

45
144
2



FOR REGISTRATION REGISTER OF DEEDS
REBECCA T. CHRISTIAN
NEW HANOVER COUNTY, NC
2004 SEP 08 03:09:42 PM
BK:4484 PG:265-310 FEE:\$146.00

INSTRUMENT # 2004048506

**DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS FOR
UPPER REACH EXTENSION SUBDIVISION**

RETURNED TO
A. Sdancer

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR UPPER REACH EXTENSION SUBDIVISION (the "Declaration") made as of this 8th day of September, 2004, by GALARDE & COMPANY, INC. (hereinafter referred to as "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the owner of that certain real property comprising that residential subdivision known as, or to be known as, Upper Reach Extension, and as more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Declarant desires to insure the attractiveness of the Property and to preserve the values and amenities thereof; to establish a general plan of development as herein set out; to restrict the use and occupancy of the Property; and to provide for a method for the maintenance, repair, replacement and operation of the Common Area (as defined below).

NOW THEREFORE, Declarant hereby declares that the Lots (as defined below) and other property comprising the Property shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions and easements set forth in this Declaration which are for the purpose of protecting the value and desirability of the Property, and which shall run with the Property and be binding on all parties owning any right, title, or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I

PROPERTY SUBJECT TO THIS DECLARATION
ADDITIONS THERETO

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, irrespective of whether there may be additions thereto as hereinafter provided, is located in new Hanover County, North Carolina, and is more particularly described on Exhibit "A" attached and incorporated herein (the "Existing Property").

Section 2. Additions to Existing Property. Additional property adjacent to or adjoining the Existing Property may be brought within the scheme of this Declaration and the jurisdiction of the Association (as defined below) by Declarant without the consent of the Association or its Members (as hereinafter defined); provided, however, that said annexations, if any, must occur within twenty (20) years after the date of the filing of this Declaration. Declarant shall not be obligated to subject any additional property to this Declaration. Such additions shall be made by filing a Supplementary Declaration of Covenants, Conditions and Restrictions with respect to the additional property in the New Hanover County, North Carolina, Public Registry, which shall extend the scheme of this Declaration and the jurisdiction of the Association to such properties and thereby subject such additions to the benefits, agreements, restrictions and obligations set forth herein.

ARTICLE II

DEFINITIONS

Section 1. "Association" means Upper Reach Extension Owners Association, Inc., its successors and assigns.

Section 2. "Common Area" means any real property and property rights owned by the Association for the common use and enjoyment of the Owners and/or designated as "Common Area" on the Map of the Property, together with all improvements and facilities installed upon or used in connection with such real property and property rights. The Common Area shall include without limitations, the Association's rights (if any) in and to the Private Streets, if any, and access easements, parks and ponds.

Section 3. "Declarant" means GALARDE & COMPANY, INC., and any successor thereof so designated as a Declarant hereunder, which successor has purchased all remaining Lots not theretofore sold by said Declarant (or any successor Declarant) to third party

purchasers. At any time, there shall be only one Declarant hereunder. At any time, and from time to time, Declarant may relinquish any one or more of the rights granted to or reserved in favor of Declarant in this Declaration by written instrument recorded in the New Hanover County Public Registry, and from and after the recording of any such instrument, the Association shall thereafter have the power to exercise such right and shall thereafter be responsible for all obligations and liabilities with respect to such right. At such time as Declarant becomes a "Class A Member" of the Association as provided for in the By-laws of the Association, or ceases to be a Member of the Association, whichever shall earlier occur, all rights granted to or reserved in favor of Declarant shall be deemed transferred to and exercisable by the Association, and the Association shall from and after such time be liable for all actions taken in the exercise of such rights, with the exception of the right of architectural control provided for in Article III of this Declaration, which shall be relinquished by Declarant only in the manner and at the time set forth in such Article.

Section 4. "Lot" means any plot of land, with delineated boundary lines, shown upon the Map and any other subdivision map of the Property recorded after the Map is recorded. In the event any Lot is increased or decreased in size by re-subdivisions or through recordation of new subdivision plats, any such newly plotted lot shall thereafter constitute a Lot for the purpose of this Declaration.

Section 5. "Map" means that certain map of the Existing Property as recorded in Map Book 46 at Page 296 in the New Hanover County, North Carolina, Public Registry, and the map(s) of any additions to the Existing Property which may be recorded by Declarant in the New Hanover County, North Carolina, Public Registry.

Section 6. "Member" means every person or entity who holds membership in the Association.

