonable opinion, is necessary to remedy a safety concern or a dangerous structural condition

#### 4.5 Variances.

The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. No variance shall (a) be effective unless in writing, (b) be contrary to this Declaration, or (c) preclude the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance

#### 4.6 Limitation of Liability

The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of Mayfaire; they do not create any duty to any Person. Review and approval of any application pursuant to this Article may be made on the basis of aesthetic considerations only, and the Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all structures are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners.

Declarant, the Association, the Board, any committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage or other general site work, any defects in plans revised or approved hereunder, any loss or damage arising out of the action, inaction, integrity, financial condition or quality of work of any contractor or its subcontractors, employees or agents, whether or not Declarant has approved or featured such contractor as a builder in North Carolina, or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit. In all matters, the Board, the ARC, and the members of each shall be defended and indemnified by the Association as provided in Section 7.6

#### 4.7 Obligation to Diligently Pursue Construction; Option to Purchase

Due to the zoning constraints applicable to Mayfaire, each Owner agrees to use its best efforts to initiate construction of improvements on its Unit within nine (9) months after the Construction Initiation Target Date (as defined herein) and to diligently and continuously pursue the completion of such construction thereafter. As used herein, the "Construction Initiation Target Date" shall mean (1) the date of the Recordation of any instrument conveying any Unit or

other portion of Mayfaire to the initial Owner thereof (in cases where the Unit or property is already subject to the terms of this Declaration at the time of purchase) or (ii) the date on which the real property comprising the Unit is first subjected to the term of this Declaration (in cases where such property is annexed into Mayfaire after the Owner's initial purchase thereof) If, after the expiration of twelve (12) months from the Construction Initiation Target Date, the Owner shall not have begun in good faith the construction of structures and improvements in accordance with plans approved in accordance with this Article 4 and thereafter diligently and continuously pursued (i.e., without a cessation of construction for one (1) month in any six (6) month period) the completion of construction of such structures and improvements in compliance with such approved plans, Declarant may at any time within a period of ninety (90) days from the expiration of such twelve (12) month period or from notice of cessation of construction, as the case may be, at Declarant's option, repurchase such Unit or portion of Mayfaire from the Owner and require the Owner to reconvey such property to Declarant or its designee, free and clear from all liens and encumbrances not otherwise imposed by this Declaration If such option is exercised, Declarant shall refund or pay to the Owner (as the case may be) a purchase price equal to one hundred percent (100%) of the original purchase price paid for the property by Owner and enter into exclusive and unencumbered (except for encumbrances imposed by this Declaration) possession of such property The Owner shall be specifically liable to Declarant for all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees, incurred in retaking and restoring the property to its condition as of the date of original purchase by the Owner, and such costs and expenses shall be deducted from the purchase price In the event the Owner shall have altered the property in any manner, by making partial improvements, or otherwise, from and after the date of the instrument of conveyance, the Owner shall also be liable to Declarant for the reasonable cost of restoring the Unit to its condition as of the date of such conveyance (although Declarant shall have the option to use such monies for the purpose of completing any such improvements if Declarant so desires). The option herein granted shall be exercised by giving written notice to the Owner at his or its last known address and such notice shall be deemed to have been given at the time that it is deposited, properly addressed, certified mail, postage prepaid, in an official depository of the United States Postal Service Declarant agrees to subordinate its rights under this Section 4.7 to the rights of any Mortgagee providing construction or interim financing to any Owner for the construction of improvements on any such Owner's Unit. The terms and conditions of this Section 4.7 shall not apply to (i) Declarant or any affiliate of Declarant, (ii) to any property within Mayfaire owned by Declarant or any affiliate of Declarant or (iii) Single Family Neighborhood II

## **Article 5 Maintenance and Repair**

### **5.1 Maintenance of Units.**

Each Owner shall maintain his or her Unit and all landscaping and improvements comprising the Unit in a manner consistent with the Governing Documents, the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit

Subject to the limitation provided in Section 5.2 herein, each Owner shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Common Area or public right-of-way lying between the Unit boundary and any wall, fence or curb located on the Common Area or public right-of-way within 10 feet of the Unit boundary, provided, there shall be no right to remove trees, shrubs or similar vegetation from this area without prior approval pursuant to Article 4. Notwithstanding anything herein to the contrary, the maintenance of the Conservation Area shall be subject to and governed by the Conservation Easement.

### **5.2 Maintenance of Neighborhood Property**

Any Neighborhood Association shall maintain its common property and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents, the Community-Wide Standard and all applicable covenants.

Any Neighborhood Association shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Common Area or public right-of-way lying between the boundary of its common property and any wall, fence or curb located on the Common Area or public right-of-way within 10 feet of its boundary; provided, there shall be no right to remove trees, shrubs or similar vegetation from this area without prior approval pursuant to Article 4. Notwithstanding anything herein to the contrary, the maintenance of the Conservation Area shall be subject to and governed by the Conservation Easement

Additionally, and notwithstanding anything in Sections 5.1 or 5.2 herein to the contrary, it is hereby agreed that Owner(s) of Residential Units within Single Family Neighborhood II shall not be required to maintain or irrigate any landscaping within any Common Area or public right-of-way adjacent to Single Family Neighborhood II unless such landscaping is located within the boundaries of Single Family Neighborhood II

Upon resolution of the Board, Owners within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining and insuring certain portions of the Area of Common Responsibility within or adjacent to such Neighborhood. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way and greenspace between the Neighborhood and adjacent public roads, private streets

within the Neighborhood, and lakes or ponds within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association

The Association may assume maintenance responsibility for property within any Neighborhood, in addition to that designated by any Supplemental Declaration, either by agreement with the Neighborhood or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard. All costs of maintenance pursuant to this paragraph shall be assessed as a Neighborhood Assessment only against the Units within the Neighborhood to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class, nor shall entry by the Association onto property within any Neighborhood for the purpose of maintenance as contemplated hereunder constitute a trespass. Notwithstanding the foregoing to the contrary, if the Association intends to assume maintenance responsibility for property within any Neighborhood because the Board has determined that the level and quality of service then being provided is not consistent with the Community-Wide Standard, the Association shall not assume such maintenance responsibility unless the Association has given the Owners of such property written notice of the Association's intent to take over maintenance and such Owners have failed to remedy such objectionable condition within ten (10) days after the date of such notice; provided, however, no such notice and opportunity to cure shall be required if the objectionable condition constitutes an emergency or an immediate threat to the safety of persons or property.

### 5.3 Responsibility for Repair and Replacement.

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary to maintain the property to a level consistent with the Community-Wide Standard.

By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless either the Neighborhood Association (if any) for the Neighborhood in which the Unit is located or the Association carries such insurance (which they may, but are not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Unit and the Owner.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his or her Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 4. Alternatively, the Owner shall clear the Unit and maintain it in a neat, attractive and landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs not covered by insurance proceeds.

This Section shall apply to any Neighborhood Association responsible for common property within the Neighborhood in the same manner as if the Neighborhood Association were an Owner and the common property were a Unit. Additional Recorded covenants applicable to any Neighborhood may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Units within such Neighborhood and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed

If an Owner is legally responsible for damage inflicted on any portion of the Area of Common Responsibility, the Association shall be entitled to either direct such Owner to repair such damage or the Association may itself cause the repairs to be made and recover damages from the Owner (in which case such claim shall be settled in a manner consistent with N.C.G.S. §47F-3-107)

#### 5 4 Maintenance by Association

Notwithstanding anything herein to the contrary, to the extent any governmental authority or law, ordinance, rule or regulation (including, without limitation, any applicable zoning ordinance or requirement) requires that the maintenance, repair or replacement of any aspect(s) or portion(s) of the Common Area, the Conservation Area or any other part of Mayfaire be centralized in a master association, the Association shall be obligated to undertake such obligation and no Owner, Neighborhood Association or any other party having an interest hereunder shall be permitted to prevent the Association from undertaking such responsibility. To the extent permitted under the terms of this Declaration, any expenses incurred by the Association under this Section 5 4 may be assessed in accordance with Article 8 herein.

### **PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION**

*This Declaration establishes the Association as a mechanism by which each Owner is able to participate in the governance and administration of Mayfaire. While many powers and responsibilities are vested in the Association's board of directors in order to facilitate day-to-day management and operation, some decisions are considered of such importance that they are reserved for the Association's membership - the owners of property in Mayfaire*

#### **Article 6 The Association and its Members**

##### 6 1 Function of Association.

The Association is the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility. The Association also is the primary entity responsible for enforcement of the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and North Carolina law

##### 6 2 Membership

Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 6.3(b) and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

6.3 Voting.

(a) The Association initially shall have three classes of membership, Class "A," Class "B," and Class "C"

(i) Class "A" Class "A" Members shall be all Owners of Residential Units except the Class "C" Member, if any. Class "A" Members shall have one equal vote for each Residential Unit in which they hold the interest required for membership under Section 6.2, except that there shall be only one vote per Residential Unit. No vote shall be exercised for any property which is exempt from assessment under Section 8.10. All Class "A" votes shall be cast as provided in Section 6.3(b) below.

(ii) Class "B" Class "B" Members shall be all Owners of Nonresidential Units, except the Class "C" Member, if any. Class "B" Members shall be allocated votes based on the "Equivalent Unit" formula set forth in Exhibit E, except that no vote shall be exercised for any property which is exempt from assessment under Section 8.10.

(iii) Class "C" The sole Class "C" Member shall be the Declarant. The Class "C" Member may appoint members of the Board of Directors during the Class "C" Control Period, as specified in the By-Laws. Additional rights of the Class "C" Member are specified in the relevant sections of the Governing Documents. After termination of the Class "C" Control Period, the Class "C" Member shall have a right to disapprove actions of the Board and committees as provided in the By-Laws.

The Class "C" membership shall terminate upon the earlier of:

- (1) two years after expiration of the Class "C" Control Period, or
- (2) when, in its discretion, Declarant so determines and declares in a Recorded instrument.

Upon termination of the Class "C" membership, Declarant shall be (i) a Class "A" Member entitled to Class "A" votes with respect to each Residential Unit which it owns and (ii) a Class "B" Member entitled to Class "B" votes with respect to each Nonresidential Unit which it owns.

In recognition of the different character and intended use of the property subject to such Supplemental Declaration, Declarant may, by Supplemental Declaration, create additional classes of membership for the owners of Units within any property made subject to this Declaration pursuant to Article 9. These classes shall have such rights, privileges and obligations as specified in such Supplemental Declaration.

(b) Exercise of Voting Rights Except as otherwise specified in this Declaration or the By-Laws, the vote for each Unit shall be exercised by the Voting Member representing the Neighborhood in which such Unit is located, as provided in Section 6.4(b). The Voting Member may cast all such votes as it, in its discretion, deems appropriate, provided, however, only the Voting Members representing Class "A" Members shall be permitted to vote on those issues which relate to and affect only Residential Units (although the approval of the Class "C" Member shall also be required during the Class "C" Control Period), and only the Voting Members representing Class "B" Members shall be permitted to vote on those issues which relate to and affect only Nonresidential Units (although the approval of the Class "C" Member shall also be required during the Class "C" Control Period). The Board's determination as to issues which affect only Class "A" Members or only Class "B" Members shall be conclusive, although an issue must be deemed to affect both Class "A" Members and Class "B" Members if such issue substantially affects the overall appearance of Mayfaire or substantially affects living conditions of Owners within both classes of membership.

In any situation where a Member is entitled personally to exercise the vote for his or her Unit, and there is more than one Owner of such Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

#### 6.4 Neighborhoods, Voting Members and Voting Groups

(a) Neighborhoods. The boundaries of Neighborhoods shall be defined by Declarant, either in this Declaration or by Supplemental Declaration. Any Neighborhood, acting either through a Neighborhood Committee elected as provided in the By-Laws or through a Neighborhood Association, if any, may request that the Association provide a higher level of service than which the Association generally provides to all Neighborhoods or may request that the Association provide special services for the benefit of Units in such Neighborhood. Upon the affirmative vote, written consent, or a combination thereof, of Owners of a majority of the Units within the Neighborhood (and the approval of the Class "C" Member if such Neighborhood vote occurs during the Class "C" Control Period), the Association shall provide the requested services.

The cost of such services, which may include reasonable administrative charges and property management fees in such amounts as the Board deems appropriate (provided, any such charges shall apply at a uniform rate per Unit to all Neighborhoods receiving the same service), shall be assessed against the Units within such Neighborhood as a Neighborhood Assessment.

A Neighborhood shall be exclusively comprised of Units of a similar character (*i e*, a Neighborhood shall either be comprised of Residential Units exclusively or Nonresidential Units exclusively)

With the exception of the Neighborhoods designated herein and on the Initial Plat, Neighborhoods shall be initially designated by a Supplemental Declaration. Property may be (but need not be) assigned to a specific Neighborhood (by name or other identifying designation) under the Supplemental Declaration which initially submits such property to this Declaration, in which case the Neighborhood to which such property is assigned may be then existing or newly created. So long as it has the right to subject additional property to this Declaration pursuant to Section 9.1, Declarant may unilaterally amend this Declaration or any Supplemental Declaration to redesignate Neighborhood boundaries. However, two or more existing Neighborhoods shall not be combined without the consent of Owners of a majority of the Units in the affected Neighborhoods. Declarant hereby agrees that, during any time in which State Street, LLC or an affiliate thereof either owns all of Single Family Neighborhood II or controls the Neighborhood Association of Single Family Neighborhood II pursuant to the declarant control provisions of a Subordinate Declaration applicable to such Neighborhood, no additional property within Mayfaire will be added to or removed from Single Family Neighborhood II (as originally designated herein) unless such additional property is owned by State Street, LLC or an affiliate thereof at the time such additional property is added to Single Family Neighborhood II.

(b) Voting Members Each Neighborhood shall elect a Voting Member who shall be responsible for casting all votes attributable to Units in the Neighborhood on all Association matters requiring a membership vote, except as otherwise specified in this Declaration or the By-Laws. In addition, each Neighborhood shall elect an alternate Voting Member who shall be responsible for casting such votes in the absence of the Voting Member.

The first election of a Voting Member and alternate Voting Member from each Neighborhood shall occur within one year after the sale of the first Unit in the Neighborhood to a Person other than a Builder. Thereafter, the Board shall call for an election of Voting Members and alternates on an annual basis, either by written ballots cast by mail, computer, or at a meeting of the Class "A" Members or Class "B" Members within such Neighborhood, as the Board determines. Upon written petition signed by Class "A" Members or Class "B" Members (as the case may be) holding at least 10% of the votes attributable to Units within any Neighborhood, the election for such Neighborhood shall be held at a meeting. Candidates for election as Voting Members may be nominated by the Board, a nominating committee which the Board may appoint, or from the floor at any meeting at which such election is to be held.

The presence, in person or by proxy, or the filing of ballots by Class "A" Members representing at least 25% of the total Class "A" votes attributable to Units in a Residential Neighborhood (or, in the case of a Nonresidential Neighborhood, the filing of ballots by Class "B" Members representing at least 25% of the total Class "B" votes attributable to Units in such Nonresidential Neighborhood) shall constitute a quorum at any such Neighborhood meeting or election. In the event of a failure to obtain a quorum or vacancy in such positions for any

Neighborhood, the Board may appoint a Voting Member or alternate Voting Member to represent such Neighborhood until a successor is elected.

For any Residential Neighborhood election, each Class "A" Member shall be entitled to one equal vote for each Unit which such Owner owns in the Neighborhood. For any Nonresidential Neighborhood election, each Class "B" Member shall be entitled to one equal vote for each Unit which such Owner owns in the Neighborhood. The candidate who receives the greatest number of votes shall be elected as Voting Member for the Neighborhood and the candidate receiving the next greatest number of votes shall be elected as the alternate Voting Member. The Voting Member and the alternate Voting Member shall serve a term of one year and until their successors are elected.

Any Voting Member may be removed, with or without cause, upon the vote or written petition of Owners of a majority of the total number of Units in the Neighborhood which the Voting Member represents.

Until such time as the Board first calls for election of a Voting Member for any Neighborhood, the Owners within such Neighborhood shall be entitled personally to cast the votes attributable to their respective Units on any issue requiring a membership vote under the Governing Documents.

(c) Voting Groups. Prior to the expiration of the Class "C" Control Period, Declarant shall be entitled to designate, in Declarant's sole discretion, Voting Groups consisting of one or more Neighborhoods for the purpose of electing directors to the Board. The Neighborhoods comprising each Voting Group shall be determined in Declarant's sole discretion. Voting Groups may be designated to ensure groups with dissimilar interests are represented on the Board and to avoid some Voting Members being able to elect the entire Board due to the number of Units in such Neighborhoods. Following termination of the Class "C" Control Period, the number of Voting Groups within Mayfaire shall not exceed the total number of directors to be elected pursuant to the By-Laws.

A Voting Group shall be exclusively comprised of Neighborhoods of a similar character (*i e*, a Voting Group shall either be comprised of Residential Neighborhoods exclusively or Nonresidential Neighborhoods exclusively)

The Voting Members representing the Neighborhoods within each Voting Group shall vote on a separate slate of candidates for election to the Board. Each Voting Group is entitled to elect the number of directors specified in the By-Laws.

Diagram 6.1 (on the following page) illustrates the organizational structure of the Association and the manner in which Voting Members and Voting Groups will elect the Board of Directors after the Class "C" Control Period. The number of directors (five), Neighborhoods (five) and Voting Groups (three) shown in the illustration are for demonstrative purposes only, the actual number and structure may be different.

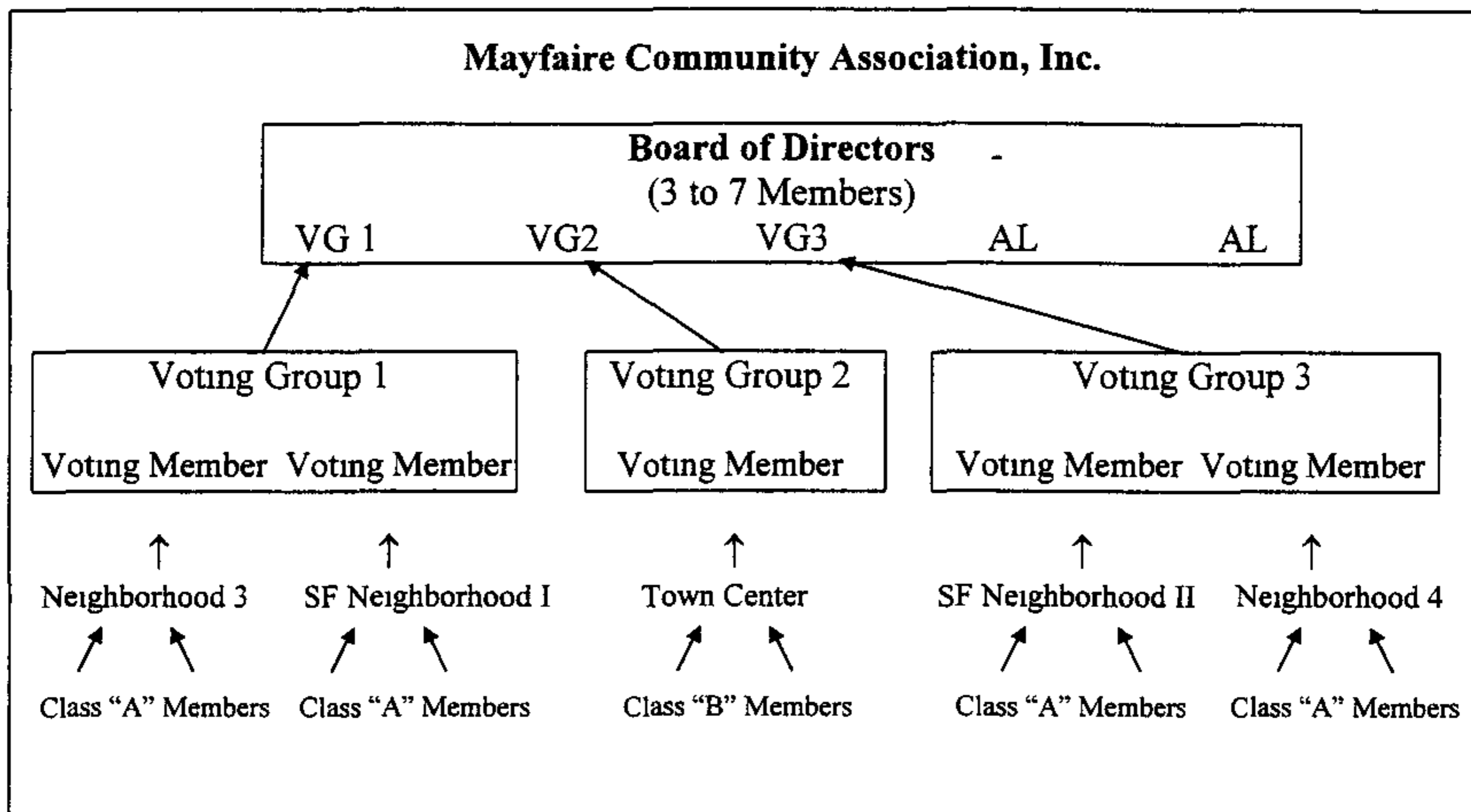


Diagram 6 1 – Association Organizational Structure. “AL” indicates “at-large” Board members.

