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NEW HANOVER COUNTY, NC
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**DECLARATION OF COVENANTS,
CONDITIONS, EASEMENTS AND RESTRICTIONS
FOR
MAYFAIRE**

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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

MINIMUM STANDARDS	OR	PREVAILING STANDARD
<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