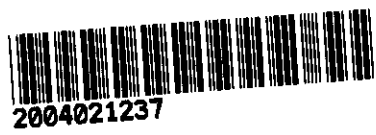


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FOR REGISTRATION REGISTER OF DEED:
REBECCA T. CHRISTIAN
NEW HANOVER COUNTY, NC
2004 APR 28 11:02:02 AM
BK: 4294 PG: 770-790 FEE: \$71.00

INSTRUMENT # 2004021237

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
PARKSIDE AT MAYFAIRE, SECTION ONE**

THIS DECLARATION, made the 28th day of April, 2004, by TRI-COAST PROPERTIES, LLC, a North Carolina limited liability company, hereinafter referred to as "Declarant or Developer", for the purposes hereinafter stated;

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property in New Hanover County, North Carolina, known as Parkside at Mayfaire which is shown on a plat recorded in the Office of the Register of Deeds of New Hanover County, North Carolina, in Map Book 46 Page 9 (The "Recorded Map") to which reference is made for a more particular description (the "Property"); and

NOW, THEREFORE, Declarant hereby declares that the Property described above shall be held, sold and conveyed subject to the North Carolina Planned Community Act in Chapter 47F of the North Carolina General Statutes and also subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the land and be binding on and shall inure to the benefit of all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns.

**ARTICLE I
DEFINITIONS**

SECTION 1. Additional Property shall mean and refer to any lands which are now owned or may be hereafter acquired or developed by Declarant, in addition to the above described Property, and annexed to and made a part of the Development (as hereinafter defined) pursuant to the provisions of this Declaration.

SECTION 2. Association shall mean and refer to Parkside At Mayfaire Homeowners' Association, Inc., a North Carolina non-profit corporation, its successors and assigns, the owners' association organized for the purposes set forth herein.

SECTION 3. Assessments shall mean the Annual, Special, Insurance, Ad Valorem Tax and Working Capital Assessments provided for in this Declaration.

SECTION 4. Common Area(s) shall mean and refer to all lands and easements within or appurtenant to the Development intended for the common use and enjoyment of the Owners (i.e., as distinguished from "Common Area" designated under the Master Declaration for the common use and enjoyment of all owners within the larger Mayfaire development), including, without limitation, any private roads, alleys, parks, aesthetic ponds, open space, amenity areas, and storm water retention ponds within the Development, and shall also include all of the private Disposal System and appurtenances located within the public rights-of-way of the Development and within that thirty foot (30') utility easement (private) (sanitary sewer) which runs along the western lot line of Lot 6R

RETURNED TO *Allen, MacDonald & Davis*

between Chelfont Circle and the southern boundary of Section One as shown on the Recorded Map.

SECTION 5. Common Expenses shall mean expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

SECTION 6. Declarant shall be used interchangeably with Developer (which designations shall include singular, plural, masculine, feminine, and neuter as required by the context) and shall mean and refer to TRI-COAST PROPERTIES, LLC, its successors and assigns, if such successors or assigns should acquire undeveloped property from the Declarant for the purpose of development.

SECTION 7. Declaration shall mean this instrument as it may be from time to time be amended or supplemented.

SECTION 8. Development shall mean the Property plus any Additional Property.

SECTION 9. Exclusive Builder Team shall mean the group of licensed general contractors selected by Declarant to build homes in Parkside.

SECTION 10. House or Home shall mean the dwelling located on a Lot.

SECTION 11. Improvements shall mean any change or addition to a Lot by or on behalf of an Owner other than the Declarant.

SECTION 12. Lot(s) shall mean and refer to any numbered lot within the Development, together with the dwelling and other improvements situated thereon.

SECTION 13. Master Association shall mean and refer to Mayfaire Community Association, Inc., a North Carolina nonprofit corporation, its successors or assigns.

SECTION 14. Master Declarant shall mean and refer to Mayfaire I, LLC, a North Carolina limited liability company, or any successor or assign to such party's rights under the Master Declaration pursuant to the terms thereof.

SECTION 15. Master Declaration shall mean and refer to the certain Declaration of Covenants, Conditions, Easement and Restrictions for Mayfaire dated May 2, 2003, recorded in Book 3772 at Page 1, and rerecorded in Book 3788 at Page 1 in the New Hanover County Registry (as same may be amended from time to time).

SECTION 16. Member(s) shall mean and refer to every person or entity who has a Membership in the Association.

SECTION 17. Membership shall mean and refer to the rights, privileges, benefits, duties and obligations, which shall inure to the benefit of and burden each Member of the Association.

SECTION 18. Owner shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 19. Parkside at Mayfaire Code shall mean that set of building requirements established by Declarant to govern all construction of improvements in the Development.

SECTION 20. Property shall mean the Property as defined in the preamble to this Declaration.