Declarant shall establish Voting Groups, if at all, not later than the date of expiration of the Class “C” Control Period by filing with the Association and Recording a Supplemental Declaration identifying each Voting Group by legal description or other means such that the Units within each Voting Group can easily be determined. Such designation may be amended from time to time by Declarant, acting alone, at any time prior to the expiration of the Class “C” Control Period. Notwithstanding the foregoing, Declarant hereby agrees that, in the event Declarant elects to establish Voting Groups, Neighborhoods exclusively comprised of residential condominium Units (including, without limitation, Single Family Neighborhood II) will be assigned to a separate and distinct Voting Group, thereby assuring such Voting Group of the right to elect at least one (1) director to the Board.

After expiration of Declarant’s right to expand Mayfaire pursuant to Article 9, the Board shall have the right to amend the composition of Voting Groups by amending the Supplemental Declaration referenced in the immediately preceding paragraph upon (i) the vote of a majority of the total number of directors, (ii) the approval of sixty-seven percent (67%) of the total Class “A” votes in the Association and (iii) the approval of sixty-seven percent (67%) of the total Class “B” votes in the Association. Neither Recordation nor amendment of such Supplemental Declaration by Declarant shall constitute an amendment to this Declaration, and no consent or approval of any Person shall be required except as stated in this paragraph.

Until such time as Voting Groups are established (if at all), all of Mayfaire shall constitute a single Voting Group and directors shall be selected as provided in the By-Laws. After a Supplemental Declaration establishing Voting Groups has been Recorded, any and all

portions of Mayfaire which are not assigned to a specific Voting Group shall constitute a single Voting Group.

**Article 7 Association Powers and Responsibilities**

7.1 Acceptance and Control of Association Property

(a) The Association, through action of its Board, may acquire, hold, lease (as lessor or lessee), operate and dispose of tangible and intangible personal property and real property. The Association may enter into leases, licenses or operating agreements for portions of the Common Area, for such consideration or no consideration as the Board deems appropriate, to permit use of such portions of the Common Area by community organizations and by others, whether nonprofit or for profit, for the provision of goods or services for the general benefit or convenience of owners, occupants and residents of Mayfaire.

(b) Declarant and its designees may convey to the Association, and the Association shall accept, personal property and fee title, leasehold or other property interests in any real property, improved or unimproved, described in Exhibit A or B (including, without limitation, stormwater and other environmental or land use permits relating to such real property). Declarant shall convey Common Area to the Association as and to the extent required by law, but such conveyance shall take place no later than the expiration of the Class "C" Control Period (it being acknowledged that not all Common Area need be conveyed to the Association). Upon Declarant's written request, the Association shall reconvey to Declarant any unimproved portions of the Common Area which Declarant originally conveyed to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines. No conveyance of Common Area to the Association hereunder shall affect or diminish Declarant's rights to impose easements [including, without limitation, the Conservation Easement as defined below] and restrictions on property within Mayfaire as and to the extent provided in this Declaration. Declarant shall be entitled to encumber the Conservation Area, without the necessity of the consent or joinder of any Owner or the Association, with a conservation easement consistent with the requirements of the Master Plan and zoning requirements imposed on Mayfaire by governmental authorities (the "Conservation Easement"). The Conservation Easement may add additional restrictions and modify the maintenance obligations relative to the Conservation Area for the purpose of protecting the environmental condition thereof.

(c) The Association shall be responsible for management, operation and control of the Common Area, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate, and the adoption of such rules shall not require the approval of the Members.

7.2 Maintenance of Area of Common Responsibility.

The Association shall maintain, in accordance with the Community-Wide Standard, the Area of Common Responsibility, which shall include, but need not be limited to

- (a) all portions of and structures situated on the Common Area,
- (b) landscaping within public rights-of-way within or abutting Mayfaire,
- (c) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, a Covenant to Share Costs, or any contract or agreement for maintenance thereof entered into by the Association;
- (d) all ponds, streams and/or wetlands located within Mayfaire which serve as part of the stormwater drainage system for Mayfaire, including improvements and equipment installed therein or used in connection therewith (subject to the terms and conditions of the Conservation Easement, if any are applicable),
- (e) all other stormwater facilities within Mayfaire (to the extent such maintenance is required under the terms of Section 5.4 herein and/or to the extent the Association elects to maintain such stormwater facilities); and
- (f) any property and facilities which Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Such property and facilities shall be identified by written notice from Declarant to the Association and will remain part of the Area of Common Responsibility maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard

The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless Voting Members representing 75% of the Class "A" votes in the Association, Voting Members representing 75% of the Class "B" votes in the Association and the Class "C" Member, if any, agree in writing to discontinue such operation (provided, however, the Association shall not be entitled to

discontinue any maintenance obligations which the Association is required to undertake pursuant to Section 5 4 herein).

Except as provided above, the Area of Common Responsibility shall not be reduced except with Declarant's prior written approval as long as Declarant owns any property described in Exhibit A or B of this Declaration

The costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense, provided, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, a Covenant to Share Costs, other Recorded covenants, or agreements with the owner(s) thereof Maintenance, repair and replacement of Limited Common Areas shall be a Neighborhood Expense assessed to the Neighborhood(s) to which the Limited Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder

### 7 3 Insurance

(a) Required Coverages The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and within the Area of Common Responsibility to the extent that Association has assumed responsibility in the event of a casualty, regardless of ownership If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$10,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage, provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits,

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law,

(iv) Directors and officers liability coverage,

(v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds, in an amount determined in the Board's business judgment but not less than an amount equal to (A) one-quarter of the sum of annual Base Assessments on applicable Units plus (B) reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation, and

(vi) Such additional insurance as the Board, in the exercise of its business judgment, determines advisable

In addition, the Association shall, if so specified in a Supplemental Declaration applicable to any Neighborhood, obtain and maintain property insurance on the insurable improvements within such Neighborhood which insurance shall comply with the requirements of Section 7 3(a)(i). Any such policies shall provide for a certificate of insurance to be furnished upon request to the Owner of each Unit insured.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses, except that (i) premiums for property insurance on Units within a Neighborhood shall be a Neighborhood Expense, and (ii) premiums for insurance on Limited Common Areas may be included in the Neighborhood Expenses of the Neighborhood(s) to which such Limited Common Areas are assigned unless the Board reasonably determines that other treatment of the premiums is more appropriate.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the metropolitan Wilmington area. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7 3(a). In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment

All insurance coverage obtained by the Board shall

(i) be written with a company authorized to do business in North Carolina which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate,

(ii) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members. Policies secured on behalf of a Neighborhood shall be for the benefit of the Owners within the Neighborhood and their Mortgagees, as their interests may appear,

(iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually,

(iv) contain an inflation guard endorsement,

(v) include an agreed amount endorsement, if the policy contains a coinsurance clause,

(vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area as a Member in the Association (provided, this provision shall not be construed as giving an Owner any interest in the Common Area other than that of a Member),

(vii) provide a waiver of subrogation under the policy against any Owner or household member of an Owner,

(viii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

(ix) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Association.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide

(i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash,

(iii) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause,

(iv) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal,

(v) a cross liability provision; and

(vi) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss

(c) Restoring Damaged Improvements. In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements on the Common Area shall be repaired or reconstructed unless (i) repair or reconstruction would be illegal under any state or local health or safety statute or ordinance or (ii) Voting Members representing at least 80% of the total Class "A" votes in the Association, the Voting Members representing at least 80% of the total Class "B" votes in the Association, Voting Members representing 100% of the total votes attributable to Units entitled to use and enjoy any Limited Common Area within such damaged portion of the Common Area and the Class "C" Member, if any, decide within 60 days after the loss not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and runs and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard

Notwithstanding anything herein to the contrary, post-hurricane or other storm cleanup of the Common Area (or any other cleanup or repair of the Common Area necessitated by an Act of God or natural disaster) shall be the obligation of the Association. If necessary, the Board shall be entitled to impose a Special Assessment to cover the costs of such cleanup. Nothing in this paragraph shall be deemed to limit the types of costs and expenses that may justify a Special Assessment hereunder.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by the Association for the benefit of its Members or the Owners of Units within the insured Neighborhood, as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Voting Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 7.3(a).

#### 7.4 Compliance and Enforcement.

(a) Every Owner and occupant of a Unit shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents after notice and a hearing in accordance with the procedures set forth in Section 3.24 of the By-Laws. Such sanctions may include, without limitation

(i) imposing reasonable monetary fines which shall constitute a lien upon the violator's Unit (In the event that any occupant, guest or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator, provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board);

(ii) suspending an Owner's right to vote,

(iii) suspending any Person's right to use any recreational facilities within the Common Area or any other privileges relating to the Common Area, provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit,

(iv) suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association,

(v) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation,

(vi) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Unit in violation of the Governing Documents and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass,

(vii) without liability to any Person, precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of Article 4 and the Architectural Guidelines from continuing or performing any further activities in Mayfaire, and

(viii) levying Specific Assessments to cover costs incurred by the Association to bring a Unit into compliance with the Governing Documents.

In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in the By-Laws.

(i) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); or

(ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may Record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner as a Specific Assessment. If a Neighborhood Association fails to perform its maintenance responsibilities, the Association may perform such maintenance and assess the costs as a Specific Assessment against all Units within such Neighborhood. Except in an emergency situation, the Association shall provide the Owner or Neighborhood Association (if applicable) reasonable notice and an opportunity to cure the problem [not to exceed thirty (30) days] prior to taking such enforcement action.

All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

(b) The decision to pursue enforcement action in any particular case shall be left to the Board's sole discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case

(i) the Association's position is not strong enough to justify taking any or further action, or

(ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law, or

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources, or

(iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action

Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

#### 7.5 Implied Rights; Board Authority

The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. All rights and powers of the Association may be exercised by the Board without a vote of the membership except where applicable law or the Governing Documents specifically require a vote of the membership.

The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its Members.

In exercising the rights and powers of the Association, making decisions on behalf of the Association, and conducting the Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in the By-Laws.

#### 7.6 Indemnification of Officers, Directors, and Others.

Subject to North Carolina law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under the Articles of Incorporation and North Carolina law.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of

the Association (except to the extent that such officers or directors may also be Members of the Association).

The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available. Notwithstanding the foregoing to the contrary, the indemnification provided in this Section 7.6 shall not apply to or benefit Voting Members.

#### 7.7 Safety and Security

**Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in Mayfaire. The Association may, but shall not be obligated to, maintain or support certain activities within Mayfaire designed to enhance the level of safety or security which each person provides for himself or herself and his or her property. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within Mayfaire, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.**

**No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to Mayfaire, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and shall be responsible for informing its tenants and all occupants of its Unit that the Association, its Board and committees, and Declarant are not insurers or guarantors of security or safety and that each Person within Mayfaire assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.**

#### 7.8 Powers of the Association Relating to Neighborhood Associations.

Nothing in this Declaration shall require the creation of any Neighborhood Associations. No Neighborhood Association may be created without the prior written consent of the Declarant and the Association, and, as provided in Section 10.4, no Recorded documents establishing or governing such Neighborhood Association shall be effective without the joinder of the Association. Additionally, the Association shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Association which the Board reasonably determines to be inconsistent with the Governing Documents, adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association also shall have the power to require specific action to be taken by any Neighborhood Association in connection with its obligations and responsibilities, such as requiring specific maintenance or

repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefor

Notwithstanding the foregoing, the consent of the Association shall not be required for any declaration of condominium or declaration of restrictive covenants which applies solely to Single Family Neighborhood II (each, a "Subordinate Declaration") as long as (1) the provisions of such Subordinate Declaration are commercially reasonable and consistent with the provisions and intent of this Declaration and (11) such Subordinate Declaration clearly provides that it is subject and subordinate in all respects to the terms and conditions of this Declaration

A Neighborhood Association shall take appropriate action required by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the Neighborhood Association fails to comply, the Association shall have the right to effect such action on behalf of the Neighborhood Association and levy Specific Assessments to cover the costs, as well as an administrative charge and sanctions

#### 7.9 Provision of Services

The Association may provide, or provide for, services and facilities for the Members and their Units, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities provided at the option of an Owner, or may include the costs thereof in the Association's budget as a Common Expense and assess it as part of the Base Assessment if provided to all Units. By way of example, such services and facilities might include landscape maintenance, pest control service, cable television service, security, caretaker, transportation, fire protection, utilities, and similar services and facilities.

Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board shall be permitted to modify or cancel existing contracts for services in its discretion, unless the provision of such services is otherwise required by the Governing Documents. Non-use of services provided to all Owners or Units as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

#### 7 10 Relationships with Other Properties.

The Association may enter into contractual agreements or covenants to share costs with any neighboring property or Private Amenity to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Area maintenance

#### 7 11 Facilities and Services Open to the Public

Certain facilities and areas within Mayfaire may be open for use and enjoyment of the public. Such facilities and areas may include, by way of example soccer fields, greenbelts, trails and paths, parks, and other neighborhood spots conducive to gathering and interaction, roads,

sidewalks and meridians. Declarant may designate such facilities and areas as open to the public at the time Declarant makes such facilities and areas a part of the Area of Common Responsibility or the Board may so designate at any time thereafter

7 12 Special Provisions Relating to Town Center, The Town Center REA

Declarant has entered into a ground lease (the "Hecht's Lease") with Hecht's relating to the Hecht's Property, which property is contiguous with and surrounded by, but not a part of, the Town Center or the remainder of Mayfaire. In connection with the Hecht's Lease, Declarant, Hecht's and the Ground Lessee have or will soon enter into a Reciprocal Easement and Operating Agreement which encumbers the Hecht's Property and the Town Center. Such Reciprocal Easement and Operating Agreement, as the same may exist from time to time, is hereinafter referred to as the "Town Center REA". Declarant and Ground Lessee, and the successors and assigns of each as to its respective interest in the Town Center REA, are referred to collectively in this Section 7 12 as the "Town Center Developer Parties".

The Town Center REA sets forth certain covenants, agreements, terms, conditions and limitations, all so as to provide for the improvement and operation of the Hecht's Property and the Town Center as a unified multi-use development. Among other things, the Town Center REA (i) imposes upon each of the Town Center Developer Parties terms, conditions and restrictions which may be more restrictive than those which are or may be imposed on the Owner(s) of the Town Center by or through this Declaration, (ii) imposes affirmative obligations on each of the Town Center Developer Parties in addition to those obligations which are or may be imposed on the Owner(s) of the Town Center by or through this Declaration, (iii) grants certain easement and other property rights to Hecht's with respect to the Town Center; and (iv) grants rights and remedies to Hecht's in the event that the Town Center Developer Parties, or any of them, breach the provisions of the Town Center REA.

Notwithstanding anything to the contrary which may be contained in this Declaration, any action taken hereunder or hereby (including but not limited to, any exercise of rights granted pursuant to Article 21 herein, amendments of this Declaration and/or the Restrictions and Rules, creation of any Supplemental Declaration(s) and/or the enforcement, interpretation or application of any of the foregoing) shall be of no force and effect, and any such action shall be void ab initio, to the extent that such action would otherwise have the effect, directly or indirectly, of: (i) granting rights to any Person other than the Town Center Developer Parties in or in connection with the Town Center (including, but not limited to, the Association or any Neighborhood Association) which are in violation of, contrary to, more burdensome than or in any way inconsistent with the terms and provisions of the Town Center REA, (ii) imposing obligations on the Town Center Developer Parties or burdens on the Town Center which are in any way inconsistent with or more burdensome than the terms and provisions of the Town Center REA, (iii) voiding, frustrating, interfering with, making more burdensome the exercise of, or otherwise limiting in any manner the rights or remedies granted to Hecht's under the Town Center REA (including, but not limited to, any self-help right of Hecht's provided in the Town Center REA); or (iv) modifying or affecting in any manner whatsoever Hecht's rights under this Section 7 12, unless, in any of the foregoing instances, Hecht's has expressly consented in writing to such

action, which consent may be granted or withheld in Hecht's sole and absolute discretion

It is further agreed that the Town Center REA shall continue in full force and effect and be binding upon the successor(s) to the interest(s) of the Town Center Developer Parties in the Town Center notwithstanding any transfer(s) of any interest in all or a portion of the Town Center, whether pursuant to Section 4.7 or Section 8.9 hereof or otherwise

The provisions of this Section 7.12 are intended to be and are for the benefit of Hecht's and the successors and assigns of Hecht's as to its interest in the Town Center REA, notwithstanding that Hecht's is not a party to this Declaration

## **Article 8      Association Finances**

### **8.1      Budgeting and Allocating Common Expenses**

At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year, including any contributions to be made to a reserve fund pursuant to Section 8.3. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount to be generated through the levy of Base Assessments and Special Assessments against the Units, as authorized in Section 8.7. Except to the extent prohibited by law, the Association shall be entitled to retain surplus funds for use in the budget for the next fiscal year.

