

*
2

BOOK 353 PAGE 894

FILED

'83 OCT 18 PM 4 47

DECLARATION OF PROTECTIVE COVENANTS

THIS DECLARATION is made and entered by Colony by the Sea Partnership, this 10th day of October, 1983.

ALMA C. WILSON
REGISTERED DEEDS
SOUTH CAROLINA, N.C.

WHEREAS, Colony by the Sea Partnership is the owner of that certain tract of land known as Sea Colony, as shown on map or plat thereof made by Quible and Associates, Inc., and said plat being recorded in Plat Cabinet B, Slides 185 and 186, and;

WHEREAS, the parties set forth above, hereinafter called "Declarant", intend to sell lots in said subdivision subject to certain protective restrictions, reservations and covenants in order to insure the most beneficial development of the said subdivision as a residential subdivision and to prevent any such use thereof as might tend to diminish the value or pleasurable enjoyment thereof, and it is the purpose of this Declaration to declare and make known the covenants, conditions and restrictions which shall apply to the lands as shown on said plat.

NOW, THEREFORE, Declarant hereby declares and makes known that the following restrictions, reservations and covenants are hereby imposed upon the said subdivision which shall run with the land in the subdivision and shall be binding upon Declarant, its agents, heirs and assigns, and upon all parties and persons claiming by, through or under them.

1. Easements. The Declarant reserves a perpetual, assignable and releasable easement and right of way over, on and under the ground to erect, maintain and use electric, cable television and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, cable television, telephone equipment, gas, sewer, water, drainage or other public conveniences or utilities on, in, over or under the front ten (10) feet, the rear ten (10) feet and the side five (5) feet of each lot.

2. Residential Use. No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one single-family residence. No business or business activity may be carried on upon the property at any time, provided, however, that nothing herein shall preclude the Declarant, its agents, affiliates and employees from using all or part of the land or buildings owned by them for the purpose of carrying on business directly related to the development, sales and/or management of the subdivision by the Declarant.

3. Subdivision of Lots. No lot shall be subdivided, or its boundary lines changed, except with the prior written consent of the Declarant, however, it shall be permissible to combine two or more adjacent lots, which have a common ownership, into one tract of land for purposes of building a dwelling which would be authorized on such lots individually. In the event of such a combination, the setback requirements relating to the common boundary between the lots will not prohibit building upon that boundary so long as setback requirements relating to the outside border of the tract are met. This provision does not reduce or remove any other restriction which may exist as a result of this Declaration.

4. Plans. No building, fences or other structure shall be erected, placed, moved into, maintained or in any way altered on any lot within the subdivision until the proposed building plans, specifications, exterior color or finish, plot plan (showing proposed location and elevation of such building structure, drives and parking areas) shall have been submitted in duplicate to Declarant in writing as evidenced by an approved copy of the elevation plans left in the permanent possession of the Declarant. The Declarant or its successor or designee may refuse to approve plans, locations or specifications upon any ground, including purely aesthetic considerations, which in the sole discretion of the Declarant shall seem sufficient. No alterations in the exterior appearance of any building or other structure shall be made without like approval by Declarant. The minimum square footage required shall be 1200 square feet of living area, exclusive of porches, patios, garages, unfinished areas and other protrusions from the base dimensions of the residence. The exterior of all houses and other structures, after approval of the building plans, must be completed within six months from the commencement of construction, except where such completion is impossible, or results in great hardship to the owner or builder due to strikes, fire, national emergencies or calamities. Where more than six months is required due to the size or type of

Notary Public
SOUTH CAROLINA
My Comm. Exp.
May 1984, 88,

structure, the owner shall have the right to reasonably extend the time of completion.

5. Maintenance of Buildings. All buildings, structures and their appurtenances shall be maintained in a suitable state of repair; in the event of destruction or casualty, premises are to be cleared and debris removed within sixty days from the date of such casualty. It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly or unkept condition of buildings and other structures or grounds on his lot which shall tend substantially to decrease the beauty of the neighborhood and of the subdivision as a whole. Upon the failure of an owner to comply with this requirement, the Declarant reserves the right at its option, within three weeks after written notice has been mailed to such lot owner's last-known address, to clean such property up or remove same if such property has been destroyed by fire or other disaster and Declarant's expense in so doing shall constitute a lien upon such owner's lot and improvements thereof, enforceable in the same manner as a mortgage or deed of trust.