**ARTICLE II
PROPERTY RIGHTS AND EASEMENTS**

SECTION 1. Owners' Property Rights and Easement of Enjoyment in the Common Area. Every Owner shall have and is hereby granted a right and easement of enjoyment in and to the Common Area, if any, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The Association may make and amend reasonable rules and regulations governing use of the Common Areas by the Owners, and limiting the number of guests of Members;

(b) The Association may suspend the voting rights and privileges of an Owner for any period during which any Assessments against the Owner's lot remain unpaid and for a period not to exceed 60 days for an infraction of the published rules and regulations of the Association;

(c) The Association may mortgage or convey the Common Areas, or dedicate or transfer all or part of the Common Areas, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by at least two-thirds of the Members, excluding the Developer; provided, however, the Association may without the consent of the Owners grant easements over the Common Area for drainage systems, public utilities servicing the Development and the private sanitary sewage disposal system and provided, further, that any conveyance or encumbrance of Common Area shall be subject to any rights of ingress and egress to any Lot over private streets.

(d) The Association, acting through the Board of Directors, shall have the right to grant easements, rights of way, licenses and similar interests over any part of the Common Areas for any lawful purpose which it determines, in its own discretion, to be consistent with the interest of the Association.

(e) The Association may levy fines in accordance with the North Carolina Planned Community Act (Chapter 47F of the North Carolina General Statutes).

SECTION 2. Easements in Favor of Declarant and the Association. The following easements are reserved to Declarant and the Association, their successors and assigns:

(a) Easements as necessary in the lands constituting the Common Area and that portion of each Lot not occupied by a structure for the installation and maintenance of utilities and drainage facilities: there shall be a ten foot (10') non-municipal utility easement along the front of all perimeter lots, five feet of which is within the lot and the other five feet of which extends into the City of Wilmington right-of-way beneath the sidewalk; there shall be an eight foot (8') non-municipal utility easement on either side of the nine foot (9') alleys within the twenty-five foot (25') alley access at the rear of all interior lots; including the right of Declarant and the Association to go upon the ground with men and equipment to erect, maintain, inspect, repair and use electric and telephone lines, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in or over each Lot and such other areas as are shown on the plat of the Property or any Additional Property recorded or to be recorded in the office of the Register of Deeds of New Hanover County; the right to cut drain ways, swales and ditches for surface water whenever such action may appear to the Developer or the Association to be necessary in order to maintain reasonable standards of health, safety and appearance; the right to cut any trees, bushes or shrubbery; the right to make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance; and the right to locate wells, pumping stations, and tanks within residential areas, or upon any Lot with the permission of the owner of such Lot. No structures or plantings or other material shall be placed or permitted to remain upon such easement areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems;

(b) Easements over all private streets and alleys, if any, access easements, and Common Areas within the Development as necessary to provide access, ingress and egress, to any Additional Property.

(c) Some Lots may be subjected to a non-disturbance easements or similar easements for conservation or wet lands buffering purposes. Further, some Lots may be subjected to landscape easements for the purpose of maintaining specified plantings, levels of maintenance, signs, walls, fences, and other decorative structures. The operation of such easements shall be governed by provisions in this Declaration, other recorded instruments and by policies duly enacted by the Association and pursuant to its authority set forth in this Declaration.

(d) Perpetual non-exclusive easement over the Common Areas for the purpose of conducting parades, running, biking, or other sporting events, education, cultural, artistic, musical and entertainment activities and other activities of general community interest at such locations and times as Declarant, in its sole discretion, deems appropriate. By accepting title to or occupying a Lot subject to this Declaration, as it may be amended, each owner and occupant of a Lot acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences. Neither the association, nor any owner or occupant of any Lot, shall take any action that would interfere with or otherwise attempt to restrict the exercise of this easement.

SECTION 3. Private Sanitary Sewage Disposal System Easements (“Disposal System”). The following easements are reserved to Declarant and the Association, their successors and assigns:

(a) A five foot (5') Disposal System maintenance easement over the eastern five feet (5') of Lots 59R, 60R, 102R adjacent to Chalfont Circle, and over the front or southern five feet (5') of Lots 103R, 104R, 105R, and 106R, adjacent to Chalfont Circle as shown on the subdivision map, for its use in maintaining, servicing, repairing and replacing the private Disposal System components located in the fifty-eight foot (58') public rights-of-way adjacent thereto. In addition, the Association shall have a sanitary sewer maintenance easement over that area at the front of each lot in Section One located within five feet (5') of that point on the front or street lot line where the private Disposal System service line crosses the lot line for the Association's use in maintaining, servicing, repairing and replacing that portion of the Disposal System service line in the public rights-of-way. The foregoing easements are in addition to and not in limitation of any easements shown on the recorded map or described elsewhere herein.

(b) Prohibition Of Permanent Structures Within The Sanitary Sewer System Maintenance Easements. No permanent structure may be built within the easements in this Section. Owners may plant trees, shrubs, flowers and grass in those easements. Owners shall be responsible for the cost of removal, repair and/or replacement of any non-permanent structures which the Association deems necessary to remove to allow for Disposal System maintenance, servicing, repair or replacement. Owner shall also be responsible for the cost of the removal of any permanent structure constructed within those easements. Any costs incurred by the Association for removal, repair and/or replacement of structures or vegetation in the easement areas shall be assessed to the Owner of the related lot.

SECTION 4. Other Easements. The following easements are granted by Declarant to others:

(a) An easement is hereby granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services, to enter upon all Lots and Common Area in the performance of their duties;

(b) In case of any emergency originating in or threatening any Lot or Common Areas, regardless of whether any Lot Owner is present at the time of such emergency, the Association or any other person authorized by it shall have the right to enter any Lot for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by

the Lot Owners, and such right of entry shall be immediate;

(c) The Association is granted an easement over each Lot for the purposes of providing Lot maintenance. Owners shall provide gates in fences to permit access by the Association.