Diagram 8 1 illustrates the various funding sources available to the Association

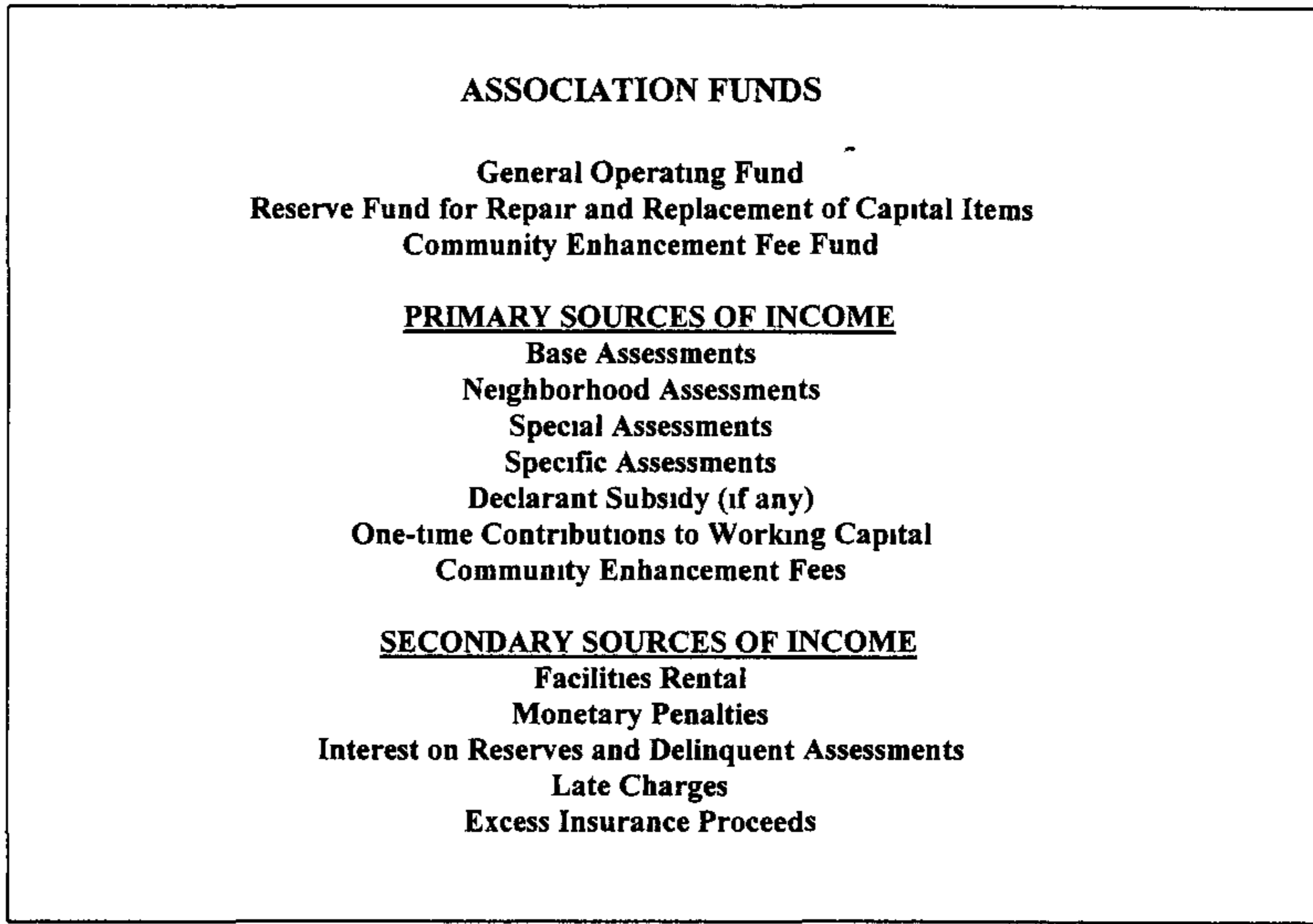


Diagram 8 1 – Funding Sources

The Association is authorized to levy Base Assessments against all Units subject to assessment under Section 8 7 to fund the Common Expenses. In determining the Base Assessment for each Unit, the Board may consider any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year

The Base Assessment for each Unit during any fiscal year shall be determined as follows (subject to adjustment as provided in Section 8 13 herein)

- (1) Based on the budget prepared in accordance with this Section 8 1, the Board shall estimate the total Common Expenses for the fiscal year
- (2) Each Neighborhood within Mayfaire shall then be allocated a prorata share of the total amount of Common Expenses determined in item (1) above (the prorata share for each Neighborhood being determined by multiplying the total amount of Common Expenses by a fraction, the numerator of which is the total Usable Acreage within such Neighborhood and the denominator of which is the total Usable Acreage within Mayfaire)
- (3) In the event there is more than one Unit within a Neighborhood, the amount allocated to each Neighborhood pursuant to item (2) above shall (unless otherwise determined by the Neighborhood Association, if any) be divided among the Units within such Neighborhood on a Usable Acreage basis, with the prorata share for each Unit being determined by multiplying the total amount of the Base Assessment allocated to the

Neighborhood by a fraction, the numerator of which is the total Usable Acreage within such Unit and the denominator of which is the total Usable Acreage within the Neighborhood).

For purposes of determining assessments hereunder, the term "Usable Acreage" shall mean the actual acreage of the parcel in question *less* (i) any portion(s) of such parcel deemed to be wetlands or (ii) any portion(s) of such parcel devoted to stormwater detention uses. During the Class "C" Control Period, Declarant shall have the right, in its reasonable discretion, to determine which portion(s) of Mayfaire are wetlands and which portion(s) of Mayfaire are devoted to stormwater detention uses for purposes of determining Usable Acreage hereunder. After the expiration of the Class "C" Control Period, the Association shall be entitled to make such determination (in its reasonable discretion). Unless Declarant (or the Association, as the case may be) is found to have been arbitrary, capricious or grossly negligent with respect to the determinations contemplated in this paragraph, such determinations by Declarant (or the Association, as the case may be) shall be deemed final.

Declarant may, but shall not be obligated to, reduce the amount of Common Expenses used to determine Base Assessments for any fiscal year by payment of a subsidy [in addition to any amounts paid by Declarant under Section 8 8(b)], which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provide in a written agreement between the Association and Declarant.

The Board shall send a summary of the final budget, together with a notice of the amount of the Base Assessment to be levied pursuant to such budget, to each Owner within 30 days after the Board adopts such budget. With such summary, the Board shall provide to each Owner a written notice of the meeting of the Owners at which the ratification of the budget will be considered. Such notice shall include a statement that the budget may be ratified at such meeting without a quorum. The meeting of the Owners to consider ratification of the budget shall be held not less than 10 nor more than 60 days after mailing of the summary and notice referenced in this paragraph. The budget shall automatically become effective unless disapproved at such meeting by (i) Members representing at least 75% of the total Class "A" votes in the Association and Members representing at least 75% of the total Class "B" votes in the Association or (ii) the Class "C" Member, if such exists.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, the periodic budget last ratified by the Owners shall continue in effect until a new budget is determined.

The Board may revise the budget and adjust the Base Assessments from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

## 8.2 Budgeting and Allocating Neighborhood Expenses.

At the same time the Base Assessment budget referenced in Section 8.1 is prepared, the Board shall prepare a separate budget covering the estimated Neighborhood Expenses for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. Each such budget shall include any costs for additional services or a higher level of services which the Owners in such Neighborhood have approved pursuant to Section 6.4(a) and any contribution to be made to a reserve fund pursuant to Section 8.3. Each Neighborhood Expense budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount required to be generated through the levy of Neighborhood and Special Assessments against the Units in such Neighborhood.

The Association is hereby authorized to levy Neighborhood Assessments equally against all Units in the Neighborhood which are subject to assessment under Section 8.7 to fund Neighborhood Expenses; provided, if so specified in the applicable Supplemental Declaration or if so directed by petition signed by a majority of the Owners within the Neighborhood, any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures shall be levied on each of the benefited Units in proportion to the benefit received.

The Board shall send a summary of the final Neighborhood budget, together with a notice of the amount of the Neighborhood Assessment to be levied pursuant to such Neighborhood budget, to each Owner in the Neighborhood within 30 days after the Board adopts such Neighborhood budget. With such summary, the Board shall provide to each Owner within the Neighborhood a written notice of the Neighborhood meeting at which the ratification of the Neighborhood budget will be considered. Such notice shall include a statement that the budget may be ratified at such meeting without a quorum. The meeting of the Owners within the Neighborhood to consider ratification of the Neighborhood budget shall be held not less than 10 nor more than 60 days after mailing of the summary and notice referenced in this paragraph. The budget shall automatically become effective unless disapproved at such meeting by (i) Members representing at least 75% of the total votes in the Neighborhood Association or (ii) the Class "C" Member, if such exists.

If any proposed Neighborhood budget is disapproved or the Board fails for any reason to determine the budget for any year, the periodic budget last ratified by the Owners within the Neighborhood shall continue in effect until a new Neighborhood budget is determined.

The Board may revise the budget for any Neighborhood and the amount of any Neighborhood Assessment from time to time during the year, subject to the notice requirements and the right of the Owners of Units in the affected Neighborhood to disapprove the revised budget as set forth above.

All amounts collected by the Association as Neighborhood Assessments shall be held in trust for and expended solely for the benefit of the Neighborhood for which they were collected and shall be accounted for separately from the Association's general funds

### 8.3 Budgeting for Reserves

The Board shall prepare and review at least annually a reserve budget for the Area of Common Responsibility and for each Neighborhood for which the Association maintains capital items as a Neighborhood Expense. For purposes of this Section 8.3, the term "capital item" shall include any capital item costing Ten Thousand Dollars (\$10,000.00) or more with a useful life (as determined in accordance with generally accepted accounting principles) in excess of five (5) years. The budgets shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the Common Expense budget adopted pursuant to Section 8.1 or the Neighborhood Expense budgets adopted pursuant to Section 8.2, as appropriate, a capital contribution to fund reserves in an amount sufficient to meet the projected need with respect to both amount and timing by annual contributions over the budget period.

8.4 [Intentionally Deleted].

### 8.5 Special Assessments

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the Units within any Neighborhood if such Special Assessment is for Neighborhood Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Voting Members (if a Common Expense) or Owners (if a Neighborhood Expense) representing more than 50% of the total votes (in each class of membership) allocated to Units which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "C" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

### 8.6 Specific Assessments

The Association shall have the power to levy Specific Assessments against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to Units upon request of an Owner pursuant to any menu of special services which may be offered by the Association (which might include the items identified in Section 7.9). Specific Assessments for special services may be levied in advance of the provision of the requested service, and

(b) to cover costs incurred in bringing the Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests, provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Specific Assessment under this subsection

The Association may also levy a Specific Assessment against the Units within any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Governing Documents, provided the Board gives prior written notice to the Owners of Units in, or the Voting Member representing, the Neighborhood and an opportunity for such Owners or Voting Member to be heard before levying any such assessment.

#### 8 7 Authority to Assess Owners, Time of Payment

Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Unit on the first day of the month following. (a) the month in which the Unit is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment and Neighborhood Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and any Neighborhood Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

#### 8 8 Obligation for Assessments

(a) Personal Obligation Each Owner, by accepting a deed or entering into a Recorded contract of sale for any portion of Mayfaire, is deemed to covenant and agree to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of the lesser of (i) 12% per annum or (ii) the highest rate per annum permitted by North Carolina law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

Failure of the Board to fix assessment amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Neighborhood Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner may exempt himself or herself from liability for assessments by non-use of Common Area, abandonment of his or her Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Upon written request, the Association shall furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(b) Declarant's Option to Fund Budget Deficits During the Class "C" Control Period, Declarant may satisfy its obligation for assessments on Units which it owns either by paying such assessments in the same manner as any other Owner or by paying the difference between the amount of assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year.

Regardless of Declarant's election, Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "C" Control Period, Declarant shall pay assessments on its unsold Units in the same manner as any other Owner.

#### 8.9 Lien for Assessments

The Association shall have a lien against each Unit (including Declarant's) to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of North Carolina law), and costs of collection (including attorneys fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior; and (b) the lien or charge of any Recorded first Mortgage (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure:

(a) no right to vote shall be exercised on its behalf, (b) no assessment shall be levied on it, and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner to the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8 7, including such acquirer, its successors and assigns.

#### 8 10 Exempt Property.

The following property shall be exempt from payment of Base Assessments, Neighborhood Assessments, and Special Assessments.

(a) All Common Area and such portions of the property owned by Declarant as are included in the Area of Common Responsibility,

(b) Any property dedicated to and accepted by any governmental authority or public utility, and

(c) Property owned by any Neighborhood Association for the common use and enjoyment of its members, or property owned by all of the members of a Neighborhood Association as tenants-in-common for the common use and enjoyment of such Neighborhood Association members.

#### 8.11 Capitalization of Association.

Upon acquisition of record title to a Unit by the first Owner thereof other than Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth of the annual Base Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-Laws. This Section 8 11 shall not apply to property owned or leased by Declarant or an affiliate of Declarant or to property within Single Family Neighborhood II.

8 12 Intentionally Deleted

8 13 Limitation on Assessments Payable by Single Family Neighborhood II  
Notwithstanding anything in this Article 8 to the contrary, the total amount of assessments payable by each Owner of a Residential Unit within Single Family Neighborhood II other than assessments which relate to the maintenance of facilities which are designated as Limited Common Area within Single Family Neighborhood II and which exclusively serve Single Family Neighborhood II (collectively, the "Capped Assessments") shall not exceed One Hundred and No/100 Dollars (\$100.00) in any calendar year until such time as one hundred percent (100%) of the improvements shown on the initial development plan for Single Family Neighborhood II (as originally submitted to the City of Wilmington by State Street, LLC) has been completed. Upon the completion of one hundred percent (100%) of such improvements, the aforementioned per-Unit cap shall thereafter increase by five percent (5%) each calendar year. Thus, for example, in the first full calendar year after the completion of one hundred percent (100%) of the improvements shown on the initial development plan for Single Family Neighborhood II, the limit on Capped Assessments payable by each Owner of a Residential Unit within Single Family Neighborhood II shall be deemed to be \$105 00; the next year such cap shall be deemed to be \$110 25, etc.

In the event the Capped Assessments that would be payable by each Owner of a Residential Unit in Single Family Neighborhood II were it not for the cap provided in this Section 8 13 exceed the limits provided herein, the responsibility to pay the amounts not paid by the Owners of Residential Units in Single Family Neighborhood II (the total of such excess being referred to herein as an "Assessment Overage") shall be allocated in prorata shares to the Owners of Units which are not located in Single Family Neighborhood II and which are subject to such Capped Assessments. The share of any Assessment Overage to be paid by each other Owner to which such Capped Assessments apply shall be determined by multiplying the total Assessment Overage by a fraction, the numerator of which is the total Usable Acreage within such Owner's tract and the denominator of which is the total Usable Acreage within the portions of Mayfaire to which such Capped Assessments apply (excluding all Residential Units within Single Family Neighborhood II )

**PART FOUR: COMMUNITY DEVELOPMENT**

*The Declaration reserves various rights to the developer in order to facilitate the smooth and orderly development of Mayfaire and to accommodate changes in the master plan which inevitably occur as a community the size of Mayfaire grows and matures*

**Article 9      Expansion of the Community**

9 1      Expansion by Declarant

Declarant may from time to time subject to the provisions of this Declaration all or any portion of the property described in Exhibit B by Recording a Supplemental Declaration

describing the additional property to be subjected. A Supplemental Declaration Recorded pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant (except as otherwise provided in this paragraph). Notwithstanding the foregoing, all parties are hereby put on notice that the Declarant may unilaterally subject certain of the property described in Exhibit B to the lien of this Declaration (i.e., annex such property into Mayfaire) without the consent of the owner of such property if (A) Declarant once owned such property and Declarant, at the time it conveyed such property to a third party, reserved the right to subject such property to the lien of this Declaration without the consent of the owner thereof, or (B) (i) Declarant obtains a binding option or right to purchase or acquire such property (an "Option"), (ii) Declarant assigns or conveys such Option to a third party and, in connection with such assignment or conveyance, reserves the right to subject such property to the lien of this Declaration without the consent of any party obtaining title by exercise of the Option and (iii) such property is actually obtained by a third party pursuant to the Option.

During the Class "C" Control Period, any Supplemental Declaration executed by Declarant (and, if other than Declarant, the owner(s) of such property) may establish, amend, revise, classify and/or reclassify the designation of (i) any Common Areas on such additional property, (ii) the Neighborhoods on such property and (iii) the Voting Groups into which such Neighborhoods will be placed. During the Class "C" Control Period, Declarant (together with the owner(s) of such property, if other than Declarant) shall also be entitled, without the consent or joinder of any other Person, to Record and/or amend such subdivision plats and other plats necessary to designate Units, Common Areas and other aspects of development on such additional property (regardless of whether such additional property has already been subjected to the provisions of this Declaration).

Declarant's right to expand Mayfaire pursuant to this Section shall expire upon the earlier to occur of (i) the date all property described in Exhibit B has been subjected to this Declaration, (ii) the date on which Declarant Records a notice relinquishing its right to expand Mayfaire as provided in this Declaration or (iii) the expiration of the Class "C" Control Period. Until then, Declarant may transfer or assign this right to any Person who is the developer of at least a portion of the real property described in Exhibit A or B. Any such transfer shall be memorialized in a written, Recorded instrument executed by Declarant.

Nothing in this Declaration shall be construed to require Declarant or any successor to subject additional property to this Declaration or to develop any of the property described in Exhibit B in any manner whatsoever.

## 9.2 Expansion by the Association.

The Association may also subject additional property to the provisions of this Declaration by Recording a Supplemental Declaration describing the additional property. Any such Supplemental Declaration shall require the affirmative vote of Voting Members representing more than 50% of the Class "A" votes of the Association and Voting Members representing more than 50% of the Class "B" votes of the Association represented at a meeting duly called for such purpose and the consent of the owner of the property. In addition, so long as Declarant owns

property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, Declarant's consent shall be necessary. The Supplemental Declaration shall be signed by the Association's President and Secretary, by the owner of the property, and by Declarant, if Declarant's consent is necessary.

### 9.3 Additional Covenants and Easements

Declarant may subject any portion of Mayfaire to additional covenants and easements, including covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Neighborhood Assessments. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If the property is owned by someone other than Declarant, then the consent of the Owner(s) [or party(ies) having legal authority to bind such Owner(s)] shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

Notwithstanding the foregoing to the contrary, in the event additional property is subjected to the provisions of this Declaration pursuant to this Article 9, neither Declarant nor the Association shall be entitled to subject any portion of Single Family Neighborhood II to additional easements to serve such additional property without the consent of the Neighborhood Association for Single Family Neighborhood II (which consent shall not be unreasonably withheld, conditioned or delayed). Additionally, in the event any utility services are provided to Single Family Neighborhood II exclusively via utility facilities entering Single Family Neighborhood II from another portion of Mayfaire (as opposed to utility facilities entering Single Family Neighborhood II directly from a public right of way) (any of such utility facilities being referred to herein as "Protected Single Family Neighborhood II Utilities"), then Declarant and the Association agree that no annexation of property under this Article 9 shall materially impair the level of service provided to Single Family Neighborhood II via any Protected Single Family Neighborhood II Utilities; provided, however, and notwithstanding anything in this grammatical paragraph to the contrary, nothing in this paragraph shall be deemed or construed to limit or prevent the development of all or any portion of the property described in Exhibit B if and to the extent utilities to such property are provided via facilities other than Protected Single Family Neighborhood II Utilities, it being understood and agreed that Single Family Neighborhood II shall have no claim or right to prevent the development of such property (or the annexation of such property into Mayfaire) on the grounds that the overall level of service within public utilities may be decreased by such development.

9 4 Effect of Filing Supplemental Declaration

A Supplemental Declaration shall be effective upon Recording unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

9 5 Annexation of Cobb Property

Notwithstanding the foregoing provisions of this Article 9 to the contrary, the property described in that certain deed recorded in Deed Book 1246 at Page 1026 in the New Hanover County Public Registry (the "Cobb Property") shall not be annexed into Mayfaire for use as a multi-family housing development or residential condominium development without the prior written consent of the Neighborhood Association for Single Family Neighborhood II (which consent shall not be unreasonably withheld, conditioned or delayed). If the initial use of the Cobb Property subsequent to annexation into Mayfaire will be any use other than a multi-family housing development or residential condominium development, the consent of the Neighborhood Association for Single Family Neighborhood II shall not be required for the annexation of the Cobb Property into Mayfaire.

9 6 Annexation of Hecht's Property

Notwithstanding the foregoing provisions of this Article 9 or the provisions of Article 19 hereof, so long as the Hecht's Lease remains in effect, the Hecht's Property may not be annexed into Mayfaire without the prior written consent of Hecht's or any successor tenant under the Hecht's Lease.