Section 7. "Mortgage" means any mortgage or deed of trust constituting a recorded first lien on a Lot.

Section 8. "Mortgagee" means the owner and holder of a mortgage at the time such term is being applied.

Section 9. "Owner" means the record owner, whether one or more person or entity, of fee simple title to any Lot which is a part of the Property, including contract sellers and owners of any equity or redemption, but excluding those having such interest in a Lot solely as security for the performance of an obligation.

Section 10. "Public Right of Way" means any streets and alleys marked as such on any Map of the Property and/or designated by Declarant as Public Right of Way. The Public Right of Way shall include all paved portions of such streets, adjoining curbs and gutters, irrigation systems, all storm drains, sanitary sewer lines, and other utility facilities installed therein or thereunder, all landscaped medians therein, and adjoining landscaped areas within the full width of the rights-of-way of the Public Right of Way as shown on any Map or as designated in writing by Declarant.

Section 11. "Property" means the "Existing Property" described in Article 1, Section 1 hereof, and any additions thereto, as are or shall become subject to this Declaration and any Supplementary Declaration under the provisions of Article I, Section 2 hereof.

ARTICLE III

ARCHITECTURAL CONTROL

Section 1. Duration of Control. Because Declarant may develop areas adjoining the subdivision and bring same within the scheme of this Declaration. Declarant shall retain the right of architectural control as provided for in this Article III for twenty (20) years from the date of filing of this Declaration even though the Declarant at the time of any exercise of such control may own no Lot. However, the Declarant may, at its sole option, surrender such right of architectural control at any time by a duly recorded written instrument, and, at such time, the Association shall have the power through an additional duly recorded written instrument to appoint an architectural review board (the "Architectural Review Board"), which Architectural Review Board, if so appointed, shall have the right of architectural control as described in this Article, and shall retain such right until said Architectural Review Board is terminated by a duly recorded written instrument executed by the Association.

Section 2. Extent of Control. No building, garage, fence, wall, sidewalk, hedge, mass planting, change in grade or slope, side preparation, swimming pool, tree house, children's play house, sign, exterior illumination, monument or marker, driveway, utility facility, mailbox, well, tennis court, patio, deck, shrubbery, landscaping, or any other structure or improvement ("Improvements") shall be commenced, erected or maintained upon any Lot nor shall any exterior addition, change or alteration therein (including change of color) be made without the prior written approval or Declarant in its sole discretion. The areas over which Declarant

shall have control shall include, but shall not be limited to, the size and plan of the principal residential structure, the location of the principal residential structure on the Lot, the size and plan of any attached or unattached garage or other building, the location and manner of construction of any driveway, swimming pool, utility facility, patio, mailbox, driveway and landscaping monuments and markers or any other exterior improvements, the composition and color of all material used on the exterior of any structure and the location and type of any shrubbery. Declarant shall also have control over the removal of any tree or other vegetation from any Lot and no party shall grade, excavate upon or otherwise alter the topography of any Lot or remove any tree or other vegetation therefrom without obtaining the prior written approval of Declarant in accordance with its general plan of development. The Declarant reserves the right to control absolutely and solely and decide the precise site and location of any house or dwelling or other structure upon all Lots, provided however, that such locations shall be determined only after reasonable opportunity is afforded the Lot Owner to recommend a specific site.

Section 3. Procedure. Any party requiring approval of any proposed Improvements to any Lot shall submit to Declarant plans and specifications showing in such detail and manner as Declarant shall require the nature shape, height, color, material and location of any such improvements. Declarant, in its sole and absolute discretion, may require in particular instances that such plans and specifications be accompanied by a plat prepared by a registered surveyor showing the location of the proposed Improvements on the Lot. All decisions by Declarant shall be based on Declarant's discretionary determination as to whether any particular Improvement is suitable and harmonious with the development of the Property. Declarant's approval or disapproval of any proposed Improvement shall be in writing. In the event that Declarant fails to approve or disapprove any such proposed Improvement within thirty (30) days after plans and specifications in such detail as Declarant may require have been received by it, such plans and specifications shall be deemed approved. Subsequent to the approval of any plans and specifications, the Owner shall have the responsibility for making such Improvements in accordance with the plans and specifications as approved. Approval by Declarant of any proposed Improvements shall not constitute or be construed as approval of the structural stability, design, or quality of any Improvement or the compliance of any such Improvement with applicable laws and codes. Refusal or approval of plans, specifications or location may be based upon any grounds, including purely aesthetic considerations, which in the opinion of

and the sole and uncontrolled discretion of Declarant shall be deemed sufficient.