SECTION 5. Nature of Easements. All easements and rights described herein are perpetual easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the Declarant and the Association, their successors and assigns, and any Owner, purchaser, mortgagee and other person having an interest in the Property or any Additional Property, or any part or portion thereof, regardless of whether or not reference is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

SECTION 6. Prohibition Of Permanent Structures Within Easements. No permanent structure may be built within the easements described in this Article or those easements shown on the Recorded Map. Owners may plant trees, shrubs, flowers and grass in those easements. Owners shall be responsible for the cost of removal, repair and/or replacement of any non-permanent structures which the Association deems necessary to remove to allow for maintenance, servicing, repair or replacement within those easements. Owner shall also be responsible for the cost of the removal of any permanent structure constructed within those easements. Any costs incurred by the Association for removal, repair and/or replacement of structures or vegetation in the easement areas shall be assessed to the Owner of the related lot.

ARTICLE III PRIVATE SANITARY SEWAGE DISPOSAL SYSTEM

The private sanitary sewage disposal system (“Disposal System”) at Parkside At Mayfaire is a private system which connects to the New Hanover County Public Disposal System and has been constructed in accordance with applicable governmental rules and regulations, and approved plans and specifications and the Association shall properly operate and maintain the disposal system in accordance with applicable law and permit provisions for construction, operation, repair and maintenance. The Disposal System’s cost for operations, maintenance and repair shall be accorded the Association’s highest priority and shall be paid subordinate only to federal, state and local taxes and insurance. The following provisions shall control with respect to that disposal system:

SECTION 1. The disposal system and appurtenances thereto are part of the common area and shall be properly maintained and operated in conformity with law and the provisions of the permit for construction, operation, repair and maintenance of the system and facilities. The disposal system will receive the highest priority for expenditures by the Association except for federal, state and local taxes and insurance. The cost of maintaining that portion of the disposal system which is in the public rights-of-way of the Development shall be paid as a common expense of the Association and the Association shall be responsible for maintaining, repairing and replacing those components of the disposal system at Parkside At Mayfaire located within the fifty-eight foot (58’) public rights-of-way, the cost of which shall be assessed to the Members pursuant to Article VIII. The Owners however shall be responsible for maintaining, repairing and replacing the components of the disposal system located on their respective lots. To assure that there will be funds readily available to repair and maintain the disposal system beyond routine operational and maintenance expenses, a separate special account shall be created and funded annually as part of the budgeting process with funds that will be used pay extraordinary maintenance expenses of the disposal system.

SECTION 2. In the event that routine maintenance and operation funds and the special account funds are not sufficient for necessary maintenance and repair of the disposal system, the Association shall be entitled to levy a special assessment to defray such costs without limit on amount.

SECTION 3. The Association shall not enter into a voluntary dissolution without first having transferred the disposal system to a person, corporation or other entity acceptable and approved by the North Carolina Environmental Management Commission.

SECTION 4. The Association shall not transfer, convey or assign or otherwise relinquish or release its responsibility for the operation and maintenance of its disposal system until a permit has been reissued to the Association's successor.

SECTION 5. If a wastewater collection system and wastewater treatment and/or disposal facility provided by any city, town, village, county, water and sewer authorities, or other unit of government shall hereinafter become available to serve the Development, the Association shall take such action as is necessary to cause the existing and future wastewater of the Development to be accepted and discharged into said governmental system, and shall convey or transfer as much of the Disposal System and such necessary easements as the governmental unit may require as condition of accepting the Development's wastewater.

ARTICLE IV RIGHTS OF DEVELOPER

The Declarant shall have, and there is hereby reserved to the Declarant, the following rights, powers and privileges which shall be in addition to any other rights, powers and privileges reserved to the Declarant herein:

SECTION 1. For the duration of the Declarant's rights and obligations, Declarant shall have the right to conduct development, construction, marketing and customer service operations within Parkside at Mayfaire in a customary and reasonable fashion. This includes the right to maintain construction and sales offices and model homes on lots which Declarant or a Member of the Declarant's Exclusive Builder Team owns and to park vehicles thereon, the right of access over the streets and rights of way within Parkside at Mayfaire by construction and supply vehicles and the right to store materials and equipment related to such land development and construction on property owned by Declarant, and the right to make and reproduce photographs of the common area and of private homes in marketing, advertising, and public relations efforts. However, it shall be incumbent upon those exercising these reserve rights to conduct their activities in ways respectful of the comfort and safety of the occupants of lots in Parkside at Mayfaire.

SECTION 2. The Architectural Control Committee. All duties and responsibilities conferred upon the Architectural Control Committee by this Declaration or the Bylaws of the Association shall be exercised and performed by the Declarant or its designee, so long as Declarant shall own any Lot within the Property or any Additional Property.