**Article 10 Additional Rights Reserved to Declarant**

10 1 Withdrawal of Property

Declarant reserves the right to amend this Declaration, so long as it has a right to annex additional property pursuant to Section 9 1, for the purpose of removing any portion of Mayfaire which has not yet been improved with structures from the coverage of this Declaration, provided such withdrawal does not reduce the total number of Units then subject to the Declaration by more than 10 percent. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

10 2 Marketing and Sales Activities

Declarant and Builders authorized by Declarant may construct and maintain upon portions of the Common Area such facilities and activities as, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of Units, including,

but not limited to, business offices, signs, model units, and sales offices. Declarant and authorized Builders shall have easements for access to and use of such facilities at no charge

#### 10.3 Right to Develop.

Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion

Every Person that acquires any interest in Mayfaire acknowledges that Mayfaire is a master planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge or otherwise object to (a) changes in uses or density of property outside the Neighborhood in which such Person holds an interest, or (b) changes in the Master Plan as it relates to property outside the Neighborhood in which such Person holds an interest.

#### 10.4 Right to Approve Additional Covenants.

Except as otherwise provided in Section 7.8, no Person shall Record any Subordinate Declaration or any other declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of Mayfaire without Declarant's review and written consent. Any attempted Recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed and Recorded by Declarant.

#### 10.5 Right to Approve Changes in Mayfaire Standards

No amendment to or modification of any Restrictions and Rules or Architectural Guidelines shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1

#### 10.6 Right to Transfer or Assign Declarant Rights.

Any or all of Declarant's special rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons, provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument Declarant signs and Records. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to Record any written assignment unless necessary to evidence Declarant's consent to such exercise. Notwithstanding anything in this Declaration to the contrary, Declarant shall be entitled to assign its rights hereunder to a ground lessee (*i.e.*, the

leasehold interest of such ground lessee shall be deemed sufficient title for purposes of receiving an assignment of Declarant's rights hereunder).

10 7 Exclusive Rights To Use Name of Development.

No Person shall use the name "Mayfaire" or any derivative of such name or in logo or depiction in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "Mayfaire" in printed or promotional matter where such term is used solely to specify that particular property is located within Mayfaire and the Association shall be entitled to use the words "Mayfaire" in its name. Additionally, the Owner of Single Family Neighborhood II shall be entitled to refer to the development on such property as "The Village at Mayfaire" (subject to limitations of law or claims of any other parties in and to such name).

10 8 Easement to Inspect and Right to Correct

Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement or condition which may exist on any portion of the property within Mayfaire, including Units, and a perpetual nonexclusive easement of access throughout Mayfaire to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner and no entry into a structure shall be permitted without the consent of the Owner. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

10 9 [Intentionally Deleted]

10 10 Termination of Rights

Except as otherwise provided in Section 1 2, the rights contained in this Article shall not terminate until the earlier of (a) 89 years from the date this Declaration is Recorded; or (b) Recording by Declarant of a written statement that all sales activity has ceased.

**PART FIVE: PROPERTY RIGHTS WITHIN THE COMMUNITY**

*The nature of living in a planned community, with its wide array of properties and development types and its ongoing development activity, requires the creation of special property rights and provisions to address the needs and responsibilities of the Owners, Declarant, the Association, and others within or adjacent to the community.*

**Article 11 Easements**

11.1 Easements in Common Area

Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to

- (a) The Governing Documents and any other applicable covenants,
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association,
- (c) The Board's right to
  - (i) adopt rules regulating use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area,
  - (ii) suspend an Owner's right to use recreational facilities within the Common Area (A) for any period during which any charge against such Owner's Unit remains delinquent, and (B) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of the Governing Documents after notice and a hearing pursuant to the By-Laws,
  - (iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration,
  - (iv) permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees, and guests and designate other areas and facilities within the Area of Common Responsibility as open for the use and enjoyment of the public,
  - (v) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, and
  - (vi) make reasonable and appropriate modifications to the boundaries of the Common Area in order to make such boundaries consistent with improvements as actually constructed therein (including, without limitation, reasonable relocations of Common Area to conform to the specifications of roads actually installed within the Common Area).
- (d) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Limited Common Areas," as described in Article 12 (although nothing herein shall require that the use of Limited Common Areas be limited to certain Owners or Persons)

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable Board regulation. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

#### 11.2 Easements of Encroachment

Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units or any Unit and any Private Amenity due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

#### 11.3 Easements for Utilities

(a) Installation and Maintenance. Declarant reserves for itself, so long as Declarant owns any property described in Exhibit A or B of this Declaration, and grants to the Association and all utility providers, perpetual non-exclusive easements throughout Mayfaire (but not through a structure) to the extent reasonably necessary for the purpose of:

(i) installing utilities and infrastructure to serve Mayfaire, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways and trails, drainage systems, street lights and signage on property which Declarant owns or within public rights-of-way or easements reserved for such purpose on Recorded plats;

(ii) inspecting, maintaining, repairing, and replacing the light poles, utilities, infrastructure, and other improvements described in Section 11.3(a)(i), and

(iii) access to read utility meters

(b) Minimal Interference. All work associated with the exercise of the easements described in this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

#### 11 4 Easements for Stormwater Drainage

(a) Installation and Maintenance Declarant reserves for itself, so long as Declarant owns any property described in Exhibit A or B of this Declaration, and grants to the Association perpetual non-exclusive easements throughout Mayfaire (but not through a structure) to the extent reasonably necessary for the purpose of:

(i) installing detention ponds, stormwater drainage facilities and any related infrastructure necessary or advisable for serving the stormwater drainage needs of Mayfaire (collectively, "Stormwater Facilities"), and

(ii) inspecting, maintaining, repairing, and replacing the Stormwater Facilities

During the Class "C" Control Period, Declarant shall be entitled to determine, in Declarant's sole discretion, whether an Owner shall be entitled to drain into Stormwater Facilities installed pursuant to this Section 11 4 (it being acknowledged that in some instances, depending on governmental requirements and/or Declarant's plan for the orderly development of Mayfaire, an Owner's stormwater drainage system shall be completely contained within such Owner's tract). After the Class "C" Control Period, the discretion reserved to the Declarant in this paragraph shall be exercised by the Association. Notwithstanding the foregoing to the contrary, in the event an Owner is granted the right to use Stormwater Facilities installed pursuant to this Section 11 4 and such Owner constructs improvements in reliance upon such grant, such Owner's right to use such Stormwater Facilities shall be deemed a perpetual, non-exclusive easement and may not be rescinded by act of Declarant or the Association without such Owner's consent (which consent shall not be unreasonably withheld, conditioned or delayed)

Notwithstanding the foregoing to the contrary, no portions of Mayfaire (other than Single Family Neighborhood II) shall have any easement or right to use any Stormwater Facilities located within Single Family Neighborhood II without the prior written consent of the Neighborhood Association for Single Family Neighborhood II (which consent shall not be unreasonably withheld, conditioned or delayed), provided, however, Declarant and the Association shall have the right to inspect, maintain, repair, and replace Stormwater Facilities located within Single Family Neighborhood II from time to time as contemplated in other portions of this Declaration

(b) Minimal Interference. All work associated with the exercise of the easements described in this Section shall be performed in such a manner as to minimize material, adverse interference with the use and enjoyment of the property burdened by the easement

#### 11 5 Easements to Serve Additional Property

Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Area and over any roads, driveways and parking areas within Mayfaire for the purposes of enjoyment, use, access, and development of the property described in Exhibit B, whether or not such property is made subject to this Declaration

This easement includes, but is not limited to, a right of ingress and egress over the Common Area and such roads, driveways and parking areas for construction of roads and for connecting and installing utilities on such property. Notwithstanding the foregoing to the contrary, no parties other than the Owners and occupants of Units within Single Family Neighborhood II shall have the right to park vehicles in the parking lots within Single Family Neighborhood II except as permitted by the Neighborhood Association of Single Family Neighborhood II.

Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area or such other such roads, driveways and parking areas as a result of their respective actions in connection with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such property.

#### 11.6 Easements for Maintenance, Emergency, and Enforcement.

Declarant grants to the Association easements over Mayfaire as necessary to enable the Association to fulfill its maintenance responsibilities under Section 7.2. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

#### 11.7 Easements for Lake and Pond Maintenance and Flood Water

Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the Area of Common Responsibility to (a) install, operate, maintain, and replace pumps to supply irrigation water to the Area of Common Responsibility; (b) construct, maintain, and repair structures and equipment used for retaining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. Declarant, the Association, and their successors, assigns and designees shall have an access easement over and across any of Mayfaire abutting or containing bodies of water or wetlands to the extent reasonably necessary to exercise their rights under this Section.

Declarant further reserves for itself, the Association, and their successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Units (but not the structures thereon) adjacent to or within 100 feet of bodies of water and wetlands within or adjacent to Mayfaire (including, without limitation, the Conservation Area), in order to (a) temporarily flood and back water upon and maintain water over such portions of Mayfaire, (b) alter in any manner and generally maintain the bodies of

water and wetlands within the Area of Common Responsibility, and (c) maintain and landscape the slopes and banks pertaining to such areas. All persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to hurricanes, heavy rainfall, or other natural occurrences.

11.8 Easement to Inspect and Right to Correct.

Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the property within Mayfaire, including Units, and a perpetual, nonexclusive easement of access throughout Mayfaire to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner and no entry into a structure shall be permitted without the Owner's consent. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

11.9 Easement over Private Sidewalks, Roads, Etc.

Declarant reserves for itself and hereby grants to the Association and each Owner within Mayfaire a perpetual, mutual, reciprocal and non-exclusive easement of passage and use, both vehicular and pedestrian, over, across and through any and all sidewalks, streets, roadways, access areas and biking/walking/jogging trails which are located on any Owner's tract and which are intended for the general use of the public. Notwithstanding the foregoing to the contrary, nothing in this Section 11.9 shall be deemed to give other Owners an easement over any personal driveway constructed on a single-family Residential Unit.

11.10 Setback Easement Relating to Road Dedications.

In addition to the easements reserved and/or granted above, Declarant hereby further reserves for itself, the Association, and their successors, assigns and designees, a perpetual, nonexclusive right and easement over any portions of any Unit and/or tract within Mayfaire lying within ten (10) feet of a road which Declarant and/or the Association intends to dedicate to the City of Wilmington (but only to the extent such easement is required in connection with such dedication). The reservation included in this Section 11.10 shall be deemed to include the right to dedicate such area to the City of Wilmington if necessary and to impose upon such area any restrictions or limitations required by the City of Wilmington in connection with road dedications.

11.11 Additional Specific Easements

Subject to the limitations provided in Article 9 herein, Declarant also reserves for itself the non-exclusive right and power to grant and Record such specific easements as may be necessary, in Declarant's sole discretion, in connection with the orderly development of any property described in Exhibits A and B. The Owner of any property to be burdened by any easement granted pursuant to this Section shall be given written notice in advance of the grant.

The location of the easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned. All work associated with the exercise of the easements described in this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

## **Article 12 Limited Common Areas**

### **12.1 Purpose.**

Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use or primary benefit of Owners and occupants within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Limited Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, lakes and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of a Limited Common Area shall be a Neighborhood Expense allocated among the Owners in the Neighborhood(s) to which the Limited Common Areas are assigned.

### **12.2 Designation.**

Initially, any Limited Common Area shall be designated as such in this Declaration, in the deed conveying such area to the Association or on the subdivision plat relating to such Common Area, provided, however, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Area to additional Units and/or Neighborhoods by Supplemental Declaration, so long as Declarant has a right to subject additional property to this Declaration pursuant to Section 9.1.

Thereafter, a portion of the Common Area may be assigned as Limited Common Area and Limited Common Area may be reassigned upon approval of the Board and the vote of both (i) Voting Members representing a majority of the total Class "A" votes in the Association, including a majority of the Class "A" votes within any Residential Neighborhood(s) affected by the proposed assignment or reassignment (if any) and (ii) Voting Members representing a majority of the total Class "B" votes in the Association, including a majority of the Class "B" votes within any Nonresidential Neighborhood(s) affected by the proposed assignment or reassignment (if any). As long as Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, any such assignment or reassignment shall also require Declarant's written consent.

12.3 Use by Others.

Upon approval of a majority of Owners of Units within the Neighborhood to which any Limited Common Area is assigned, the Association may permit Owners of Units in other Neighborhoods to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Limited Common Area

12.4 Initial Designation of Certain Limited Common Areas.

(a) All stormwater facilities within the Town Center, as such facilities may be modified and/or relocated from time to time by Declarant, are hereby designated as Limited Common Area which shall be for the benefit of, and which shall be maintained by assessments against, the Town Center

(b) All stormwater facilities within Single Family Neighborhood II, as such facilities may be modified and/or relocated from time to time by the Neighborhood Association for Single Family Neighborhood II, are hereby designated as Limited Common Area which shall be for the sole benefit of, and which shall be maintained solely by assessments against, the Owners of Units within Single Family Neighborhood II. Assessments levied upon the Owners of Units within Single Family Neighborhood II for the support of such Limited Common Area shall not be deemed a Capped Assessment for purposes of Section 8.13 herein

**Article 13 Party Walls and Other Shared Structures**

13.1 General Rules of Law to Apply

Each wall, fence, driveway, or similar structure built as a part of the original construction on the Units which serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article 14

13.2 Maintenance; Damage and Destruction

The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure

If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions

The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

## **PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY**

*The growth and success of Mayfaire as a community in which people enjoy living, working, and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationships within the community and with our neighbors, and protection of the rights of others who have an interest in the community*

### **Article 14 Dispute Resolution and Limitation on Litigation**

#### **14 1 Agreement to Encourage Resolution of Disputes Without Litigation**

(a) Declarant, the Association and its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Mayfaire community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 14 2 in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to

(i) the interpretation, application, or enforcement of the Governing Documents,

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of improvements within Mayfaire, other than matters of aesthetic judgment under Article 4, which shall not be subject to review;

except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 14 2

(i) any suit by the Association to collect assessments or other amounts due from any Owner,

(ii) any suit by the Association to obtain injunctive relief, a temporary restraining order, emergency equitable relief or any such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Part Two of this Declaration (relating to creation and maintenance of community standards),

(iii) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents,

(iv) any suit in which any indispensable party is not a Bound Party, and

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 14.2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article

#### 14.2 Dispute- Resolution Procedures

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice to each Respondent and to the Board stating plainly and concisely

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim,

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises),

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim

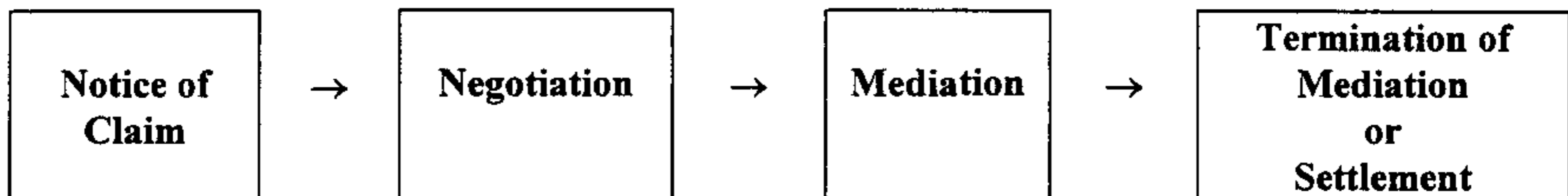
(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim

(c) Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in Section 14.2(a) (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Wilmington area.

If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all fees charged by the mediator.

#### **Alternative Dispute Resolution Process**



(d) Settlement Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party hereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

#### 14.3 Initiation of Litigation by Association

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a majority of the Board.

### **Article 15 Private Amenities**

#### 15.1 General

No Private Amenity may operate within Mayfaire during the Class "C" Control Period without the prior written consent of Declarant, which may be granted or withheld in Declarant's sole discretion. After the Class "C" Control Period, no Private Amenity may operate within Mayfaire without the prior written consent of the Association. Currently, no Private Amenities are planned for Mayfaire. Accordingly, references in this Declaration to Private Amenities relate only to the extent a Private Amenity is actually constructed and opens for business.

Access to and use of any Private Amenity is strictly subject to the rules and procedures of the owner of such Private Amenity, and no Person gains any right to enter or to use any Private

Amenity by virtue of membership in the Association or ownership or occupancy of a Unit unless such rights are granted by the rules and procedures of the owner of such Private Amenity

All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant, the Association, any Builder, or by any Person acting on behalf of any of the foregoing, with regard to the construction of any Private Amenities or the continuing ownership or operation of any Private Amenities that may be constructed in the future. No purported representation or warranty in such regard, written or oral, shall be effective unless specifically set forth in a written instrument executed by the record owner of the Private Amenity.

Ownership or operation of any Private Amenity may change at any time by virtue of, but without limitation, (a) the sale to or assumption of operations by an independent Person, (b) establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the members of a Private Amenity or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Private Amenity, or (c) the conveyance of a Private Amenity to one or more affiliates, shareholders, employees, or independent contractors of Declarant. Consent of the Association, any Neighborhood Association, any Voting Member, or any Owner shall not be required to effectuate any change in ownership or operation of any Private Amenity, subject to the terms of any written agreements entered into by such owners.

Rights to use the Private Amenities will be granted only to such persons, and on such terms and conditions, as may be determined by their respective owners. Such owners shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities and to terminate use rights altogether.

#### 15.2 Conveyance of Private Amenities.

All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant, the Association, any Builder, or by any Person acting on behalf of any of the foregoing, with regard to the construction, continuing ownership or operation of any Private Amenity. No purported representation or warranty in such regard, either written or oral, shall be effective unless specifically set forth in a written instrument executed by the record owner of the Private Amenity. The ownership or operation of any Private Amenity may change at any time by virtue of, but without limitation, (a) the sale to or assumption of operations of any Private Amenity by a Person other than the owner or operator; (b) the establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the members of the Private Amenity or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Private Amenity, or (c) the conveyance of any Private Amenity to one or more of Declarant's affiliates, shareholders, employees, or independent contractors. After the initial approval of a Private Amenity by Declarant or the Association (as applicable), consent of the Declarant, the Association, any Neighborhood Association, any Voting Member, or any Owner shall not be required to effectuate any change in

ownership or operation of any Private Amenity, for or without consideration and subject to or free of any mortgage, covenant, lien, or other encumbrance.

### 15.3 View Impairment

Declarant, the Association, or the owner of any Private Amenity, does not guarantee or represent that any view over and across the Private Amenity from Units adjacent to the Private Amenity will be preserved without impairment. Owners of the Private Amenities, if any, shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in their sole and absolute discretion, to add trees and other landscaping to the Private Amenities from time to time. Any such additions or changes may diminish or obstruct any view from the Units and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

### 15.4 Rights of Access and Parking.

If a Private Amenity is approved by Declarant or the Association hereunder, there shall be established for the benefit of the Private Amenity and its members (regardless of whether such members are Owners hereunder), guests, invitees, employees, agents, contractors, and designees, a right and nonexclusive easement of access and use over all roadways located within Mayfaire reasonably necessary to travel between the entrance to Mayfaire and the Private Amenity and over those portions of Mayfaire (whether Common Area or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Private Amenity.

### 15.5 Assessments.

In consideration of the fact that the Private Amenity will benefit from maintenance of the roads, rights-of-way, and Common Areas within Mayfaire, the Private Amenity shall be obligated to pay assessments to the Association as provided in Article 8. In addition, the Association may enter into a contractual arrangement or covenant to share costs with any Private Amenity obligating the Private Amenity to contribute funds for, among other things, shared property or services and/or a higher level of Common Area maintenance.

## **Article 16 Mortgage Provisions**

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in Mayfaire. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

#### 16.1 Notices of Action.

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of.