6. Temporary Buildings. No trailer, double-wide modules, tent, shack or other temporary building shall be erected or placed on the lands within the subdivision except a temporary building as may be necessary for the storage of materials or the convenience of workmen shall be permitted during the erection of a residence upon said lands, and such temporary structure shall be removed from said premises upon issuance of an occupancy permit of such residence.

7. Signs. There shall be no signs, billboards or advertising structures of any nature whatsoever placed on any lots or lands, except that one sign per lot, not exceeding one square foot, shall be allowed for identification of the property owner and signs and notices of the property for rent or sale provided such sign shall be no larger than six square foot in size. Also, no animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose.

8. Road. The lot owners shall be responsible for the maintenance and repair of the roads as shown on the plat of Sea Colony until such time as the North Carolina Highway Commission or other State Agency with jurisdiction over the public roads has accepted the roads for public maintenance.

9. Occupancy. No residence erected upon any lot shall be occupied in any manner prior to completion of construction and the connection of permanent utilities.

10. Violations. If the owners or occupants of any lot, or all of them, or their successors and assigns, shall violate any of the covenants and restrictions herein, it shall be the right of the developers herein, or their successors and assigns, or any lot owner in the subdivision, to institute proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant or restriction for the purpose of preventing him or them from so doing, or to recover damages for such violation, or both.

11. Water and Sewage. All wells and toilets and sewage units installed on the property shall be in accordance with the rules and regulations of the North Carolina Department of Health and the Dare County Environmental Health Department and shall be located on such lands in positions approved by such departments. No outside toilets will be permitted under any circumstances.

12. Setbacks. No building is to be constructed closer than 25 feet from any street or roadway nor closer than 8 feet from the side lines thereof, nor closer than 10 feet from the rear property line. In the case of side property line which abuts a street, the minimum setback shall be 15 feet. The portion of a lot abutting a street shall be the front yard, corner lots may have the front yard on either side abutting a street.

13. As long as it owns ten (10%) percent or more of the lots in Sea Colony, Declarant reserves the right to include in any contract or deed thereafter made or entered into, such modifications and/or additions to these Protective Covenants, which will, in the sole opinion of Declarant, raise the standards or enhance the desirability of the subdivision as a residential area. Such reservation shall not be construed as authorizing Declarant to relieve any purchaser of any lot in the subdivision, in whole or in part, from any of the Protective Covenants set forth. Declarant may allow reasonable variances and

adjustments of these covenants in order to overcome practical difficulties and prevent unnecessary hardships in the application of the provisions contained herein; provided, however, that such is done in conformity with the intent and purposes hereof and provided also that in every instance such variance or adjustment will not be materially detrimental or injurious to other property or improvements in the subdivision.

14. Enforcement of these covenants, restrictions and declarations may be by Declarant or any owner of property subject to these covenants whether for equitable restraint against the violation thereof, or at law damages by virtue of any such violation and the invalidation of any one or more of the conditions and restrictions set out herein shall in no way affect any other of such provisions, all of which shall remain in full force and effect. The failure of Declarant or of any such party entitled to enforce any protective covenant contained in this Declaration however long continued shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement.

15. The foregoing conditions, reservations, declarations, covenants and easements shall be run with the lands and be binding upon all purchasers of lands or lots in said properties covered by these restrictions, and upon all persons or entities claiming under them through the 1st day of October, 1999, after which time the same shall be extended for successive periods of ten (10) years each, unless an instrument signed by a majority of the then owners of the lots subject thereto has been recorded, agreeing to change the restrictions and covenants in whole or in part. For the purpose of such vote, the owners will be entitled to one (1) vote per lot regardless of the number of persons or entities owning any one lot.

16. Declarant reserves the right to bring other property belonging to said Declarant under these Protective Covenants by filing a Supplementary Declaration setting forth that purpose.