SECTION 3. Plan of Development. The right to change, alter or redesignate the allocated planned, platted, or recorded use or designation of any of the lands constituting the Development including, but not limited to, the right to change, alter or redesignate road, utility and drainage facilities and easements and to change, alter or redesignate such other present and proposed amenities or facilities as may in the sole judgment and discretion of Declarant be necessary or desirable. The Declarant hereby expressly reserves unto itself, its successors and assigns, the right to re-plat any one (1) or more Lots shown on the plat of any subdivision of the Property or Additional Property in order to create one or more modified Lots; to further subdivide tracts shown on any such subdivision plat into two or more Lots; to recombine one or more tracts or Lots or a tract and Lots to create a larger tract; to eliminate from this Declaration Lots that are not otherwise buildable or are needed for access or are needed for use as public or private roads or access areas, whether serving the Development or other property or are needed for Common Areas, Designated Common Areas, or amenities, and to take such steps as are reasonably necessary to make such replatted Lots or tracts suitable and fit as a building site, access area, roadway or Common Area.

SECTION 4. Amendment of Declaration by Declarant or Board without Membership Approval. Subject to the prior written approval of Master Declarant, this Declaration may be amended or supplemented without member approval by the Declarant, or the Board of the Association, as the case may be, as follows:

- (a) in any respect, prior to the sale of the first Lot;

- (b) to the extent this Declaration applies to Additional Property;
- (c) to correct any obvious error or inconsistency in drafting, typing or reproduction;
- (d) to qualify the Association or the Property and Additional Property, or any portion thereof, for tax-exempt status;
- (e) to include any platting change as permitted herein;
- (f) to conform this Declaration to the requirements of any law or governmental agency having legal jurisdiction over the Property or any Additional Property or to qualify the Property or any Additional Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Carolina, regarding purchase or sale of such Lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration, U. S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion. Notwithstanding anything else herein to the contrary, only the Declarant, during the Developer Control Period, shall be entitled to amend this Declaration pursuant to this Section.

SECTION 5. Annexation of Additional Property. Declarant may annex to and make a part of the Development any other real property which Declarant now owns or which Declarant may hereafter acquire (the Additional Property). Annexation of Additional Property to the Development shall require the assent of two-thirds of the Class A Members who are voting in person or by proxy at a meeting called for this purpose; provided, however, Additional Property may be annexed to the Development without the assent of the Members so long as the Additional Property is developed as a single family residential subdivision. Nothing herein shall require the Declarant to develop any other lands now owned or hereafter acquired by the Declarant in accordance with the same general scheme as the Development. Notwithstanding the foregoing to the contrary, any annexation hereunder relating to property located outside of Single Family Neighborhood I (as defined in the Master Declaration) shall require the prior written approval and joinder of the Master Declarant [unless 100% of the property being annexed is owned by Declarant and was purchased by Declarant from Mabel Duke Weeks pursuant to that certain Right Of First Refusal referenced in that certain memorandum recorded in Book 2891 at Page 494 of the New Hanover County Registry, in which case the prior written approval and joinder of the Master Declarant shall not be required for such annexation].

SECTION 6. Alleys and Parking. Notwithstanding that such may not be shown on any recorded plats for the Development, the Declarant may establish on and over any Common Area such service alleyways and parking areas as Declarant in its sole discretion deems necessary or appropriate.

**ARTICLE V
ARCHITECTURAL STANDARDS**

SECTION 1. General.

(a) **Approval Required.** No improvements shall be made, placed, constructed or installed on any Lot and no exterior modifications to existing Improvements shall be undertaken without prior approval of the Parkside At Mayfaire Architectural Control Committee in accordance with this Article except that the Declarant activities shall be exempt from this requirement so long as it is

engaged in development or construction in Parkside At Mayfaire. In addition, all improvements or exterior modifications to existing improvements must comply with the architectural review requirements of the Master Declaration. In other words, there will be a two-step process in order to obtain approval for improvements or exterior modifications to existing improvements.

(b) All improvements to Lots in Parkside At Mayfaire shall conform to the Parkside At Mayfaire Code unless a variance has been granted in writing pursuant to this Article. The Declarant shall have exclusive authority to amend the Parkside At Mayfaire Code until all of the Lots have initially been developed, after which the power to amend shall pass to the Parkside At Mayfaire Architectural Control Committee. Any amendments to the Parkside At Mayfaire Code shall be prospective in effect and shall not apply to require modifications to or removal of structures previously approved once construction has commenced.

SECTION 2. Architectural Control Committee.

(a) Composition. The Architectural Control Committee shall be comprised of three to five persons who shall be appointed, and may be removed and replaced, in the discretion of the Declarant, so long as the Declarant owns any unimproved Lots, and thereafter in the discretion of the Association. The members of the Architectural Control Committee may, but need not be, Owners, and may include architects, engineers or similar professionals who may receive such compensation for their service as the Association may determine appropriate.

(b) Fees. The Architectural Control Committee may establish and charge reasonable fees to defray costs of administering applications for approval under this Article.

(c) Powers and Duties. The Parkside At Mayfaire Architectural Control Committee shall receive and act on all applications of Owners seeking approval of proposed Improvements or proposed changes to existing improvements to Lots in Parkside At Mayfaire. The Architectural Control Committee shall establish and make available to all Owners guidelines and procedures for applications and required submissions. The Owner of a vacant lot shall make application for the construction of a residential structure on said lot within sixty (60) days after taking title to said lot unless that time limitation is waived in writing by the Declarant or the Association.