(a) Any condemnation loss or any casualty loss which affects a material portion of Mayfaire or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Unit or the Owner or occupant which is not cured within 60 days, and

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association

#### 16.2 No Priority

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

#### 16.3 Notice to Association.

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

#### 16.4 Failure of Mortgagee to Respond

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested

### **PART SEVEN: CHANGES IN THE COMMUNITY**

*Communities such as Mayfaire are dynamic and constantly evolving as circumstances, technology, needs and desires, and laws change, as the residents age and change over time, and*

*as the surrounding community changes Mayfaire and its Governing Documents must be able to adapt to these changes while protecting the things that make Mayfaire unique*

### **Article 17 Changes in Ownership of Units**

Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Unit Owner, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

### **Article 18 Changes in Common Area**

#### **18.1 Condemnation.**

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the vote or written direction of Members representing at least 80% of the total Class "A" votes in the Association and Members representing at least 80% of the total Class "B" votes in the Association, and the written consent of Declarant, as long as Declarant owns any property subject to the Declaration or which may be made subject to the Declaration in accordance with Section 9.1) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

- If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking Declarant (so long as Declarant owns any property subject to the Declaration or which may be made subject to the Declaration in accordance with Section 9.1), Members representing at least 80% of the total Class "A" vote of the Association and Members representing at least 80% of the total Class "B" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.3(c) regarding funds for restoring improvements shall apply.
- If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine (subject to the applicable requirements of the North Carolina Planned Community Act).

## 18.2 Partition

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

## 18.3 Transfer or Dedication of Common Area

Subject to the applicable terms of the North Carolina Planned Community Act, the Association may dedicate portions of the Common Area to the City of Wilmington, North Carolina, the North Carolina Coastal Land Trust, The North Carolina Agricultural Foundation, Inc. or to any other local, state, or federal governmental or quasi-governmental entity or preservation entity.

## **Article 19 Amendment of Declaration**

### 19.1 By Declarant

In addition to specific amendment rights granted elsewhere in this Declaration, Declarant may unilaterally amend this Declaration at any time if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination, (b) to enable any reputable title insurance company to issue title insurance coverage on the Units, (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, to make, purchase, insure, or guarantee mortgage loans on the Units, or (d) to satisfy the requirements of any local, state, or federal governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent in writing.

In addition, so long as Declarant owns property described in Exhibit A or B for development as part of Mayfaire, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon the rights of more than 5% of the Owners. Notwithstanding the foregoing, no unilateral amendment by Declarant which would increase the burden upon or obligations of the Owners of Units within Single Family Neighborhood II shall be effective vis a vis Single Family Neighborhood II unless and until Declarant has obtained the written consent of the Neighborhood Association of Single Family Neighborhood II (which consent shall not be unreasonably withheld, conditioned or delayed); provided, however, the obligation to obtain the written consent of the Neighborhood Association of Single Family Neighborhood II provided in this sentence shall not apply to the exercise of Declarant's right to record one or more Supplemental Declarations for the purposes of subjecting additional property to this Declaration pursuant to Article 9 herein, designating or redesignating Neighborhoods (other than Single Family Neighborhood II), designating or redesignating Common Area and/or Limited Common Area within Mayfaire, and/or designating or redesignating Voting Groups hereunder (other than the Voting Group for Single Family

Neighborhood II), it being acknowledged that the exercise of such rights could be construed to increase the burdens or obligations of Owners of Units within Single Family Neighborhood II in certain ways

Any modification or amendment of this Declaration adopted in accordance with the provisions of this Section 19 1 shall be binding upon all Owners and their heirs, successors and assigns

#### 19 2 By Members.

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of (i) Members representing 75% of the total Class "A" votes in the Association, including 75% of the Class "A" votes held by Members other than Declarant, (ii) Members representing 75% of the total Class "B" votes in the Association, including 75% of the Class "B" votes held by Members other than Declarant, and (iii) Declarant, so long as Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9 1 Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

#### 19 3 Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "C" Member without the written consent of Declarant or the Class "C" Member, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon Recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

#### 19 4 Termination

Except in the case of taking of all the Lots by eminent domain, this Declaration may be terminated only by the affirmative vote or written consent, or any combination thereof, of (i) Members representing 80% of the total Class "A" votes in the Association, including 80% of the Class "A" votes held by Members other than Declarant, (ii) Members representing 80% of the total Class "B" votes in the Association, including 80% of the Class "B" votes held by Members

other than Declarant, and (iii) Declarant's consent, so long as Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1

19.5 Exhibits and Amendments Thereto

All exhibits attached to this Declaration are incorporated herein by this reference. Amendment of Exhibits A, B and E shall be governed by this Article. Amendment of Exhibit C shall be governed by the provisions of Article 3 herein relating to modification of the Restrictions and Rules. Amendment of Exhibit D shall be governed by provisions in such exhibit relating to amendment of the By-Laws. Amendment of Exhibit F shall be governed by this Article (although such amendment shall be subject to the Conservation Easement, if applicable)

19.6 Right to Extend Term of Covenants

The power to amend this Declaration shall specifically include, *inter alia*, the right to extend the term of this Declaration beyond the initial term specified herein

**Article 20 Conflicts with the North Carolina Planned Community Act**

To the extent any provision of this Declaration is directly inconsistent with the terms of the North Carolina Planned Community Act (the "NCPCA") and such provision of this Declaration cannot reasonably be reconciled with the NCPCA, the terms of the NCPCA shall be controlling with regard to such term

**Article 21 Additional Rights and Restrictions Relating to the Town Center**

In order to preserve the appeal of the Town Center to top-quality, national and regional retailers, and to preserve the benefits which inure to all of Mayfaire as a result of the presence of such occupants, the following provisions shall apply in connection therewith

21.1 Designation and Modification of Common Area.

If the designation, location, relocation, expansion or contraction of any Common Area within the Town Center would materially, adversely impact the leased premises of any tenant leasing in excess of 25,000 square feet of land or improved space within the Town Center (a "Primary Tenant") or the conduct of business in such leased premises by such Primary Tenant, such designation, location, relocation, expansion or contraction shall not be effective under this Declaration unless and until it has received the written approval of any Primary Tenant so affected

21.2 Modifications of Restrictions and Rules Relating to the Town Center.

Declarant shall be entitled to modify any of the Restrictions and Rules as same apply to the Town Center if, in Declarant's reasonable opinion, the application of such Restrictions and

Rules would inhibit the normal and customary operation of a Primary Tenant within the Town Center, provided, however, Declarant's power unilaterally to modify the Restrictions and Rules as same apply to the Town Center shall not include any modification which would increase the burden of such Restrictions and Rules on other Neighborhoods within Mayfaire.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the date and year first written above.

BRODY ZIMMER, LLC, a North Carolina limited liability company

Katherine B. Walburn

WITNESS

By Hyman J. Brody

Name Hyman J Brody

Title: Manager

Katherine B. Walburn

WITNESS

By Jeffrey L. Zimmer

Name Jeffrey L Zimmer

Title Manager

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

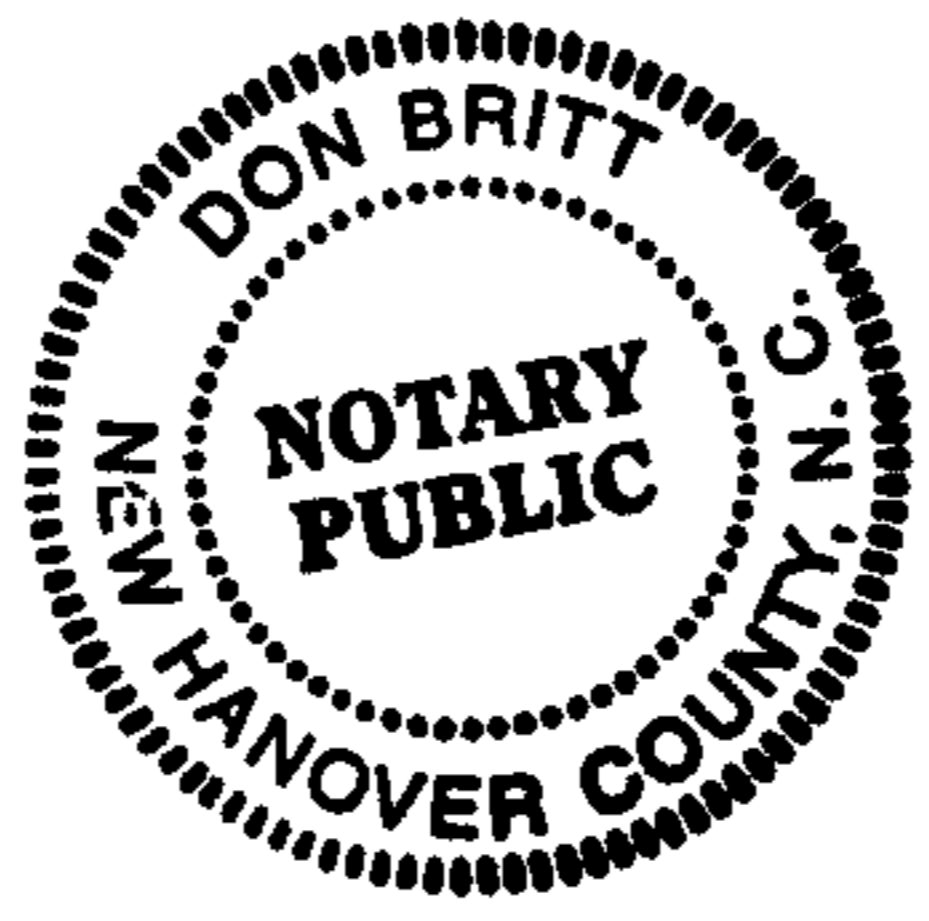
I, Don Britt, a Notary Public of the State and County aforesaid, certify that Hyman J. Brody, Manager of BRODY ZIMMER, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the limited liability company.

WITNESS my hand and official seal this 2 day of May, 2003

Don Britt  
Notary Public

My Commission Expires:

6-12-07



STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

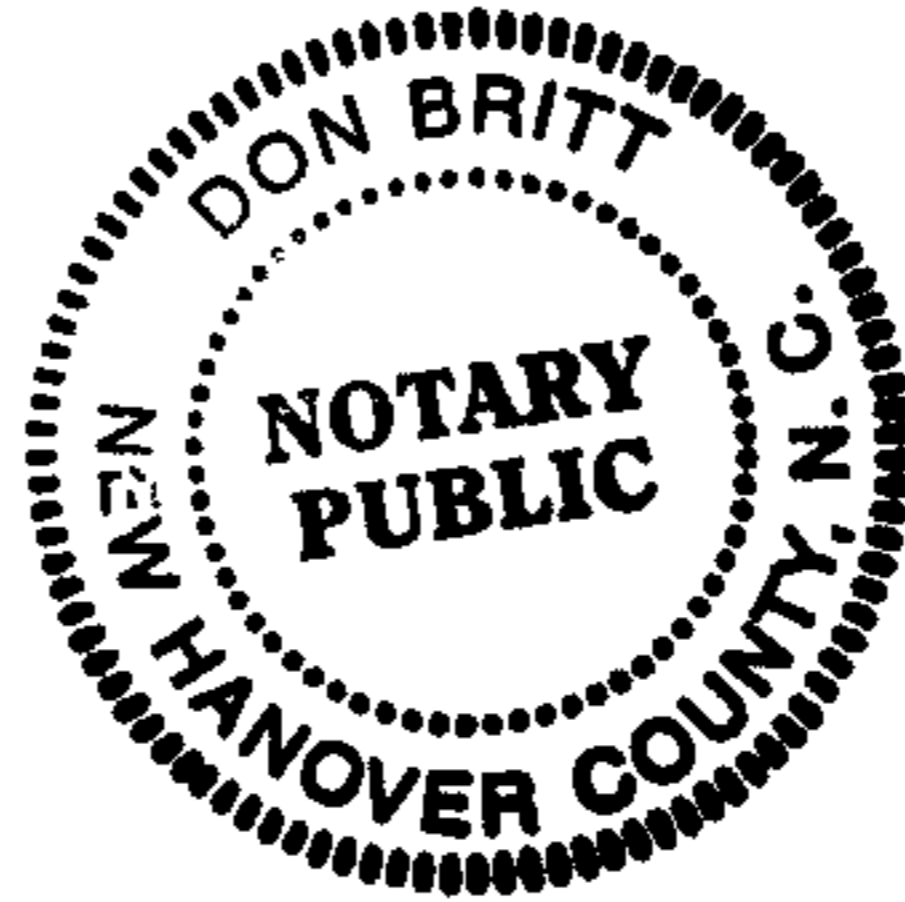
I, Don Britt, a Notary Public of the State and County aforesaid, certify that Jeffrey L Zimmer, Manager of BRODY ZIMMER, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the limited liability company.

WITNESS my hand and official seal this 2 day of May, 2003.

Don Britt  
Notary Public

My Commission Expires:

6-12-07



CONSENT AND SUBORDINATION OF GROUND LESSEE

MAYFAIRE TOWN CENTER, L.L.C., a North Carolina limited liability company ("Ground Lessee"), as the ground lessee under that certain ground lease with Declarant dated January 1, 2002, recorded in **Book 3256 at Page 897** in the New Hanover County Registry (the "Town Center Ground Lease"), hereby agrees that it has consented to the terms and provisions of the attached Declaration of Covenants, Conditions, Easements and Restrictions for Mayfaire (the "Declaration") and joins herein for the purpose of subjecting and subordinating its interest under the Town Center Ground Lease to the lien of this Declaration.

IN WITNESS WHEREOF, the undersigned have duly executed these presents as of the 2 day of May, 2003

MAYFAIRE TOWN CENTER, L.L.C., a North Carolina limited liability company

Katherine B. Walker  
WITNESS

By Hymen Brady  
Name Hymen Brady  
Title: Manager

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

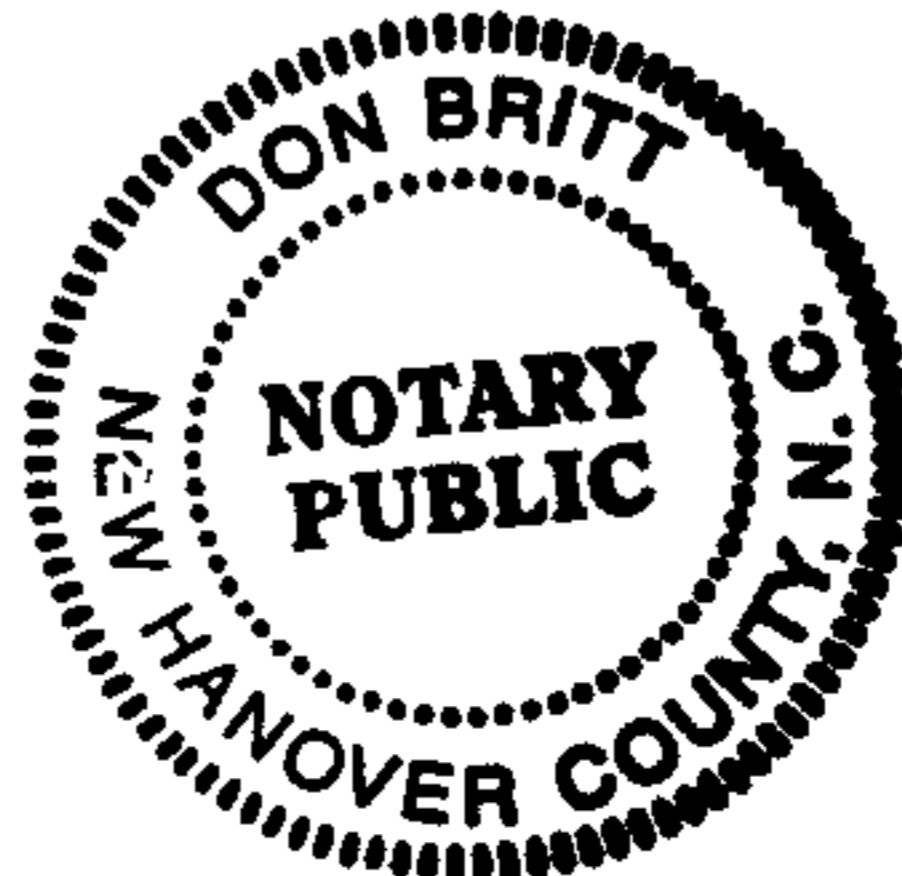
I, Don Britt, a Notary Public of the State and County aforesaid, certify that Hymen Brady, Manager of MAYFAIRE TOWN CENTER, L.L.C., a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the limited liability company

WITNESS my hand and official seal this 2 day of May 2003

Don Britt  
Notary Public

My Commission Expires

6-12-07



CONSENT AND SUBORDINATION OF LENDER

WACHOVIA BANK, N.A (f/k/a First Union National Bank), a national banking association ("Lender"), owner and holder of a note secured by that certain Deed of Trust (the "Deed of Trust") recorded in **Book 2891 at Page 427** in the New Hanover County Public Registry, and TRSTE, INC , Trustee under said Deed of Trust, hereby agree that they have consented to the terms and provisions of the attached Declaration of Covenants, Conditions, Easements and Restrictions for Mayfaire (the "Declaration") and that the lien of the Deed of Trust is hereby subordinated to the lien of the Declaration.

IN WITNESS WHEREOF, the undersigned have duly executed these presents as of the 2 day of May 2003

WACHOVIA BANK, N.A.

By [Signature]  
Name H. Lee Whiteside, Jr.  
Its VICE President



TRSTE, INC , a Virginia corporation

By [Signature]  
Name: H. Lee Whiteside, Jr.  
Its VICE President



STATE OF NORTH CAROLINA

COUNTY OF New Hanover

I, Jennifer S. Miller a Notary Public of the State and County aforesaid, certify that H. Lee Whiteside Jr. personally came before me this day and acknowledged that he is Vice Pres of WACHOVIA BANK, N A., a national banking association, and that he/she, as Vice President being authorized to do so, executed the foregoing instrument on behalf of said banking association.



WITNESSE my hand and official seal this 2 day of May, 2003

Jennifer S. Miller  
Notary Public

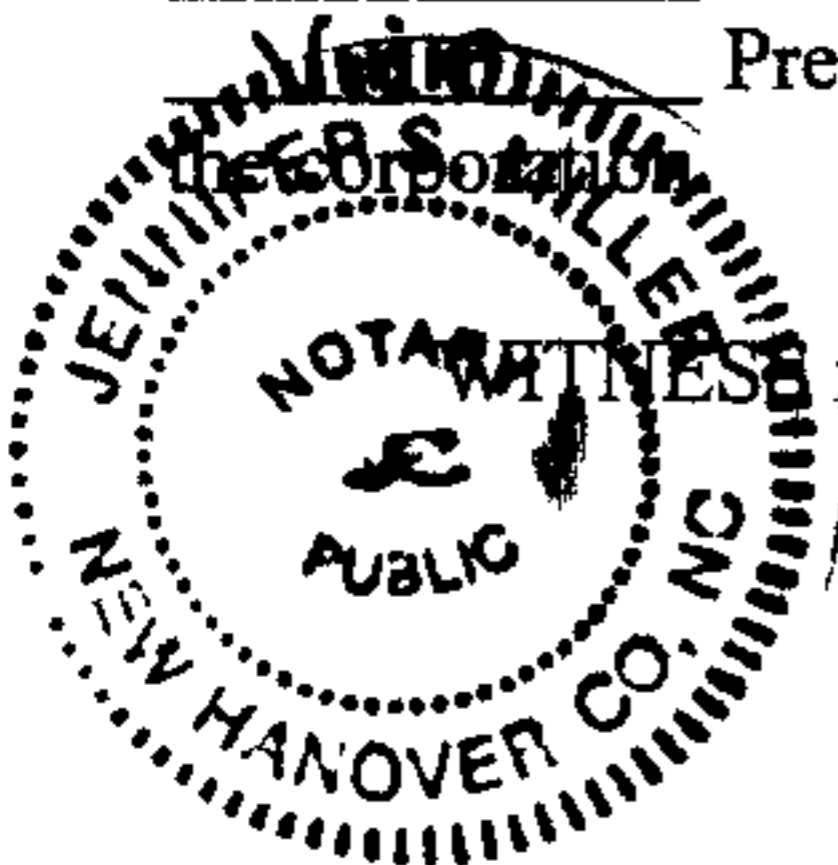
My Commission Expires

April 7, 2007

STATE OF North Carolina

COUNTY OF New Hanover

I, Jennifer S. Miller a Notary Public of the State and County aforesaid, certify that H. Lee Whiteside Jr. personally came before me this day and acknowledged that he/she is Vice President of TRSTE, INC., a Virginia corporation, Trustee, and that he/she, as President being authorized to do so, executed the foregoing instrument on behalf of the corporation.