In the event any Owner violates the terms of this Section, Declarant or its duly appointed agent shall, after thirty (30) days written notice to Owner to cure such violation and failure of Owner to so cure, be entitled to enter upon the Lot(s) of Owner and cure such defect including the removal of any Improvements built in violation hereof, all at the cost and expense of Owner. Any costs and expenses incurred by Declarant or such duly appointed agent in connection with the cure of any such violation shall be a lien upon such Lot(s), and upon the failure of such Owner to reimburse Declarant or such agent for such costs and expenses upon demand, Declarant or such agent may enforce such lien against such Lot(s) in the same manner as is provided for enforcement of the Association's lien for non-payment of assessments as provided for in Article VII, Section 8, hereinbelow. This right of the Declarant or its agent shall be in addition to all other general enforcement rights which the Declarant may have for a breach or violation of the terms of this Declaration and shall not be deemed a trespass by Declarant or its agents. Declarant reserves the right for reasonable needs, but shall not be obligated, to waive in writing any violation of this provision.

ARTICLE IV

COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, amend, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Areas. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in a Book of Resolutions that shall be maintained in a place convenient to the Owners and available to them for inspection during normal business hours.

Section 2. Use of Lots. All lots and buildings shall be single-family residential lots and shall be used for residential purposes. The Developer may use one or more homes for offices and/or models for sales purposes. The foregoing shall not be construed to limit or prohibit offices within the home provided said offices are not open to the public or held out to be for public visitation, use or convenience.

Section 3. Subdivision of Lots. No Lot shall be subdivided by sale or otherwise so as to reduce the total Lot area shown on the Map, except by and with the written consent of the Declarant and

provided same is also permitted under applicable governmental regulations and private restrictions affecting said Lot. However, Declarant hereby expressly reserves unto itself, its successors and assigns, the right to re-plat any two 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 for use as private roads or access areas, and to take such steps as are reasonably necessary to make such re-platted Lots or tracts suitable and fit as building sites or access areas or roadways, said steps to include, but not limited to, the relocation of easements, walkways, and rights of way to conform to the new boundaries of the said re-platted Lots.

Section 4. Right of First Refusal Respecting Unimproved Lots.

Before any unimproved Lot may be sold or resold to any person, firm or corporation by any Owner thereof except Declarant or its successors, the Owner of such Lot first shall offer in writing to sell the Lot to Declarant, at a price and on terms designated by said Owner. If Declarant does not accept or reject in writing said offer of sale within seven (7) days of its receipt of the same, then the Owner of such Lot shall have the right to sell the Lot to any third party; provided, however, the sale of said Lot to such third party shall be at a price and on terms and conditions not less favorable to said Owner than the offer made to Declarant, and the closing of the sale of such Lot must occur within six (6) months after the offer by Owner to sell the Lot to Declarant. Any sale of a Lot at a price or on terms and conditions less favorable to said Owner than the offer made to Declarant, or which closes more than six (6) months after the offer made by such Owner to Declarant, will require separate compliance with the foregoing provisions of this Article IV, Section 4.

Section 5. Reserved Utility Easements. In addition to the easements reserved on the Map, the Declarant reserves for itself, and its successors and assigns, a permanent easement in and the right at any time in the future to grant a permanent right of way over, under and along an area uniformly ten (10) feet in width along the front lines of each Lot for the installation and maintenance of poles, lines, conduits, pipes and other equipment necessary or useful for furnishing electrical power, gas, water, sewer, telephone service and other utilities and drainage facilities. Within such areas no structures, plantings, fences or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of

utilities or which may obstruct or retard the flow of water through drainage channels in such areas. The area of each Lot containing the easement and all improvements thereon shall be maintained continuously by the Owner of the Lot except for those improvements for which a public Authority or utility company is responsible.

Section 6. Reserved Drainage Easements. In addition to the easement reserved on the Map, the Declarant reserves for itself, and its successors and assigns, a permanent easement in and the right at any time in the future to grant a permanent right of way over, under and along an area uniformly twenty(20) feet in width along the rear lines of each Lot; and twenty (20) feet in width centered along the dividing line between Lots 2 and 3 (being ten (10) feet in width along each said side Lot lines); as well as the ponds and within the Progress Energy Easements for the installation and maintenance of conduits, pipes and other equipment necessary or useful for furnishing drainage facilities. Within such areas no structure, plantings, fences or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of said drainage facilities or which may obstruct or retard the flow of water through drainage channels in such areas. The area of each Lot containing the drainage easement and all improvements thereon shall be maintained continuously by the Owner of the Lot except for those improvements for which a public Authority or utility company is responsible.