The Architectural Control Committee 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.

The Committee may authorize variances from compliance with the Parkside At Mayfaire Code or any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (i) be effective unless in writing; (ii) be contrary to this Declaration; or (c) bind the Committee to grant a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of permit, or the terms of any financing shall not be considered a hardship warranting a variance.

SECTION 3. Scope of Review. In reviewing each application and related submissions, the Architectural Control Committee shall be guided by the Parkside At Mayfaire Code; however, the Parkside At Mayfaire Code shall not be the exclusive basis for its decisions and compliance with the Parkside At Mayfaire Code does not guarantee approval of any application. The Architectural Control Committee may consider any factors it deems relevant, including harmony of external Architectural Control with surrounding structures and environment and consistency with the visual themes established for Parkside At Mayfaire. Its decisions may be based on purely aesthetic considerations. Each Owner, by accepting a deed to a Lot in Parkside At Mayfaire, acknowledges that determinations as to such matters are subjective and opinions may vary as to the desirability or attractiveness of particular improvements.

The architectural standards and procedures established pursuant to this Article and the

Parkside At Mayfaire Code are intended as a mechanism for maintaining and enhancing the overall aesthetics of Parkside At Mayfaire and shall not create any duty to any person. The Committee 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 dwellings are of comparable quality, value or size or of similar Architectural Control.

Neither the Declarant, the Association, nor the Architectural Control Committee shall be held liable for soil conditions, drainage or other general site work; any defects in plans revised or approved hereunder, or any injury, damages, or loss arising out of the manner or quality of approved construction or modifications. In all such matters, the Assembly shall defend and indemnify the Parkside at Mayfaire Architectural Control Committee and its members.

SECTION 4. Schedule for Review. The Architectural Control Committee shall notify the applicant of its determination on an application within sixty (60) days after receipt of the completed application and all required information. The Committee 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. In the case of disapproval, the Committee may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections. 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.

In the event that the Committee fails to respond in a timely manner, approval shall be deemed to have been denied.

The Architectural Control Committee reserves the right to postpone approval of an application in order to comply with the annual maximum square footage construction requirements of the City of Wilmington and the Master Declarant as set forth in the deed from Mayfaire SPE/B, LLC, to Declarant recorded in Book 4054 at Page 599 of the New Hanover County Registry.

After termination of the Declarant's right to appoint the Committee, any denial of an application by the Committee may be appealed to the Board of Appeals in accordance with such procedures as the Board of Appeals may establish.

SECTION 5. Commencement and Completion of Construction. If construction has not commenced on a project for which an application has been approved within six months after the date of approval, such approval shall be deemed withdrawn. Once construction is commenced, it shall be diligently pursued to completion. Unless otherwise agreed in writing by the Architectural Control Committee, all elements of proposed Improvements for which plans are approved hereunder shall be completed within one year after the date of approval, or such shorter period as may be specified in any agreement for the purchase of the Lot from the Declarant.

ARTICLE VI HOMEOWNERS' ASSOCIATION

SECTION 1. Formation of Association. The Association is a nonprofit corporation organized pursuant to the Nonprofit Corporation Act of the State of North Carolina for the purpose of establishing an association for the Owners of Lots to own, operate and maintain the Common Areas in accordance with this Declaration, the Association's Charter and Bylaws.

SECTION 2. Membership. Every Lot Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Lot ownership.

SECTION 3. Voting Rights. The Association shall have two classes of voting Membership.

Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot,

all such persons shall be Members. The vote for such Lot shall be exercised as they determine but in no event shall more than one vote be cast with respect to any Lot. Fractional voting with respect to any Lot is hereby prohibited.

Class B. The Declarant shall be a Class B Member and shall be entitled to four (4) votes for each Lot owned. The Class B Membership shall cease and be converted to Class A Membership on the happening of any of the following events, whichever occurs earlier:

(a) when the total vote outstanding in the Class A Memberships equals the total vote outstanding in the Class B Membership: or

(b) on December 31, 2010; or

(c) upon the voluntary surrender of all Class B Membership by the holder thereof.

The period during which there is Class B Membership is sometimes referred to herein as the Declarant Control Period.

SECTION 4. Government Permits. All duties, obligations, rights and privileges of the Declarant under any water, sewer, stormwater and utility agreements, easements and permits for the Development with municipal or governmental agencies or public or private utility companies are at all times the responsibility of the Association.

ARTICLE VII INSURANCE AND BONDS

SECTION 1. Insurance . The Board of Directors on behalf of the Association, as a common expense, may at all times keep the Common Areas and other property of the Association, if any, insured against loss or damage by fire or other hazards and other such risks, including, but not limited to directors' liability and public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect such property, which insurance shall be payable in case of loss to the Association for all Members. The Association shall have the sole authority to deal with the insurer in the settlement of claims. Such insurance shall be obtained without prejudice to the right of each Member to insure his personal property for his own benefit at his own expense. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by Members or their mortgagees.

SECTION 2. Fidelity Bond. The Association may maintain blanket fidelity bonds for all officers, directors, employees and all other persons handling or responsible for funds of the Association (provided, however, that if the Association shall delegate some or all of the responsibility for the handling of its funds to a management agent, such fidelity bonds shall be maintained by such management agent for its officers, employees and agents handling or responsible for funds of or administered on behalf of the Association).