WITNESSE my hand and official seal this 2 day of May, 2003.

Jennifer S. Miller  
Notary Public

My Commission Expires.

April 7, 2007

## EXHIBIT A

### Land Initially Submitted

Each of the following tracts lying and being in New Hanover County, North Carolina, being more particularly described as follows:

#### Tract One

That certain tract containing approximately 30.06 acres and being designated as "Single Family Neighborhood II" on that certain plat of Mayfaire by Michael Underwood and Associates, PA recorded in Map Book 44 at Pages 27 through 39 of the New Hanover County Public Registry

#### Tract Two

That certain tract containing approximately 76.38 acres designated as the "Mayfaire TownCenter" on that certain plat of Mayfaire by Michael Underwood and Associates, PA recorded in Map Book 44 at Pages 27 through 39 of the New Hanover County Public Registry

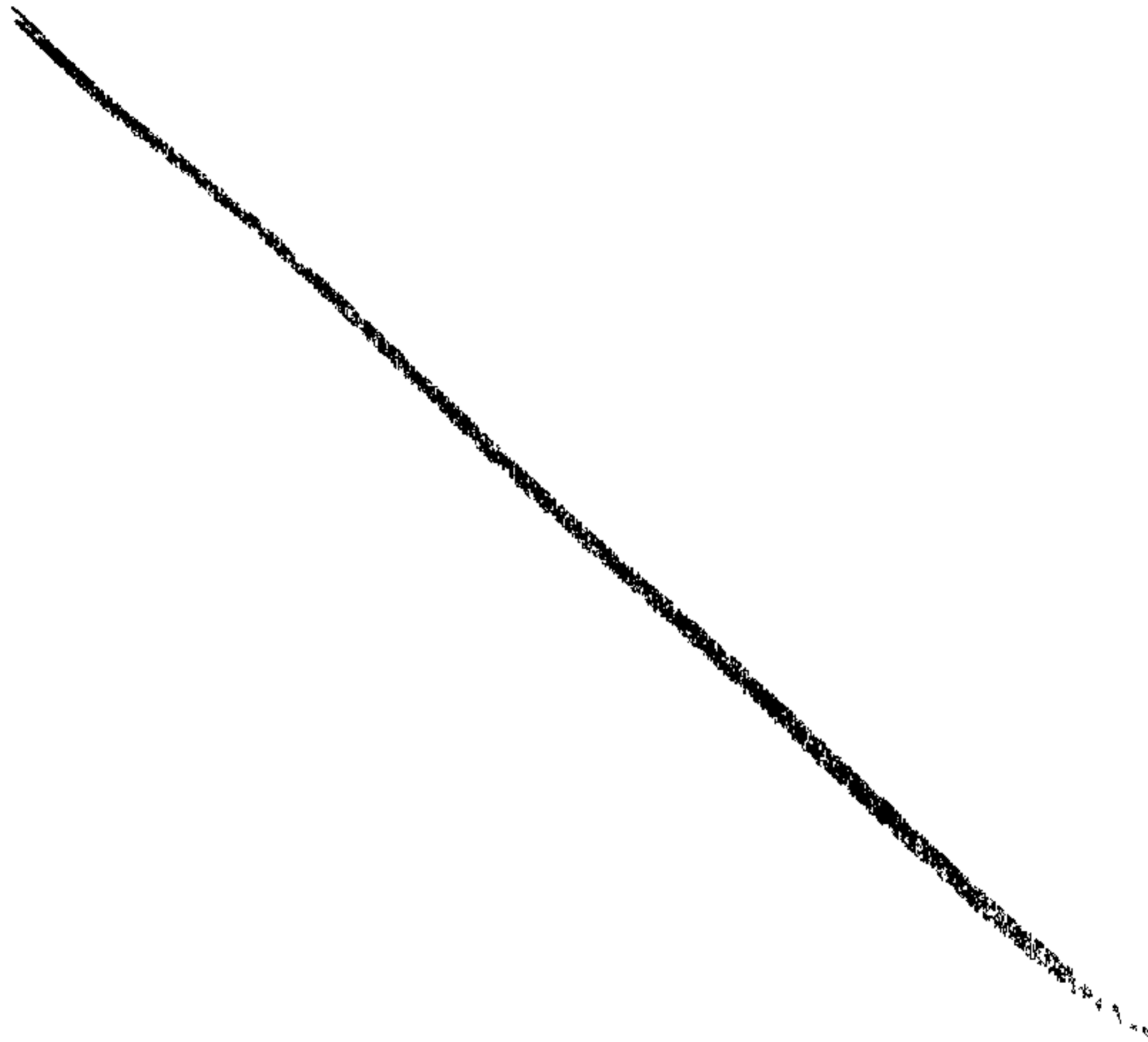
#### Tract Three

That certain tract containing approximately 30.59 acres designated as "Single Family Neighborhood I" on that certain plat of Mayfaire by Michael Underwood and Associates, PA recorded in Map Book 44 at Pages 27 through 39 of the New Hanover County Public Registry.

**EXHIBIT B**

**Land Subject to Annexation**

Any property contiguous to and lying within two (2) miles of the property described on Exhibit A to the Declaration to which this Exhibit B is attached.



## EXHIBIT C

### Initial Restrictions and Rules

The following restrictions shall apply to all of Mayfaire until such time as they are amended, modified, repealed, or limited pursuant to Article 3 of the Declaration.

1 Restricted Activities The following activities are prohibited within Mayfaire unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board

(a) Parking any vehicles on public or private streets or thoroughfares, or parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles, or inoperable vehicles in places other than enclosed garages; provided, construction, service and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Area. This restriction shall not apply to Units within the Town Center or other Non-Residential Units dedicated exclusively to office or retail use. Additionally, and notwithstanding the foregoing restriction, Owners and occupants in certain areas of Mayfaire containing single-family Residential Units (which Residential Units and/or areas shall be designated by Declarant) shall be entitled to park personal cars and trucks on the sides of streets,

(b) Raising, breeding, or keeping animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Residential Unit; however, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon the Board's request. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the structure. Pets shall be registered, licensed and inoculated as required by law. All pet owners within Mayfaire shall be obligated to clean up after their pets (including, without limitation, the removal and disposal of excrement);

(c) Any activity which emits foul or obnoxious odors outside the Unit or creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Units,

(d) Any activity which violates local, state, or federal laws or regulations, however, the Board shall have no obligation to take enforcement action in the event of a violation,

(e) Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Unit,

(f) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units;

(g) Outside burning of trash, leaves, debris, or other materials,

(h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes (provided that Declarant shall be entitled to permit reasonable variances and exceptions to this restriction within the Town Center),

(i) Use and discharge of firecrackers and other fireworks,

(j) Dumping grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within Mayfaire, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff,

(k) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers;

(l) Obstruction or rechanneling drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that Declarant and the Association shall have such right, provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent,

(m) Subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit after a subdivision plat including such Unit has been approved and Recorded, without Declarant's written consent and joinder (it being understood that Declarant shall be permitted to subdivide or replat Units which it owns or as otherwise provided in the Declaration),

(n) Swimming, boating, fishing, use of personal flotation devices, or other active use of lakes, ponds, streams, or other bodies of water within Mayfaire, except that fishing from the shore shall be permitted with appropriate licenses in locations designated by the Association and except that Declarant, its successors and assigns, shall be permitted and shall have the exclusive right and easement to draw water from lakes, ponds, and streams within Mayfaire for purposes of irrigation and such other purposes as Declarant shall deem desirable. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of rivers, lakes, ponds, streams or other bodies of water within or adjacent to Mayfaire,

(o) Use of any Unit for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years;

(p) Discharge of firearms, provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(q) On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank authorized pursuant to Article 4,

(r) Any business, trade, garage sale, moving sale, rummage sale, or similar activity within a Residential Unit, except that an Owner or occupant residing in a Residential Unit may conduct business activities within the Residential Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside such Unit; (ii) the business activity conforms to all zoning requirements for Mayfaire; (iii) the business activity does not involve door-to-door solicitation of residents of Mayfaire; (iv) the business activity does not, in the Board's reasonable judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in Mayfaire which is noticeably greater than that which is typical of Units in which no business activity is being conducted, and (v) the business activity is consistent with the residential character of Mayfaire and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of Mayfaire, as may be determined in the Board's sole discretion.

The terms "business" and "trade," as used in this provision, shall be construed, to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

Leasing of a Unit shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by Declarant or a Builder approved by Declarant with respect to its development and sale of Mayfaire or its use of any Units which it owns within Mayfaire;

(s) Capturing, trapping, or killing of wildlife within Mayfaire, except in circumstances posing an imminent threat to the safety of persons using Mayfaire,

(t) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within Mayfaire or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution,

(u) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit without prior approval pursuant to Article 4,

(v) Operation of motorized vehicles on pathways or trails maintained by the Association, and

(w) Any construction, erection, placement, or modification of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article 4 of the Declaration. This shall include, without limitation, signs, basketball hoops, swing sets and similar sports and play equipment, clotheslines; garbage cans, woodpiles; above-ground swimming pools; docks, piers and similar structures, hedges, walls, dog runs, animal pens, or fences of any kind, satellite dishes and antennas, flag poles, and statuary, except that.

(i) an antenna designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one meter or less in diameter;

(ii) an antenna designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television broadcast signals,

(collectively, "Permitted Antennas") shall be permitted on Units, subject to such reasonable requirements as to location and screening as may be set forth in the Architectural Guidelines, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of Mayfaire, should any master system or systems be utilized by the Association and require such exterior apparatus. The restriction on dishes and antennas provided in this subparagraph (w) shall not apply to the Town Center or other Non-Residential Units dedicated exclusively to office or retail use, it being agreed that limitations on antennas and dishes in such Neighborhood shall be controlled by lease agreements relative thereto.

2 Additional Restrictions Applicable to Nonresidential Units In addition to the restrictions provided in Paragraph 1 of this exhibit, the following activities shall be prohibited within Nonresidential Units of Mayfaire (except for Nonresidential Units comprised exclusively of multi-family apartment dwellings) and in Nonresidential Neighborhoods unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board:

(a) Each Owner shall give to Declarant prompt written notice of any significant accident, fire or damage occurring on or to such Owner's Unit

(b) Each Owner shall use reasonable efforts to unload deliveries of goods only in such areas and through such entrances as may be designated for such purposes by Declarant

(c) Each Owner shall keep its Nonresidential Unit clean, sanitary and free from offensive odors and from insects, vermin and other pests

(d) Each Owner shall conduct its business in its Unit in a diligent and dignified manner, refrain from using any sales promotion device or practice that would tend to mislead or deceive the public or detract from the reputation of Mayfaire, refrain from installing video or other electronic games in the Unit and keep the Unit in first class condition in accordance with the highest standards of operation of similar businesses. No Owner shall hold any going out of business, moving or liquidation sales or promotions in its Unit

(e) Each Owner shall install such fire extinguisher and other safety equipment as applicable law may require

(f) Except as permitted under the Declaration or as may be approved under Article 4 of the Declaration, no Owner of a Nonresidential Unit may place, affix or maintain any signs, advertising placards, names, insignia, trademarks, descriptive material or any other similar item or items outside, on or within twenty-four (24) inches of the storefront of Owner's Unit, the glass panes and supports of the Unit's windows, or any window, door, roof or exterior boundary of the Unit. Notwithstanding the foregoing, the restriction provided in this subparagraph (f) shall not apply to the Town Center or other Non-Residential Units dedicated exclusively to office or retail use, it being agreed that limitations on signage in such Neighborhood shall be controlled by lease agreements relative thereto

(g) No Owner of a Nonresidential Unit shall display, paint or place, or cause to be displayed, painted or placed, any handbills, bumper stickers or other advertising devices on any vehicle parked in the parking areas of Mayfaire or cause any handbills or other advertising devices to be distributed in Mayfaire (except as expressly permitted under the Declaration)

(h) No Owner of a Nonresidential Unit shall display or sell merchandise, or place portable signs, devices or any other objects in the Common Area and Owner shall not solicit or distribute materials in any manner in Mayfaire, without Declarant's prior written approval, which may be granted or withheld in Declarant's sole discretion

3 Prohibited Conditions The following shall be prohibited at Mayfaire.

(a) Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of Mayfaire;

(b) Structures, equipment, or other items on the exterior portions of a Unit which have become rusty, dilapidated, or otherwise fallen into disrepair; and

(c) Sprinkler or irrigation systems or wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within

Mayfaire, except that Declarant and the Association shall have the right to draw water from such sources.

4 Additional Stormwater Restrictions The following additional restrictions relating to stormwater shall encumber Mayfaire (as required by the North Carolina Division of Water Quality):

- (a) The covenants in this Paragraph 4 are intended to ensure ongoing compliance with State Stormwater Management Permit Number SW8 010512, as issued by the Division of Water Quality under NCAC 2H 1000
- (b) The State of North Carolina is made a beneficiary of the Declaration to the extent necessary to maintain compliance with the Stormwater Management Permit.
- (c) The restrictions in this Paragraph 4 are to run with the land and be binding on all persons and parties claiming under them
- (d) The restrictions in this Paragraph 4 may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Water Quality
- (e) Alteration of the drainage as shown on the approved plans may not take place without the concurrence of the Division of Water Quality.
- (f) The maximum built-upon area (BUA) for outparcel(s) and future areas shown on the approved plans is as follows Future area within Drainage Area #1 – 54,778 square feet; Future area with Drainage Area #2 – 49,2266 square feet, Future Area within Drainage Area #3 – 117,475 square feet, and Future area within Drainage Area #4 – 12,819 square feet The runoff from all built-upon areas on all four outparcels must drain into Wet Pond #3 Outparcel #1 is limited to 53,346 square feet of built-upon area; Outparcel #2 is limited to 43,038 square feet of BUA, Outparcel #3 is limited to 20,782 square feet; Outparcel #4 is limited to 20,176 square feet of BUA The allotted amounts include any built-upon area constructed within the property boundaries, and any outside of the property line or lease line that is needed to connect into existing streets or parking lots 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
- (g) The runoff from all built-upon area within the outparcel or future area must be directed into the appropriate permitted stormwater control system.
- (h) Built-upon area in excess of the permitted amount will require a permit modification
- (i) The connection from future development or Outparcels into the stormwater

control shall be made such that short-circuiting of the system does not occur. No new inlets into the ponds or infiltration basins may be made without a permit modification.

- (j) Each outparcel or future development tract whose ownership is not retained by Brody Zimmer, LLC, shall submit a permit application to the Division of Water Quality and receive a permit prior to construction.

## EXHIBIT D

### BY-LAWS OF MAYFAIRE COMMUNITY ASSOCIATION, INC.

#### **Article 1 Name, Principal Office, and Definitions**

##### **1.1 Name.**

The name of the corporation is Mayfaire Community Association, Inc (the "Association").

##### **1.2 Principal Office.**

The principal office of the Association shall be located in New Hanover County, North Carolina. The Association may have such other offices, either within or outside Mayfaire, as the Board of Directors may determine or as the affairs of the Association may require.

##### **1.3 Definitions.**

The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that certain Recorded Declaration of Covenants, Conditions, Easements and Restrictions for Mayfaire as it may be amended (the "Declaration"), unless the context indicates otherwise.

#### **Article 2 Membership: Meetings, Quorum, Voting, Proxies**

##### **2.1 Membership**

The Association shall have three classes of membership, Class "A," Class "B" and Class "C" as more fully set forth in the Declaration. The provisions of the Declaration pertaining to membership are incorporated by this reference.

##### **2.2 Place of Meetings.**

Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate.

##### **2.3 Annual Meetings**

The first meeting of the Association, whether a regular or special meeting, shall be held within one year after the date of incorporation of the Association. Meetings shall be of the Voting Members unless otherwise required by North Carolina law or specified by the Board. Subsequent regular annual meetings shall be set by the Board so as to occur during the third quarter of the Association's fiscal year on a date and at a time set by the Board.

#### **2.4 Special Meetings**

The President may call special meetings of the Association. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Voting Members representing at least 10% of the total Class "A" and Class "B" votes of the Association.

#### **2.5 Notice of Meetings.**

Written or printed notice stating the place, day, and hour of any meeting of the Voting Members shall be delivered, either personally or by mail, to each Voting Member entitled to vote at such meeting, not less than 10 nor more than 50 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice shall be deemed to be delivered when deposited in the United States mail addressed to the Voting Member at his address as it appears on the Association's records, with postage prepaid.

#### **2.6 Waiver of Notice**

Waiver of notice of a meeting of the Voting Members shall be deemed the equivalent of proper notice. Any Voting Member may waive, in writing, notice of any meeting of the Voting Members, either before or after such meeting. Attendance at a meeting by a Voting Member shall be deemed waiver by such Voting Member of notice of the time, date, and place thereof, unless such Voting Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

#### **2.7 Adjournment of Meetings.**

If any meeting of the Association cannot be held because a quorum is not present, a majority of the Voting Members who are present at such meeting may adjourn the meeting to a time not less than five nor more than thirty (30) days from the time the original meeting was

called. At the reconvened meeting, if a quorum is present (as determined by these By-Laws), any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Voting Members in the manner prescribed for regular meetings.

Voting Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Voting Members to leave less than a quorum, provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

## **2.8 Voting**

The voting rights of the Members shall be as set forth in the Declaration and in these By-Laws, and such voting rights provisions are specifically incorporated by this reference.

## **2.9 Proxies.**

Voting Members may not vote by proxy but only in person or through their designated alternates, provided, however, any Voting Member who is only entitled to cast the vote(s) for his own Unit(s) pursuant to the Declaration may cast such vote in person or by proxy until such time as the Board first calls for election of a Voting Member to represent the Neighborhood of which the Unit is a part. On any matter as to which a Member is entitled personally to cast the vote for his Unit, such vote may be cast in person or by proxy, subject to the limitations of North Carolina law relating to use of general proxies and subject to any specific provision to the contrary in the Declaration or these By-Laws.

Every proxy shall be in writing specifying the Unit for which it is given, signed by the Member or his duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to the meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable and shall automatically cease upon (a) conveyance of any Unit for which it was given, (b) receipt by the Secretary of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is a natural person, from the date of the proxy, unless a shorter period is specified in the proxy.