Section 7. Easements Reserved for the Association. The Association is hereby granted an easement for the installation and maintenance of all of the Common Areas.

Section 8. Exterior Lights. All light bulbs or other lights installed in any fixture located on the exterior of any building or on any Lot shall be clear, white or non-frost lights or bulbs, and shall be low level (not fluorescent, neon, etc.). No street lights or other high intensity lights are permitted.

Section 9. Electrical Power. The Declarant reserves the right, at its option, to subject the Property, or any portion thereof, to a contract with Progress Energy Corporation which may require a continuing monthly payment to Progress Energy Corporation by the Association.

Section 10. Approval of Plans. Front, rear and side elevations, together with specifications on the exterior siding, square footage, windows, doors, roofing and exterior colors must first be submitted to Declarant for review and approval prior to the beginning of any construction, to include site work. All buildings must be stick built and have a crawl space or raised slab of a

minimum of eighteen (18) inches. Mobile homes, modular homes and any other structure that is not stick built on the Lot are absolutely prohibited.

Section 11. Minimum House Size. A house shall contain not less than 1,600 square feet of heated living area. However, it is expressly understood and agreed that Declarant, in its sole discretion, may approve a 10 percent variance.

Section 12. Building Placement. Since the establishment of inflexible building setback lines for location of houses on lots tends to force construction of houses directly to the side of other homes, with detrimental effects on privacy, view, preservation of important trees and other vegetation, ecological and related considerations, the site and location of any house or dwelling or other structure upon any lot shall be controlled by and must be approved absolutely by the Declarant. Notwithstanding the foregoing, the minimum front setback of any dwelling shall be fifteen (15) feet; the minimum side setback between dwellings shall be ten (10) feet; and the rear setback shall be thirty five (35) feet. Detached garages or out buildings shall have a minimum front setback of seventy five (75) feet and a side setback of twenty (20) feet.

Section 13. Building Completion. The exterior of all houses and other structures must be completed within twelve (12) months after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner of builder, due to strikes, fires, national emergency or natural calamities.

Section 14. Number of Dwellings and Height. No structure shall be erected, altered, placed or permitted to remain on any Lot, except one single-family dwelling not to exceed two-and-a-half stories in height, unless the Declarant or its successor, as the case may be, approves in writing a structure of more than two-and-a-half stories, and one or more small accessory buildings which may include a detached private garage or guest facilities.

Section 15. Limitations on Impervious Surfaces. All Lots are subject to the State of North Carolina rules and regulations concerning stormwater runoff as those rules and regulations are amended from time to time. The following covenants are intended to ensure ongoing compliance with state stormwater management permit number SW8030813 as issued by the Division of Water Quality. These covenants may not be changed or deleted without the consent of the State. No more than 4,000 square feet of any lot shall be covered by structures or impervious materials. Impervious materials

include asphalt, gravel, concrete, brick, stone, slate or similar material but do not include wood decking or the water surface of swimming pools. Swales shall not be filled in, piped, or altered except as necessary to provide driveway crossings. Built-upon area in excess of the permitted amount requires a state stormwater management permit modification prior to construction. All permitted runoff from outparcels or future development shall be directed into the permitted stormwater control system. These connections to the stormwater control system shall be performed in a manner that maintains the integrity and performance of the system as permitted. Declarant reserves the right to recalculate the maximum allowable built-upon area in accordance with the stormwater runoff rules and regulations of the State of North Carolina with the approval of State of North Carolina, Division of Water Quality. For curb and gutter projects, no one may pipe, fill in, or alter any lot line swale used to meet North Carolina Stormwater Management Permit requirements. The State of North Carolina is hereby made a beneficiary of this Declaration to the extent necessary to maintain compliance with the stormwater management permit. These covenants are to run with the land and be binding on all persons and parties claiming under them. The covenant pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Water Quality. Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the Division of Water Quality. The foregoing covenants are intended to ensure ongoing compliance with State Stormwater Management Permit issued by the Division of Water Quality.

Section 16. Outbuildings and Similar Structures. No trailer, camper or other structure of a temporary nature shall be erected or allowed to remain upon any Lot and no trailer, camper, shack, tent, garage, barn, or other structure of a similar nature shall be used as a residence either temporarily or permanently upon any Lot; provided, however, that this Section shall not be construed to prevent the Declarant from permitting any party building a structure upon any lot to erect temporary structures during construction.