ARTICLE VIII COVENANTS FOR ASSESSMENTS

SECTION 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, by acceptance of a deed for the Owner's Lot, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association the following assessments (collectively the "Assessments"):

(a) Annual Assessments;

(b) Special Assessments for Capital Improvements;

(c) Insurance Assessments;

- (d) Ad Valorem Tax Assessments;
- (e) Working Capital Assessments; and
- (f) Any other assessments authorized or required by the Master Declaration.

The Assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the respective Lot against which the Assessments are made. Each such Assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

SECTION 2. Purpose of Annual Assessments. The Annual Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Property and Additional Property and for the improvement and maintenance of the Common Areas. The funds arising from said assessments or charges, may be used for any or all of the following purposes: Operations, maintenance and improvement of the Common Areas, including payment of utilities and the maintenance and repair of the disposal system; enforcing this Declaration; paying taxes, insurance premiums, legal and accounting fees and governmental charges; establishing working capital; paying any assessments or other charges allocable to the Development pursuant to the terms of the Master Declaration; and in addition, doing any other things necessary or desirable in the opinion of the Association to keep the Common Areas in good operating order and repair, including the Disposal System.

SECTION 3. Annual Assessments. The Board of Directors shall adopt a proposed annual budget at least 90 days before the beginning of each fiscal year. Within 30 days after adoption of the proposed budget for the Development, the Board of Directors shall provide to all of the Lot Owners a summary of the budget and notice of a meeting to consider its ratification, including a statement that the budget may be ratified without a quorum. The budget shall contain, in addition to an allocation for routine maintenance and repair of the disposal system an additional allocation to cover extraordinary maintenance and repair expenses of the Disposal System which additional allocation, once the budget has been approved, shall be deposited in a special account with the dedicated funds to be held and used solely for extraordinary expenses relating to the maintenance and repair of the disposal system. The budget is ratified unless at the meeting a majority of all of the Lot Owners in the Association rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Board of Directors. The Annual Assessment for each Lot shall be established based on the annual budget thus adopted; provided, however, that the first Annual Assessment shall be set by the Declarant prior to the conveyance of the first Lot to an Owner. The due date for payment shall be established by the Board of Directors. The Board of Directors shall have the authority to require the assessments to be paid in periodic installments.

The Association shall, upon demand, and for a reasonable charge furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

SECTION 4. Special Assessments for Capital Improvements. In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to the year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, provided that any such assessment, reconstruction, maintenance, repair or replacement of the Disposal System shall have the assent of a majority of the Members of each class who are voting in person or by proxy at a meeting duly called for this purpose.

SECTION 5. Insurance Assessments. All premiums on insurance policies purchased by the Board of Directors or its Architectural Committee and any deductibles payable by the Association upon loss shall be a common expense, and the Association may in any assessment year levy against the Owners equally an "Insurance Assessment", in addition to the Annual Assessments, which shall be in an amount sufficient to pay the annual cost of all such deductibles and insurance

premiums not included as a component of the Annual Assessment.

SECTION 6. Ad Valorem Tax Assessments. All ad valorem taxes levied against the Common Areas, if any, shall be a common expense, and the Association may in any assessment year levy against the Owners equally an “Ad Valorem Tax Assessment”, in addition to the Annual Assessments, which shall be in an amount sufficient to pay such ad valorem taxes in such year not included as a component of the Annual Assessment.

SECTION 7. Working Capital Assessments. At the time title to a Lot is conveyed to an Owner by Declarant, the Owner shall pay an amount equal to two months’ assessments to the Association as working capital to be used for initial operating and capital expenses of the Association. Amounts paid into the working capital fund are not to be considered as advance payment of the Annual or any other assessments. Any working capital funds remaining after the last lot has been sold by Declarant shall be transferred to and become part of the general funds of the Association, in the discretion of the Board of Directors.

SECTION 8. Rate of Assessment. The Association may differentiate in the amount of Assessments charged when a reasonable basis for distinction exists, such as between vacant Lots of record and Lots of record with completed dwellings for which certificates of occupancy have been issued by the appropriate governmental authority, or when any other substantial difference as a ground of distinction exists between Lots. However, Assessments must be fixed at a uniform rate for all Lots similarly situated.

SECTION 9. Commencement of Assessments. Assessments for each Lot shall commence upon the date of acceptance by an Owner of a deed from Declarant.

SECTION 10. Effect Of Nonpayment of Assessments And Remedies Of The Association. Any Assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowable by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Owner’s Lot. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot. All unpaid installment payments of Assessments shall become immediately due and payable if an Owner fails to pay any installment within the time permitted. The Association may also establish and collect late fees for delinquent installments.

SECTION 11. Lien for Assessments. The Association may file a lien against a Lot when any Assessment levied against said Lot remains unpaid for a period of 30 days or longer.

(a) The lien shall constitute a lien against the Lot when and after the claim of lien is filed of record in the office of the Clerk of Superior Court of the county in which the Lot is located. The Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. Fees, charges, late charges, fines, interest, and other charges imposed pursuant to Sections 47E-3-102, 47F-3-107, 47F-3-107A and 47F-3-115 of the Act are enforceable as Assessments.