## **2.10 Majority**

As used in these By-Laws, the term “majority” shall mean those votes, Owners, or other group as the context may indicate totaling more than 50% of the total eligible number

### **2.11 Quorum**

Except as otherwise provided in these By-Laws or in the Declaration, the presence of Declarant and (i) Members representing ten percent (10%) of the total Class “A” votes in the Association and (ii) Members representing ten percent (10%) of the total Class “B” votes in the Association shall constitute a quorum at all Association meetings. In the event business cannot be conducted at any Association meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy, in which case the quorum requirement at the next meeting shall be one-half (½) of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted

### **2.12 Conduct of Meetings**

The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

### **2.13 Action Without a Meeting**

Any action required or permitted by law to be taken at a meeting of the Voting Members may be taken without a meeting, without prior notice and without a vote if written consent specifically authorizing the proposed action is signed by Voting Members holding at least the minimum number of votes necessary to authorize such action at a meeting if all Voting Members entitled to vote thereon were present. Such consents shall be signed within 60 days after receipt of the earliest dated consent, dated and delivered to the Association. Such consents shall be filed with the minutes of the Association and shall have the same force and effect as a vote of the Voting Members at a meeting. Within 10 days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Voting Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action

## **Article 3 Board of Directors: Selection, Meetings, Powers**

### **A *Composition and Selection***

#### **3.1 Governing Body; Composition**

The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one (1) vote. Except with respect to directors appointed by the Class "C" Member, directors shall be Members, residents or tenants; provided, however, no Owner, resident or tenant representing the same Unit may serve on the Board at the same time. A "resident" shall be any natural person eighteen (18) years of age or older whose principal residence is a Unit within Mayfaire (with respect to Class "A" Members) or who maintains a place of business within a Unit within Mayfaire (with respect to Class "B" Members). If a Member is not a natural person, any officer, director or partner of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member, provided, no Member may have more than one such representative on the Board at a time, except in the case of directors appointed by the Class "C" Member.

### **3.2 Number of Directors.**

The Board shall consist of three to seven directors, as provided in Sections 3.3 and 3.5 below. The initial Board shall consist of three directors as identified in the Articles of Incorporation.

### **3.3 Directors During Class "C" Control Period.**

During the Class "C" Control Period, all directors shall be appointed by the Class "C" Member acting in its sole discretion. Such directors shall serve at the pleasure of the Class "C" Member.

### **3.4 Nomination and Election Procedures after Class "C" Control Period**

(a) Nominations and Declarations of Candidacy Prior to each election of directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which each and every eligible person who has a bona-fide interest in serving as a director may file as a candidate for any position to be filled by Class "A" or Class "B" votes. The Board shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of directors in a fair, efficient and cost-effective manner. Nominations also may be permitted from the floor.

Except with respect to directors selected by the Class "C" Member, nominations for election to the Board may also be made by a Nominating Committee. The Nominating Committee, if any, shall consist of a Chairman, who shall be a member of the Board, and three (3) or more Members or representatives of Members, with at least one representative from each Voting Group. Members of the Nominating Committee shall be appointed by the Board not less than thirty (30) days prior to each annual meeting to serve a term of one (1) year and until their successors are appointed, and such appointment shall be announced in the notice of each election.

The Nominating Committee may make as many nominations for election to the Board as it shall in its discretion determine. The Nominating Committee shall nominate separate slates for (i) the directors, if any, to be elected at large by all Class "A" and Class "B" votes and (ii) the director(s) to be elected by the votes within each Voting Group. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates.

Each candidate shall be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes.

After the expiration of the Class "C" Membership, at least a majority of the directors on the Board shall be Owners.

### **3.5 Election and Term of Office**

Except as these By-Laws may otherwise specifically provide, election of directors after the termination of the Class "C" Control Period shall take place at the Association's annual meeting. Notwithstanding any other provision of these By-Laws, upon the termination of the Class "C" Control Period, the Board shall consist of seven (7) directors and an election shall be held in accordance with this Section 3.5. Six (6) directors shall be elected by the Voting Members as follows: the Class "A" Members shall be entitled to elect two (2) of the seven (7) directors, the Class "B" Members shall be entitled to elect two (2) of the seven (7) directors and the Voting Members shall be entitled to elect two (2) directors at-large. If Voting Groups have been established pursuant to the terms of the Declaration, each Voting Group shall be entitled to elect the director or directors specified at the time such Voting Group was created or reclassified by Declarant or the Board (as the case may be).

Three (3) of the directors elected as provided above shall serve a term of two (2) years and the remaining three (3) directors shall serve a term of one (1) year, as such directors determine among themselves. Until termination of the Class "C" membership, the Class "C" Member shall be entitled to appoint the seventh (7<sup>th</sup>) director. Upon termination of the Class "C" membership, the director elected by the Class "C" Member under this Section 3.5 shall resign and the remaining directors shall be entitled to appoint a director to serve until the next annual meeting, at which time the Voting Members shall be entitled to elect a director to fill the seventh (7<sup>th</sup>) director position. Such director shall be elected for a term of two (2) years.

Upon expiration of the term of office of each director elected by the Voting Members, Voting Members entitled to elect such director shall be entitled to elect a successor to serve a term of two (2) years. Directors elected by the Voting Members shall hold office until their respective successors have been elected.

### **3.6 Removal of Directors and Vacancies**

Any director elected by the Voting Members may be removed, with or without cause, by the vote of Voting Members holding a majority of the votes entitled to be cast for the election of

such director Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Voting Members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director

Any director elected by the Voting Members who has three (3) consecutive unexcused absences from Board meetings, or who is more than thirty (30) days delinquent (or is the representative of a Member who is so delinquent) in the payment of any assessment or other charge due the Association, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term Additionally, any director (other than the directors appointed by Declarant) may be removed from office, with or without cause, by a majority vote of all Members present and entitled to vote at any meeting of the Association at which a quorum is present

In the event of the death, disability, or resignation of a director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Voting Members entitled to fill such directorship may elect a successor for the remainder of the term.

Any director whom the Board appoints shall be selected from among Members within the Voting Group represented by the director who vacated the position

This Section shall not apply to directors appointed by the Class "C" Member nor to any director serving as Declarant's representative The Class "C" Member or Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a director appointed by or elected as a representative of the Class "C" Member or Declarant.

## B *Meetings*

### 3.7 **Organizational Meetings.**

The first meeting of the Board following each annual meeting of the membership shall be held within ten (10) days thereafter at such time and place as the Board shall fix

### 3.8 **Regular Meetings**

Regular meetings of the Board may be held at such time and place as a majority of the directors shall determine, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter

### 3.9 **Special Meetings**

Special meetings of the Board shall be held when called by written notice signed by the President or Vice President or by any two (2) directors

### **3.10 Notice; Waiver of Notice.**

(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The notice shall be given to each director by (i) personal delivery, (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director, or (iv) facsimile, computer, fiberoptics or other electronic communication device, with confirmation of transmission. All such notices shall be given at the director's telephone number, fax number, electronic mail number, or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least five (5) business days before the time set for the meeting. Notices given by personal delivery, telephone, or other device shall be delivered or transmitted at least seventy-two (72) hours before the time set for the meeting.

(b) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present and (ii) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

### **3.11 Telephonic Participation in Meetings**

Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

### **3.12 Quorum of Board**

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any Board meeting cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date of the original meeting. At the reconvened meeting, if a quorum is present,

any business which might have been transacted at the meeting originally called may be transacted without further notice.

### **3.13 Conduct of Meetings.**

The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings

### **3.14 Open Meetings; Executive Session**

(a) Except in an emergency, notice of Board meetings shall be posted at least forty-eight (48) hours in advance of the meeting at a conspicuous place within Mayfaire which the Board establishes for the posting of notices relating to the Association. Notice of any meeting at which assessments are to be established shall state that fact and the nature of the assessment. Subject to the provisions of Section 3 15, all Board meetings shall be open to all Voting Members and, if required by law, all Owners; but attendees other than directors may not participate in any discussion or deliberation unless a director requests that they be granted permission to speak. In such case, the President may limit the time any such individual may speak.

(b) Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, and may exclude persons other than directors, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc

### **3.15 Action Without a Formal Meeting**

Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

## **C. *Powers and Duties***

### **3.16 Powers.**

The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing an responsibilities and exercising all rights of the Association as set forth in the Governing Documents, and as provided by law. The Board may do or cause to be done on behalf of the Association all acts and things except those which the Governing Documents or North Carolina law require to be done and exercised exclusively by the Voting Members or the membership generally

### **3.17 Duties**

Duties of the Board shall include, without limitation

- (a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses and any Neighborhood Expenses;
- (b) levying and collecting such assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard;
- (d) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) depositing all funds received on behalf of the Association in a bank depository which it shall approve; and using such funds to operate the Association; provided, any reserve funds may be deposited, in the Board's best judgment in depositories other than banks,
- (f) making and amending use restrictions and rules in accordance with the Declaration,
- (g) opening bank accounts on behalf of the Association and designating the signatories required;
- (h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these By-Laws,
- (i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association, provided, the Association's obligation in this regard shall be subject to the provisions of the Declaration,
- (j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate,
- (k) paying the cost of all services rendered to the Association,
- (l) keeping books with detailed accounts of the Association's receipts and expenditures,
- (m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing

Documents and all other books, records, and financial statements of the Association as provided in Section 6 4 herein,

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of Mayfaire;

(o) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association, to the extent such indemnity is required by North Carolina law, the Articles of Incorporation or the Declaration;

(p) assisting in the resolution of disputes between Owners and others without litigation, as set forth in the Declaration,

(q) such other duties customarily performed by executive boards of non-profit corporations and planned unit communities under North Carolina law.

### **3.18 Compensation.**

Directors shall not receive any compensation from the Association for acting as such unless approved by Voting Members representing a majority of the total Class "A" votes and Voting Members representing a majority of the total Class "B" votes in the Association at a regular or special meeting of the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding the interested director.

### **3.19 Right of Class "C" Member to Disapprove Actions.**

So long as the Class "C" membership exists, the Class "C" Member shall have a right to disapprove any action, policy or program of the Association, the Board and any committee which, in the sole judgment of the Class "C" Member, would tend to impair rights of Declarant or Builders under the Declaration or these By-Laws, or interfere with development or construction of any portion of Mayfaire, or diminish the level of services being provided by the Association.

(a) Notice The Class "C" Member shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies as to Board meetings with Sections 3.8, 3 9, 3 10, and 3 11 herein and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) Opportunity to be Heard The Class "C" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met

The Class "C" Member, its representatives or agents, shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Class "C" Member, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within ten (10) days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within ten (10) days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, the Board, or the Association. The Class "C" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

### **3.20 Management.**

The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority or those duties set forth in Sections 3.17(a) (with respect to adoption of the budget), 3.17(b), 3.17(f), 3.17(g) and 3.17(i) herein. Declarant or its affiliate may be employed as managing agent or manager.

The Board may delegate to one of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.

The Association shall not be bound, either directly or indirectly, by any management contract executed during the Class "C" Control Period unless such contract contains a right of termination exercisable by the Association, with or without cause and without penalty, at any time after termination of the Class "C" Control Period upon not more than ninety (90) days' written notice.

### **3.21 Accounts and Reports.**

The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise

(a) cash accounts of the Association shall not be commingled with any other accounts,

(b) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise (*i e*, any thing of value received shall benefit the Association),

(c) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;

(d) commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis,

(ii) a statement reflecting all cash receipts and disbursements for the preceding period,

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format,

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be considered to be delinquent on the fifteenth (15<sup>th</sup>) day following the due date unless otherwise specified by Board resolution); and

(e) an annual report consisting of at least the following shall be made available to all Members within one hundred twenty (120) days after the close of the fiscal year (i) a balance sheet, (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year.

### **3.22 Borrowing.**

The Association shall have the power to borrow money for any legal purpose, provided, however, the Board shall obtain Voting Member approval in the same manner provided in the Declaration for Special Assessments if the proposed borrowing is for the purpose of making

discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed ten percent (10%) of the Association's budgeted gross expenses for that fiscal year. During the Class "C" Control Period, no Mortgage lien shall be placed on any portion of the Common Area without the alternative vote or written consent, or any combination thereof, of Voting Members representing at least eighty percent (80%) of the total Class "A" and Class "B" votes

### **3.23 Right to Contract.**

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or Neighborhood and other owners' or residents' associations, within and outside Mayfaire. Any common management agreement shall require the consent of a majority of the Board.

### **3.24 Enforcement.**

The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Declaration, the Board shall comply with the following procedures prior to imposition of sanctions:

(a) Notice. The Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten (10) days within which the alleged violator may present a written request for a hearing to the Board, and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless the alleged violator requests a hearing before the Board. If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed, provided the Board may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within 10 days after the initial notice to the alleged violator described in this Section 3.24(a). Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) Hearing. If a hearing is requested within the allotted 10-day period, the hearing shall be held before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Governing Documents by self-help

(specifically including, but not limited to, towing vehicles that violate parking rules) or, following compliance with the dispute resolution procedures set forth in the Declaration, if applicable, by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred. Any entry onto a Unit for purposes of exercising this power of self-help shall not be deemed as trespass.

### **3.25 Board Standards.**

In the performance of their duties, Association directors and officers shall be insulated from personal liability as provided by North Carolina law for directors and officers of nonprofit corporations, and as otherwise provided in the Governing Documents. Directors are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business judgment rule.

As defined herein, a director shall be acting in accordance with the business judgment rule so long as the director (a) acts within the express or implied terms of the Governing Documents and his or her actions are not *ultra vires* (i.e., outside the scope of the director's authority); (b) affirmatively undertakes to make decisions which are necessary for the Association's continued and successful operation and, when decisions are made, they are made on an informed basis; (c) acts on a disinterested basis, promptly discloses any real or potential conflict of interests (pecuniary or other), and avoids participation in decisions and actions when a conflict exists, and (d) acts in a non-fraudulent manner and without reckless indifference to the association's affairs. A director acting in accordance with the business judgment rule shall be protected from personal liability.

Board determinations of the meaning, scope, and application of Governing Documents provisions shall be upheld and enforced so long as such determinations are reasonable. The Board shall exercise its power in a fair and nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

### **3.26 Board Training Seminar**

Each Class "A", Class "B" and at-large Director shall complete a board training seminar within such director's first six (6) months of directorship, which seminar shall address director responsibilities and duties. The seminar may be in live, video or audiotape, or other format, as the Board determines in its discretion.

## **Article 4      Officers**

### **4.1      Officers**

Officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among Board members; other officers may, but need not be, Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

#### **4.2 Election and Term of Office**

The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the Voting Members, to serve until their successors are elected.

#### **4.3 Removal and Vacancies**

The Board may remove any officer whenever in its judgment the best interests of the Association will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

#### **4.4 Powers and Duties.**

The Association's officers shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

#### **4.5 Resignation.**

Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

#### **4.6 Agreements, Contracts, Deeds, Leases, Checks, Etc**

All agreements, contracts, deeds, leases, checks, and other instruments of the Association may be executed by one officer of the Association unless otherwise provided by Board resolution.

#### **4.7 Compensation.**

Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.18 herein.

## **Article 5      Committees**

### **5.1      General**

The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

### **5.2      Covenants Committee**

In addition to any other committees which the Board may establish pursuant to Section 5 1, the Board may appoint a Covenants Committee consisting of at least three (3) and no more than seven (7) Members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3 24 herein.

### **5.3      Neighborhood Committees**

In addition to any other committees appointed as provided above, each Neighborhood which has no formal organizational structure or association may elect a Neighborhood Committee to determine the nature and extent of services, if any, to be provided to the Neighborhood by the Association in addition to those provided to all Members of the Association in accordance with the Declaration. A Neighborhood Committee may advise the Board on any other issue but shall not have the authority to bind the Board. Such Neighborhood Committees, if elected, shall consist of three (3) to five (5) Members, as determined by the vote of at least fifty-one percent (51%) of the Owners of Units within the Neighborhood.

Neighborhood Committee members shall be elected for a term of one (1) year or until their successors are elected. Any director elected to the Board from a Neighborhood shall be an *ex officio* member of the Neighborhood Committee. The Voting Member representing such Neighborhood shall be the chairperson of the Neighborhood Committee, shall preside at its meetings, and shall be responsible for transmitting any and all communications to the Board.

In the conduct of its duties and responsibilities, each Neighborhood Committee shall abide by the notice and quorum requirements applicable to the Board under Sections 3.8, 3 9, 3 10, and 3 11. Meetings of a Neighborhood Committee shall be open to all Owners of Units in the Neighborhood and their representatives. Members of a Neighborhood Committee may act by unanimous written consent in lieu of a meeting.

## **Article 6      Miscellaneous**

### **6.1      Fiscal Year.**

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

## **6.2 Parliamentary Rules.**

Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with North Carolina law or the Governing Documents

## **6.3 Conflicts.**

If there are conflicts among the provisions of North Carolina law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of North Carolina law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

## **6.4 Books and Records.**

(a) Inspection by Members and Mortgagees The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Governing Documents, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the Association's office or at such other place within Mayfaire as the Board shall designate

(b) Rules for Inspection. The Board shall establish rules with respect to

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the Association's expense

## **6.5 Notices**

Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Member or Voting Member, at the address which the Member or Voting Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member or Voting Member;

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section; or

(c) if to any committee, at the principal address of the Association or at such other address as shall be designated by notice in writing to the Members pursuant to this Section

## **6.6 Amendment.**

(a) By Class "C" Member. Prior to termination of the Class "C" Control Period, the Class "C" Member may unilaterally amend these By-Laws. Thereafter, the Class "C" Member may unilaterally amend these By-Laws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units, or (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Units. Provided, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing. So long as the Class "C" membership exists, the Class "C" Member may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon any right of any Member

(b) By Members Generally Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing fifty-one percent (51%) of the total Class "A" votes in the Association, Voting Members representing fifty-one percent (51%) of the total Class "B" votes in the Association and the consent of the Class "C" Member, if such exists. In addition, the approval requirements set forth in the Declaration shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date of Amendments Amendments to these By-Laws shall become effective upon Recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six (6) months of its Recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "C" Member without the written consent of Declarant, the Class "C" Member, or the assignee of such right or privilege

**CERTIFICATION**

I, the undersigned, do hereby certify

That I am the duly elected and acting Secretary of Mayfaire Community Association, Inc ,  
a North Carolina corporation;

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly  
adopted at a meeting of the Board of Directors thereof held on the \_\_\_\_ day of \_\_\_\_\_,  
2003

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of  
said Association this \_\_\_\_ day of \_\_\_\_\_, 2003

\_\_\_\_\_  
Secretary [SEAL]

## EXHIBIT E

### Formula For Determining Voting Rights for Nonresidential Units

(A) **Determination of Equivalent Units.** In order to appropriately weight the interests of Owners within Mayfaire, voting rights for Nonresidential Units shall be based upon the number of "Equivalent Units" assigned to a particular Unit. Each Residential Unit shall constitute 1.00 Equivalent Unit, and each type of Nonresidential Unit shall be apportioned a certain number of Equivalent Units to reflect the voting rights of such use relative to each Residential Unit. Such apportionments are set forth in this Exhibit E. The classification of each Nonresidential Unit under this Exhibit E shall be based upon the land use classification into which the use of such Nonresidential Unit falls, as determined by applicable zoning or actual use. In the event that the land use classification for a particular Unit is not clear, the determination of land use classification made by the Board shall be controlling, provided, however, the land use classification of a Unit hereunder shall not be changed once established unless there is a corresponding change in the predominant use of the Unit. Each Unit shall be assigned a minimum of one (1.00) Equivalent Unit.