Section 17. Nuisances and Unsightly Materials. No noxious, offensive, or illegal activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance to the neighborhood. No person may keep any animal upon any part of the Lot except that any Owner then occupying a residence upon a Lot may keep customary household pets upon such Lot provided that such pets are not kept, bred or maintained for any commercial purposes or in such a manner as to become a nuisance to the other Owners or residents of the subdivision and provided

that such pets are kept in accordance with county ordinances and leash laws. No domesticated farm animal or fowl shall be kept on any part of the Property. No hunting for any bird or animal shall be permitted on any part of the Property.

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 or its successor, so as to preclude the same from causing an unsightly view from any street or way within the Property or from any other residence within the Property. No fences shall be placed or permitted to remain on any lot without approval of the Declarant.

Section 18. Maintenance of Lots. Each Owner shall keep his Lot in an orderly condition and shall keep the Improvements thereon in a first class and suitable state of repair promptly repairing any damage thereto by fire or other casualty. It shall be the responsibility of each Lot owner to maintain the berm, if any, located on the Lot. No clotheslines may be erected or maintained on any Lot. No Lot shall be used in whole or in part for storage of rubbish of any character whatsoever or for the storage of any property or thing that will cause any noise that will disturb the peace and quiet of the occupants of surrounding Lots, and no trash, rubbish, stored materials, wrecked or inoperable vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish or other debris for collection by governmental or other similar garbage and trash removal units. Each Owner shall provide suitable receptacles for trash, rubbish, garbage or ashes, and such receptacles shall be located in a screened area not generally visible from the road, the adjoining Lots or from Common Areas. In the event that any owner fails or refuses to comply with any of the foregoing, the Declarant may demand that the Owner promptly comply with the same by mailing a notice thereof to the Owner at his address specified in the records of the Association and by posting such notice on the Lot. If the Owner has not complied therewith within five (5) days thereafter, the Declarant may enter and correct the same at Owner's expense. Each Owner by acquiring a Lot(s) subject to these restrictions, agrees to pay such cost promptly upon demand by Declarant. Such cost shall be a lien upon such Owner's Lot(s), and upon the failure of such Owner to pay such cost to Declarant upon demand, Declarant may enforce such lien against such Lot(s) in the same manner as is provided for enforcement of the Association's lien for non-payment of assessments as provided for in Article VII Section 8, herein below. No such entry as provided herein shall be deemed a trespass.

Section 19. Preservation of Trees, Natural Buffer. All landscaping, tree cutting and site preparation work to be performed shall be approved by the Declarant prior to any such landscaping, tree cutting and site preparation work being done. Plans must be submitted for approval to the Declarant and shall include a site plan with lot lines, building outlines, driveways and parking areas. Identification of trees for which removal is requested is required. Specifically, hardwoods with a caliper of 5 inches or more may not be cut or removed without the express written consent of the Declarant.

Section 20. Mailboxes. Each lot shall have only one (1) mailbox and one (1) paper box which shall be mounted on a single post; all such boxes must be approved by Declarant. Such boxes may be provided by the Declarant or building contractor. Any such boxes shall be considered an improvement and must remain with the Lot, and shall be maintained by the Association. Boxes damaged beyond repair shall be replaced by the Association at the expense of the Owner of the Lot.

Section 21. Signboards. No signboard, billboard, or advertising sign of any description shall be displayed upon or above any Lot by an Owner, any building contractor or other party with the exception of the following signs, none of which may be affixed to a tree:

- Signs stating "For Rent" or "For Sale" which signs shall not exceed two feet by three feet in dimension, shall refer only to the Lot on which displayed and shall be limited to one sign per Lot, and
- Signs stating the name of the resident of any Lot and the street address, the design of which shall be furnished to Declarant and shall be subject to approval by Declarant.
- During the period of construction, the general contractor's sign, but no subcontractor's sign, shall be allowed.

Section 22. Antennae. No satellite dishes or similar structure greater than eighteen (18) inches in diameter nor any radio or television aerial antenna or any other external electronic equipment or devices may be installed or maintained on any exterior portion of any structure erected on a Lot or elsewhere upon any Lot or within the Property without the prior written approval of Declarant.

Section 23. Common Area Alterations. 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.