(b) The lien under this section shall be prior to all liens and encumbrances on a Lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments and charges against the Lot.

(c) The lien for unpaid assessments is extinguished unless proceedings to enforce the tax lien are instituted within three years after the docketing of the claim of lien in the office of the Clerk of Superior Court.

(d) Any judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys’ fees for the prevailing party.

(e) Where the holder of a first mortgage or deed of trust of record, or other purchaser of a Lot obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust, such

purchaser and its heirs, successors and assigns shall not be liable for the Assessments against the Lot which became due prior to the acquisition of title to the Lot by such purchaser. The unpaid Assessments shall be deemed to be Common Expenses collectible from all of the Lot Owners including such purchaser, its heirs, successors and assigns.

(f) A claim of lien shall set forth the name and address of the Association, the name of the record Owner of the Lot at the time the claim of lien is filed, a description of the Lot, and the amount of the lien claimed.

**ARTICLE IX
MINIMUM STANDARDS FOR SITE IMPROVEMENTS, USE RESTRICTIONS
AND MAINTENANCE**

SECTION 1. Minimum Standards for the Site Improvements.

(a) Each dwelling other than garage apartments shall have a minimum of 1800 square feet of "enclosed, heated dwelling area". The term enclosed, heated dwelling area as used in the minimum requirements shall be the total enclosed area within a dwelling which is heated by a common heating system: provided, however, that such term does not include garages, terraces, decks, open porches, and like areas.

(b) All service utilities, fuel tanks, and wood piles are to be enclosed within a wall or plant screen of a type and size approved by the Declarant, the Board or the Architectural Control Committee, so as to preclude the same from causing an unsightly view from any highway, street or way within the subdivision, or from any other residence within the subdivision. All mail and newspaper boxes shall be uniform in design. Design for mail and newspaper boxes shall be furnished by Declarant. Fences shall be permitted; provided, however, that the design, placement, and materials of any fence are approved by the Declarant, the Board, or the Architectural Control Committee, as the case may be.

(c) All light bulbs or other lights installed in any fixture located on the exterior of any building for the purpose of illumination shall be clear, white or non-frost lights or bulbs. Exterior spot/flood lights must be approved by the Association. Any such approved spot/flood lights shall be aimed to the greatest extent possible to direct light away from adjoining property.

SECTION 2. Use Restrictions.

(a) Land Use And Building Type. No Lot shall be used for any purpose except for residential purposes. All numbered Lots are restricted for construction of one single family dwelling and one garage with apartment.

(b) Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. There shall not be maintained any plants or animals, nor device or thing of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or other nature as may diminish or destroy the enjoyment of other Lots by the Owners thereof. It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly or unkept condition of buildings or grounds on the Owner's Lot which would tend to decrease the beauty of the neighborhood as a whole or the specific area.

(c) Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, barn or other outbuilding shall be used on any Lot at any time as a residence other than garage apartment of no more than 750 feet of enclosed heated dwelling area, either temporarily or permanently without the written consent of the Association or its Architectural Control Committee; provided, however, that this shall not prevent the Declarant, its Architectural Control Committee or assigns from maintaining a construction trailer or office on any part of the Development until the construction of dwellings on all Lots and Common Area improvements are completed.

(d) Vehicles/Boats. No boat, motor boat or other watercraft, camper, trailer, motor or mobile homes, recreational vehicles, tractor/trailer, or similar type vehicle, shall be permitted to remain on any Lot, or on any street at any time, without the written consent of the Association or

its Architectural Committee. No inoperable vehicle or vehicle without current registration and insurance, will be permitted on any Lot, street or Common Area. The Association shall have the right to have all such vehicles towed away at the owners expense. No repairs to any vehicle may be made on streets or in driveways but only in garages or other areas and not visible from the street.

(e) Vehicles. Except for temporary guests and visitors, only standard private passenger vehicles, including passenger vans and pick-up trucks, are permitted to be parked within Parkside at Mayfaire. Such vehicles must bear current licenses, be in operating condition, bear no signs, and be parked at the rear of a Lot behind a home or in designated areas. Further, boats and boat trailers may be stored at the rear of the Lot only. Boats and trailers must be adequately screened to be visible only from the service lane, not from the thoroughfares.

(f) Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot, or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are not allowed to run free, are at all times kept properly leashed or under the control of their owner and do not become a nuisance or cause a disturbance to owners and occupants of other lots in Parkside at Mayfaire. Each owner shall be responsible for immediately collecting and properly disposing of wastes of his pet.

(g) Statuary, TV Satellite Dishes and Outside Antennas. No yard statuary, yard art, or TV satellite signal receiving dishes are permitted on any Lot and no outside radio or television antennas shall be erected on any Lot, or dwelling unit unless and until permission for the same has been granted by the Board of Directors of the Association or its Architectural Control Committee; provided, however, satellite dishes not over eighteen inches (18") in diameter which cannot be seen from the street are permitted.

(h) Construction in Common Area. No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Areas except at the direction or with the express written consent of the Association or as permitted by this Declaration.