<u>Land Use Classification</u>	<u>Equivalent Units</u>
Single family dwelling (occupied or certified for occupancy by appropriate governmental authority)	1.00
Retail uses (including restaurants, service establishments, financial service providers, banks, health clubs, and entertainment)	10.0 per acre of land comprising the Unit*
Lodging, office space and hotel uses, clinics, hospitals and other medical facilities	3.0 per acre of land comprising the Unit*
Office/warehouse flex space, warehouse, mini-storage or manufacturing facilities	2.0 per acre of land comprising the Unit*
Combination of office above retail space (Retail Users)	6.0 per acre of land comprising the Unit*
Combination of office above retail space (Office Users)	3.0 per acre of land comprising the Unit*
Public pay parking lots and garages	2.0 per acre of land comprising the Unit*
Art galleries, museums, places of worship, libraries, nonprofit educational and cultural institutions and facilities	2.0 per acre of land comprising the Unit*
Multi-family residential (improved or unimproved)	2.0 per acre of land comprising the Unit*
Combination of multi-family residential above retail space (Retail Users)	6.0 per acre of land comprising the Unit*

Combination of multi-family residential above retail space (Multi-family Users)	2.0 per acre of land comprising the Unit*
Other Unimproved land intended for nonresidential use	2.0 per acre of land comprising the Unit*

\* rounded to the nearest full Equivalent Unit

Any Unit (except for Units within the Town Center) assigned Equivalent Units on the basis of acreage and exceeding 4 acres in size shall be assigned 50% of the Equivalent Units otherwise specified above for any acreage in excess of 4 acres on which no structures are constructed

In the case of Nonresidential Units within a condominium, each such Unit shall be deemed to contain the area of land determined by multiplying the Unit's percentage interest in the common elements of such condominium by the total acreage of land comprising the condominium. In the case of Nonresidential Units subject to the jurisdiction of an Additional Association which holds title to common property for the benefit of such Units, each such Unit shall be deemed to include, in addition to the land within the boundaries of the Unit, its pro rata share of the common property of such Additional Association, based upon the percentage liability for common expenses of such owners association attributable to the Unit

The land use classification of a Nonresidential Unit shall be deemed to be unimproved land until the earlier of

(a) the date upon which a certificate of occupancy is issued by the appropriate governmental authority for the improvements constructed on or comprising the Unit, or

(b) the date upon which the Unit is actually used or occupied for purposes other than construction of improvements thereon,

at which time it shall be reclassified under the land use for which the improvements were designed and intended, if vacant, or the actual use, if occupied

If an occupied Unit is subsequently vacated, it shall continue to be classified under the last land use classification assigned to such Unit prior to it being vacated, until the date of commencement of a new business, operation or activity in or from such Unit which more appropriately falls under a different land use classification.

**(B) Calculation of Votes.** The votes attributable to each Nonresidential Unit shall be equal to the number of Equivalent Units assigned to the Unit.

**(C) Computation by Board.** The Land Use Classification and number of Equivalent Units assigned to each Unit shall be computed at least annually by the Board of Directors at the time the annual budget is formulated. If the use of the Unit changes during the fiscal year, the Board shall be authorized to adjust the Equivalent Units effective with such change in use, but the Board need not reallocate all Units in such manner to take into account such change until the budget is redetermined

In the event that additional real property is made subject to this Declaration between annual cutoff dates for computation of Equivalent Units, the Board shall recompute voting percentages for each Unit and send notice of such recomputed percentages to each Owner

## EXHIBIT F

### Conservation Area

The following tracts lying and being in New Hanover County, North Carolina, being more particularly described as follows:

All of those certain tracts and lots shown as the "Conservation Area" on that certain plat of Mayfaire by Michael Underwood and Associates, PA recorded in Map Book 44 at Pages 27 through 39 of the New Hanover County Public Registry

## EXHIBIT G

### Hecht's Property

The following tract lying and being in New Hanover County, North Carolina, being more particularly described as follows:

METES AND BOUNDS DESCRIPTION PREPARED FOR  
THE MAY DEPARTMENT STORES COMPANY, A NEW YORK CORPORATION  
PARCEL A-1(THE MAY PAD)  
2.08 ACRES, MORE OR LESS

Commence at an existing iron pipe located in the west right of way line of Military Cutoff Road (100' public right of way) at its intersection with the north right of way line of Eastwood Road (150' public right of way); thence along and with the west right of way line of Military Cutoff Road as the same is shown on map of Eastport Subdivision at Map Book 32 Page 295 of the New Hanover County Registry North 05 degrees 23 minutes 46 seconds East a distance of 1597.49 feet to a point, thence along and with the west right of way line of Military Cutoff Road North 05 degrees 26 minutes 46 seconds East a distance of 162.73 feet to an existing iron pipe; thence along and with the west right of way line of Military Cutoff Road North 05 degrees 22 minutes 52 seconds East a distance of 1400.00 feet to a point; thence North 86 degrees 49 minutes 02 seconds West a distance of 49.17 feet to a point; thence following along a curve to the right (Arc=265 96', Radius=11561.66') and with the west right of way line of Military Cutoff Road as the same is shown on map of Mayfaire Development N.C.D.O.T. Right-of-way Dedication Map U.S. Highway No 17 Bypass/Military Cut-Off Road at Map Book 43 Page 344 of the New Hanover County Registry a chord which bears North 07 degrees 42 minutes 25 seconds East a chord distance of 265 96 feet to a point; thence North 08 degrees 21 minutes 57 seconds East a distance of 90.85 feet to a point; thence North 07 degrees 19 minutes 56 seconds East 89.74 feet to a point, thence following along a curve to the left (Arc=383.89', Radius=13442 93') and with the west right of way line of Military Cutoff Road as the same is shown on map of Mayfaire Development N.C.D O.T. Right-of-way Dedication Map U.S. Highway No. 17 Bypass/Military Cut-Off Road at Map Book 43 Page 344 of the New Hanover County Registry a chord which bears North 06 degrees 20 minutes 51 seconds East a chord distance of 383 87 feet to a point; thence North 05 degrees 25 minutes 38 seconds East a distance of 252.08 feet to a point; thence North 05 degrees 26 minutes 46 seconds East a distance of 124.83 feet to a point, thence North 84 degrees 37 minutes 08 seconds West a distance of 358.83 feet to a point, thence North 84 degrees 34 minutes 14 seconds West a distance of 261.86 feet to a point; thence South 05 degrees 25 minutes 46 seconds West a distance of 18.18 feet to a point; thence North 84 degrees 34 minutes 14 seconds West a distance of 32.80 feet to a point; thence North 05 degrees 25 minutes 46 seconds East a distance of 90.00 feet to a point; thence South 84 degrees 34 minutes 14 seconds East a distance of 20.30 feet to a point; thence North 05 degrees 25 minutes 46 seconds East a distance of 43.06 feet to the POINT OF BEGINNING; thence North 84 degrees 34 minutes 14 seconds West a distance of 252 57 feet to a point located in the north right of way line of South Town Center Drive a future 60' public right of way; thence North 05 degrees 25 minutes 46 seconds East a distance of 128.08 feet to a point; thence South 84 degrees 34 minutes 14 seconds East a distance of 13.70 feet to a point, thence North 05

degrees 25 minutes 46 seconds East a distance of 186.49 feet to a point; thence North 18 degrees 30 minutes 29 seconds West a distance of 35.81 feet to a point; thence North 84 degrees 34 minutes 14 seconds West a distance of 21.90 feet to a point; thence North 05 degrees 25 minutes 46 seconds East a distance of 45 72 feet to a point; thence South 84 degrees 34 minutes 14 seconds East a distance of 129.55 feet to a point; thence South 05 degrees 25 minutes 46 seconds West a distance of 46.34 feet to a point; thence South 84 degrees 34 minutes 14 seconds East a distance of 145.75 feet to a point; thence South 05 degrees 25 minutes 46 seconds West a distance of 346 67 feet to the POINT OF BEGINNING, containing 2.08 acres, more or less.

**METES AND BOUNDS DESCRIPTION PREPARED FOR  
THE MAY DEPARTMENT STORES COMPANY, A NEW YORK CORPORATION  
PARCEL A-2(PARKING FIELD "A")  
3.35 ACRES, MORE OR LESS**

Commence at an existing iron pipe located in the west right of way line of Military Cutoff Road (100' public right of way) at its intersection with the north right of way line of Eastwood Road (150' public right of way); thence along and with the west right of way line of Military Cutoff Road as the same is shown on map of Eastport Subdivision at Map Book 32 Page 295 of the New Hanover County Registry North 05 degrees 23 minutes 46 seconds East a distance of 1597.49 feet to a point; thence along and with the west right of way line of Military Cutoff Road North 05 degrees 26 minutes 46 seconds East a distance of 162.73 feet to an existing iron pipe; thence along and with the west right of way line of Military Cutoff Road North 05 degrees 22 minutes 52 seconds East a distance of 1400.00 feet to a point; thence North 86 degrees 49 minutes 02 seconds West a distance of 49.17 feet to a point; thence following along a curve to the right (Arc=265.96', Radius=11561.66') and with the west right of way line of Military Cutoff Road as the same is shown on map of Mayfaire Development N.C D.O.T. Right-of-way Dedication Map U.S. Highway No. 17 Bypass/Military Cut-Off Road at Map Book 43 Page 344 of the New Hanover County Registry a chord which bears North 07 degrees 42 minutes 25 seconds East a chord distance of 265.96 feet to a point, thence North 08 degrees 21 minutes 57 seconds East a distance of 90.85 feet to a point; thence North 07 degrees 19 minutes 56 seconds East 89 74 feet to a point; thence following along a curve to the left (Arc=383.89', Radius=13442.93') and with the west right of way line of Military Cutoff Road as the same is shown on map of Mayfaire Development N.C D.O.T. Right-of-way Dedication Map U.S. Highway No. 17 Bypass/Military Cut-Off Road at Map Book 43 Page 344 of the New Hanover County Registry a chord which bears North 06 degrees 20 minutes 51 seconds East a chord distance of 383 87 feet to a point, thence North 05 degrees 25 minutes 38 seconds East a distance of 252.08 feet to a point; thence North 05 degrees 26 minutes 46 seconds East a distance of 124.83 feet to a point; thence North 84 degrees 37 minutes 08 seconds West a distance of 358.83 feet to the POINT OF BEGINNING; thence North 84 degrees 34 minutes 14 seconds West a distance of 261 86 feet to a point; thence South 05 degrees 25 minutes 46 seconds West a distance of 18.18 feet to a point, thence North 84 degrees 34 minutes 14 seconds West a distance of 32 80 feet to a point; thence North 05 degrees 25 minutes 46 seconds East a distance of 90.00 feet to a point, thence South 84 degrees 34 minutes 14 seconds East a distance of 20.30 feet to a point, thence North 05 degrees 25 minutes 46 seconds East a distance of 43.06 feet to a point;

thence North 05 degrees 25 minutes 46 seconds East a distance of 346.67 feet to a point; thence North 05 degrees 25 minutes 46 seconds East a distance of 18.65 feet to a point; thence South 84 degrees 34 minutes 14 seconds East a distance of 55.30 feet to a point, thence North 05 degrees 25 minutes 46 seconds East a distance of 81.00 feet to a point; thence South 84 degrees 34 minutes 14 seconds East a distance of 19.00 feet to a point; thence South 05 degrees 25 minutes 46 seconds West a distance of 81 00 feet to a point; thence South 84 degrees 34 minutes 14 seconds East a distance of 329.20 feet to a point; thence South 05 degrees 25 minutes 46 seconds West a distance of 82.50 feet to a point, thence North 84 degrees 34 minutes 14 seconds West a distance of 129 14 feet to a point; thence South 05 degrees 25 minutes 46 seconds West a distance of 397.70 feet to the POINT OF BEGINNING; containing 3.35 acres, more or less

**METES AND BOUNDS DESCRIPTION PREPARED FOR  
THE MAY DEPARTMENT STORES COMPANY, A NEW YORK CORPORATION  
PARCEL A-3(PARKING FIELD "B")  
3.29 ACRES, MORE OR LESS**

Commence at an existing iron pipe located in the west right of way line of Military Cutoff Road (100' public right of way) at its intersection with the north right of way line of Eastwood Road (150' public right of way); thence along and with the west right of way line of Military Cutoff Road as the same is shown on map of Eastport Subdivision at Map Book 32 Page 295 of the New Hanover County Registry North 05 degrees 23 minutes 46 seconds East a distance of 1597.49 feet to a point; thence along and with the west right of way line of Military Cutoff Road North 05 degrees 26 minutes 46 seconds East a distance of 162.73 feet to an existing iron pipe, thence along and with the west right of way line of Military Cutoff Road North 05 degrees 22 minutes 52 seconds East a distance of 1400.00 feet to a point; thence North 86 degrees 49 minutes 02 seconds West a distance of 49.17 feet to a point, thence following along a curve to the right (Arc=265.96', Radius=11561.66') and with the west right of way line of Military Cutoff Road as the same is shown on map of Mayfaire Development N.C.D.O.T. Right-of-way Dedication Map U.S. Highway No. 17 Bypass/Military Cut-Off Road at Map Book 43 Page 344 of the New Hanover County Registry a chord which bears North 07 degrees 42 minutes 25 seconds East a chord distance of 265.96 feet to a point, thence North 08 degrees 21 minutes 57 seconds East a distance of 90.85 feet to a point; thence North 07 degrees 19 minutes 56 seconds East 89.74 feet to a point; thence following along a curve to the left (Arc=383.89', Radius=13442.93') and with the west right of way line of Military Cutoff Road as the same is shown on map of Mayfaire Development N.C.D.O.T. Right-of-way Dedication Map U.S. Highway No. 17 Bypass/Military Cut-Off Road at Map Book 43 Page 344 of the New Hanover County Registry a chord which bears North 06 degrees 20 minutes 51 seconds East a chord distance of 383.87 feet to a point; thence North 05 degrees 25 minutes 38 seconds East a distance of 252.08 feet to a point; thence North 05 degrees 26 minutes 46 seconds East a distance of 124.83 feet to a point; thence North 84 degrees 37 minutes 08 seconds West a distance of 358.83 feet to a point, thence North 84 degrees 34 minutes 14 seconds West a distance of 261.86 feet to a point; thence South 05 degrees 25 minutes 46 seconds West a distance of 18.18 feet to a point; thence North 84 degrees 34 minutes 14 seconds West a distance of 32.80 feet to a point; thence North 05 degrees 25 minutes 46 seconds East a distance of 90.00 feet to a point; thence South 84

degrees 34 minutes 14 seconds East a distance of 20 30 feet to a point; thence North 05 degrees 25 minutes 46 seconds East a distance of 43.06 feet to a point; thence North 84 degrees 34 minutes 14 seconds West a distance of 252.57 feet to the POINT OF BEGINNING, thence following along a curve to the left (Arc=140.04', Radius=330 00') and with the north right of way line of South Town Center Drive a future 60' public right of way a chord which bears North 72 degrees 24 minutes 50 seconds West a chord distance of 138.99 feet; thence continuing along and with the north right of way line of South Town Center Drive a future 60' public right of way North 84 degrees 34 minutes 14 seconds West a distance of 173.26 feet to a point; thence North 05 degrees 25 minutes 46 seconds East a distance of 416.06 feet to a point; thence South 84 degrees 34 minutes 14 seconds East a distance of 185 20 feet to a point; thence North 05 degrees 25 minutes 46 seconds East a distance of 12.33 feet to a point; thence South 84 degrees 34 minutes 14 seconds East a distance of 163.20 feet to a point, thence North 05 degrees 25 minutes 46 seconds East a distance of 28 67 feet to a point; thence South 84 degrees 34 minutes 14 seconds East a distance of 83.00 feet to a point; thence South 05 degrees 25 minutes 46 seconds West a distance of 93.31 feet to a point; thence North 84 degrees 34 minutes 14 seconds West a distance of 15 45 feet to a point, thence North 84 degrees 34 minutes 14 seconds West a distance of 129.55 feet to a point; thence South 05 degrees 25 minutes 46 seconds West a distance of 45.72 feet to a point; thence South 84 degrees 34 minutes 14 seconds East a distance of 21.90 feet to a point; thence South 18 degrees 30 minutes 29 seconds East a distance of 35.81 feet to a point, thence South 05 degrees 25 minutes 46 seconds West a distance of 186.49 feet to a point; thence North 84 degrees 34 minutes 14 seconds West a distance of 13.70 feet to a point; thence South 05 degrees 25 minutes 46 seconds West a distance of 128.08 feet to the POINT OF BEGINNING; containing 3.29 acres, more or less



**EXPLANATION STATEMENT TO CORRECT OBVIOUS MINOR ERRORS (S) MADE IN AN INSTRUMENT AS ORIGINALLY RECORDED**

RE· BOOK 3772  
PAGE 1

RECORDED IN THE NEW HANOVER COUNTY REGISTRY

NAMES OF ALL PARTIES TO THE ORIGINAL INSTRUMENT

GRANTORS· Brody Zimmer, LLC (Declarant)

GRANTEES Mayfaire Town Center, L.L.C. (Ground Lessee)

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

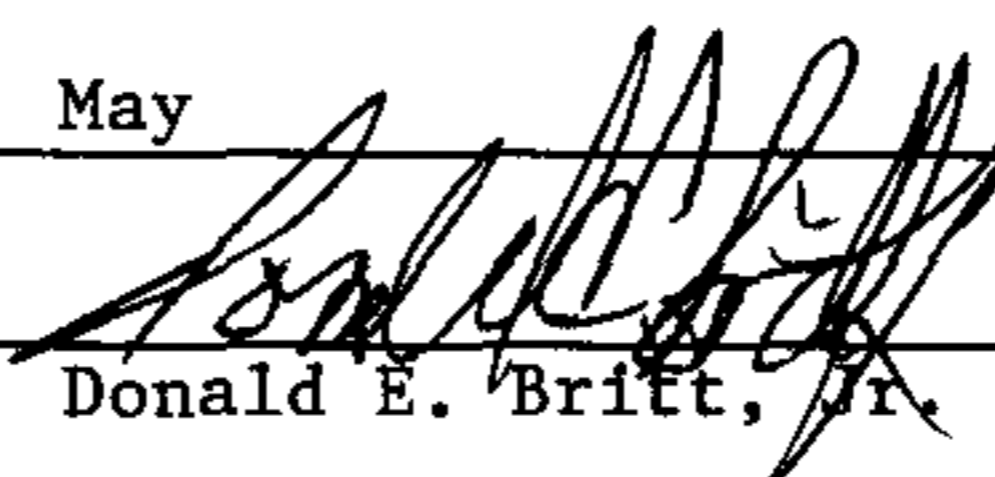
I / WE, THE UNDERSIGNED, HEREBY CERTIFY THAT THE FOLLOWING CORRECTIONS ARE MADE IN THE ABOVE NAMED RECORDED INSTRUMENT IN ACCORDANCE WITH THE PROVISIONS OF G S 47 - 36 1 RATIFIED JUNE 30, 1986

DESCRIPTION OF CORRECTION (S) \_\_\_\_\_

1. Date filled in on Page 5.

2. Map Book and Page references filled in on Page 10.

THIS, THE 13th DAY OF May, 2003

  
\_\_\_\_\_  
Donald E. Britt, Jr. (SEAL)  
\_\_\_\_\_  
(SEAL)  
\_\_\_\_\_  
(SEAL)  
\_\_\_\_\_  
(SEAL)

THIS EXPLANATION STATEMENT TOGETHER WITH THE ATTACHED INSTRUMENT DULY RECORDED AT \_\_\_\_\_ O'CLOCK \_\_M THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 200\_\_ IN THE BOOK AND PAGE SHOWN ON THE FIRST PAGE HEREOF

\_\_\_\_\_  
REGISTER OF DEEDS BY \_\_\_\_\_ DEPUTY/ASSISTANT



REBECCA T. CHRISTIAN  
REGISTER OF DEEDS, NEW HANOVER  
216 NORTH SECOND STREET

WILMINGTON, NC 28401

\*\*\*\*\*

**Filed For Registration:** 05/14/2003 11:22:58 AM  
**Book:** RE 3788 Page: 1-122  
**Document No.:** 2003029360  
REREC DECL 122 \$372.00  
PGS  
**Recorder:** LIESEL WARD

State of North Carolina, County of New Hanover

REBECCA T. CHRISTIAN , REGISTER OF DEEDS

By: Liesel Ward  
Deputy/Assistant Register of Deeds

YELLOW PROBATE SHEET IS A VITAL PART OF YOUR RECORDED DOCUMENT.  
PLEASE RETAIN WITH ORIGINAL DOCUMENT AND SUBMIT FOR RE-RECORDING.

**\*2003029360\***

2003029360