Section 24. Lease of Homes. No dwelling unit on any Lot shall be leased for transient or hotel purposes, nor may any Owner lease less than the entire dwelling unit, nor shall any lease be for any period of less than six (6) months. Any lease must be in writing and provide that the terms of the lease and occupancy of this dwelling shall be subject in all respects to the provisions of the Declaration, the By-Laws and Rules and Regulations of the Association and that any failure of any lessee to comply with the terms of such documents shall constitute a default under the lease.

Section 25. Parking Rights and Restrictions. Adequate off-street parking shall be provided by the Owner of each Lot for automobiles and other vehicles owned and controlled by such Owner, members of the Owner's family or guests and invitees of the Owner.

Section 26. Driveways. All driveways shall be constructed of concrete or other material as may be approved by Declarant.

ARTICLE V

THE ASSOCIATION

Section 1. Association Membership. Every Owner of a Lot shall be a member of the Association which Declarant may organize at a time of its choosing. Membership shall be appurtenant to and may not be separated from ownership of any Lot. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Section 2. Availability of Documents. The Association shall maintain current copies of the Declaration, the By-Laws and other rules and regulations concerning the Property as well as its own books, records, and financial statements, available for inspection by all Owners, mortgagees, and insurers and guarantors of Mortgages, upon reasonable notice and during normal business hours.

In addition, any Mortgagee may, at its own expense, have an audited statement prepared with respect to the finances of the Association.

ARTICLE VI

COMMON AREA

PROPERTY RIGHTS AND OBLIGATIONS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right of enjoyment and easement in and to all Common Areas, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to and in accordance with the terms and provisions of this Declaration, including without limitation the following provisions:

a. The right of the Association to suspend the voting rights and enjoyment rights of an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

b. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless the Members entitled to at least a majority of the votes appurtenant to all Lots agree to such dedication or transfer and signify their agreement by a signed and recorded written document, provided that this subsection shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of sewerage, utilities and drainage facilities upon, over, under and across the Common Area without the assent of the membership when such easements, in the opinion of said Board, are requisite for the convenient use and enjoyment of the property.

c. The right of the Association, with the assent of Members entitled to at least two-thirds (2/3) of the votes appurtenant to all Lots, to mortgage, pledge, deed in trust, or otherwise hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Section 2. Delegation of use.

a. Family. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be exercised by any members of the Owner's family who occupy the residence of the Owner within the Property as their principal residence in new Hanover County, North Carolina.

b. Tenants or Contract Purchasers. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be delegated by the owner to his tenants or contract purchasers

who occupy a residence within the Property as their principal residence in new Hanover County, North Carolina.

Section 3. Maintenance Responsibility of Association. The Association shall have the responsibility of maintaining in good condition all Common Areas, including the entrance to Upper Reach Extension, plantings and shrubbery, amenities, or other facilities or improvements constructed thereon, and shall pay all costs of operation thereof, including premiums associated with general liability insurance insuring the Association from liability arising from ownership and operation thereof which the Board of Directors may elect to purchase. Further the Association shall be responsible for adopting rules and regulations governing utilization of all Common Areas. The Association shall be obligated to accept ownership of all Common Areas designated on the Map or any other Property that by Supplementary Declaration is made subject to this Declaration. To the extent necessary, the Association may employ personnel necessary to perform its obligations.

The specific maintenance and upkeep obligations of the Association with respect to Lots include maintenance of mailboxes and paper boxes. Boxes damaged beyond repair shall be replaced by the Association at the expense of the Owner of the Lot.

The Association shall have no obligation to maintain the exterior of any building, or any other improvements on any Lot. The owner of each Lot shall have an affirmative obligation to maintain the Lot and the exterior appearance of all buildings, structures, and improvements as provided in Article IV, Section 18, hereof.

Section 4. Private Right of Way. As is indicated hereinabove, the Private Right of Way shall be part of the common Area until same is accepted as a Public Right-of-Way by the State of North Carolina. The Private Right of Way have been initially constructed by Declarant and are intended for the use and benefit of all Owners, their guests, employees, tenants and invitees for the purpose of ingress, egress and regress from portions of the Property to public streets by vehicle or otherwise. Neither the inclusion of the Private Right of Way on the Map nor the dedication of the Private Right of Way for the use and benefit of the Owners shall be construed to be an offer to dedicate the Private Right of Way for public use. The Association shall, at its own expense, operate, repair, maintain, and reconstruct the Private Right of Way, including all paved portions thereof, all curb and gutter, all irrigation systems, and all storm drains, sanitary sewer lines, and other utility facilities installed therein or thereunder, all street signs and related improvements, and all landscaped medians