(i) Signs. No signs (including *for sale* or *for rent* signs) shall be permitted on any Lot, or in the Common Areas without permission of the Board of Directors, except that each Lot may have posted, prior to initial occupancy, one sign setting forth the names of the Owner, builder and architect, and, in the case of a Lot owned by Declarant or builder that is a member of the Exclusive Builder Team, such other signs as the Declarant may approve, provided any such sign(s) shall be removed not later than the time of initial occupancy of the Lot. The materials, size, location, lettering and manner of installation shall conform with such rules as Declarant may establish.

(j) Subdividing. Subject to any rights reserved in the Master Declaration or reserved to the Declarant herein, no Lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Declarant during the Declarant Control Period and thereafter by the Board of Directors of the Association.

(k) Trash Cans. All trash cans must be kept from view from the street except on trash pickup days. Trash cans must be removed from the street within 8 hours of trash pickup.

(l) Christmas Decorations. Christmas decorations may only be exhibited between November 20 and January 7 of the following year.

(m) Leases. Subject to Section 3.4(f) of the Master Declaration, rental contracts for residences shall not be for a term shorter than three consecutive months.

(n) Fences and Hedges. No person shall construct or install a fence, hedge or similar structure on any Lot in such location or manner as to interfere with or obstruct access to utility meters, sewer cleanouts or utility pedestals on the Lot by any utility company or public works employees or agents. In the event of a violation of this provision, the Declarant, the Association, New Hanover County, or the affected utility company shall be entitled to enter upon the Lot and remove the fence, hedge, or other obstruction and recover all costs incurred from the owner of the Lot.

(o) **Street Lighting.** The Association has a contract with Progress Energy to lease the street lights in Parkside At Mayfaire for a monthly fee which shall be paid by the Association and included in the monthly assessments pursuant to Article VIII. The cost of these lights to the Association shall be partly defrayed by quarterly payments to the Association from the City of Wilmington because the lights will be located in the City of Wilmington's rights-of way.

(p) **Sidewalks.** The sidewalks in Parkside At Mayfaire are located within the fifty-eight foot (58') public rights-of-way of Chalfont Circle, Brevard Drive and Olmstead Lane on the Recorded Map. The Association shall be responsible for the removal, repair and/or replacement of sidewalks necessary in order to facilitate access to utility systems buried under or near these sidewalks to facilitate the maintenance, repair, servicing or replacement of those systems. The Association's costs shall be recovered through assessments pursuant to Article VIII herein.

SECTION 3. Maintenance. Each Owner shall keep his Lot free from weeds, underbrush-or-refuse piles, or unsightly growth or objects. In the event the Owner fails to do so, then, after thirty days notice from the Architectural Control Committee, the Association or its designee may enter upon the Lot and remove the same at the expense of the Owner, and such entry shall not be deemed a trespass, and in such event a lien shall arise and be created in favor of the Association for the full amount of the cost thereof chargeable to the Owner's Lot, including collection costs and such amounts shall be due and payable within thirty (30) days after the Owner is billed therefor. Such lien shall be enforceable by Court proceedings as provided by law for enforcement of liens. In the event that any maintenance activities are necessitated to any Common Areas by the willful act or active or passive negligence of any Owner, his family, guests, invitees or tenants, and the cost of such maintenance, repair or other activity is not fully covered by insurance, then, at the sole discretion of the Board of Directors of the Association, the cost of the same shall be the personal obligation of the Owner and if not paid to the Association upon demand, may be added to the annual assessment levied against said Owner's Lot and shall become a lien against the Lot.

Section 4. Maintenance and Repair of Real Property. Each Owner shall also be responsible for maintaining the structures on such Owner's Lot in a clean and attractive condition and in good order and repair. In the event a structure sustains damage clearly visible from the exterior, its Owner shall repair or reconstruct the structure in accordance with its appearance prior to damage unless the Association agrees to the contrary. The repair or reconstruction shall be accomplished within 90 days of the damage unless the Association grants a waiver based upon a finding of hardship. Should an Owner not conform to these provisions, the Association may accomplish necessary repairs or reconstruction according to its best judgment, and levy an assessment upon the Owner for the costs involved.

ARTICLE X GENERAL PROVISIONS

SECTION 1. Enforcement Of Storm Water Runoff Regulations. No more than 4,000 square feet of any Lot shall be covered by structures and/or paved surfaces, including walkways or patios of brick, stone, slate or similar materials (the "Built Upon Area"). All Lots shall be graded so that two thirds of the Lot area drains to the abutting street(s). The covenants contained in this section are intended to insure continued compliance with storm water runoff rules adopted by the State of North Carolina and, therefore, may be enforced by the State of North Carolina. Any Owner may in accordance with applicable governmental regulations borrow from another Owner any Built Upon Area which is not being utilized by the other Owner. Such transaction need not be approved by any Owners, other than those involved in the transaction, by the Declarant or by the Association.

A. Swales shall not be filled in, piped, or altered except as necessary to provide driveway crossings.

B. Built-upon area in excess of the permitted amount requires state stormwater management permit modification prior to construction.

C. All permitted runoff from out parcels or future development shall be directed into the permitted stormwater control system. These connections to the stormwater control system shall perform in a manner that maintains the integrity and performance of the system as permitted. No Lot nor that portion of the street right of way between the edge of the pavement and the front Lot