17. Each lot owner shall automatically become a member of the Sea Colony Subdivision Property Owners Association and shall be subject to the By-Laws of that Association. It is acknowledged that the Association shall consist of the owners of all lots within the subdivision and that each lot shall be entitled to equal voice or vote in the affairs of the Association. The Association shall have the right to assess the owners of lots within the subdivision for prorata shares of various costs, based upon the number of lots within the subdivision. Such costs will include the costs of maintenance of common properties, the streets and waterlines within the subdivision and other common expenses in the sole discretion of the Owners Association.

18. In order to provide for payment of dues and assessments as set forth above, the Association shall have the right to place a claim of lien against any of the lots within the subdivision and such lien shall represent the unpaid amount plus expenses and costs of collection. Liens as referred to herein are to be filed in the manner of those lien rights created by N.C.G.S. Section 44 A.

19. At such time as fifty (50%) of the lots within Sea Colony are conveyed, the process of approval described in Paragraph 4 above shall be granted to the Association, if it is at that time serving as an active authority; until then, the approval shall be given by Declarant or its designee.

20. Roads and Access. Declarant is the owner of other property to the east of the Sea Colony Subdivision. It is acknowledged that such property is being and has been developed as a multi-unit project. As a result of certain common interests and concerns between the subdivision and the multi-unit project, the Declarant makes known the following:

A. The road through the subdivision also provides access to those properties to the east of the subdivision. It is the intention of this Declaration that the property owners within the subdivision and the Sea Colony Condominium Project will share in the cost of maintaining the said road. The ratio for allocating such costs shall be based upon the number of lots in the Sea Colony Subdivision added to the number of completed units in the multi-unit project with each unit or lot owner sharing on an equal basis in such costs or assessments.

B. Declarant dedicates to the owners of the lots within the subdivision

and their successors and assigns, a right of access, ingress and egress, to and from the Atlantic Ocean along the road referred to above. A complete description of the said road, by metes and bounds, is set forth in Attachment A to the Declaration of Unit Ownership recorded in Book 332, at page 215 of the Dare County Public Registry. The right so described is subject to the rights of others in such easement of right of way, including, but not limited to, the owners of units within and the developers of the multi-unit condominium project located east of the subdivision, known as Sea Colony Condominiums and/or Colony by the Sea Condominiums, or by any other name. In addition, this Declaration is subject to the rights of the Declarant, its successors and assigns, to the free and unencumbered access to the Currituck Sound, and the property west of the State Road and the use in common with others of such properties, including the unit owners referenced above.

C. By this Declaration, the lot owners of lots within the subdivision of Sea Colony shall be entitled to access to the Atlantic Ocean along and across the areas designated for such use by the Declarant or its successors. The right of access described in Paragraph B above shall be understood to apply to the road right of way only and this paragraph shall apply to the pedestrian crossings and points of access between the roads and parking areas and the ocean located in the discretion of the developer or Declarant.

D. From time to time, Declarant or its successors, or the developer of the multi-unit project, will build certain improvements as amenities to the condominium project. Some of these improvements will be made available to owners of lots within the Sea Colony Subdivision. Those amenities to which the lot owners shall have access will be specifically designated by Declarant or the developer of said project and may not include all of the amenities or improvements constructed on the property. It is understood that one of the functions of the association formed between these lot owners will be to provide a means by which the lot owners can be assessed for the prorated share of maintenance costs and other reasonable costs for access to such amenities and the common upkeep thereof. The ratio by which such costs are allocated shall be based on the total of the completed condominium units and the total number of lots, with each lot paying an equal share with each unit owner. The amounts due from each lot shall be collectible by the lot owners association or directly from lot owners to the fund maintained for such expenditures. The provisions for enforcement of liens shall apply equally to assessments described in this paragraph. It being the expressed intention of this paragraph that lot owners shall pay an equal share of the costs of maintaining and using the amenities to which they are provided access along with the unit owners and that each lot owner shall be considered as a unit owner for purposes of allocating such costs. The amenities which shall be dedicated to use by the lot owners include, but are not limited to, the following: one pool, one beach access boardwalk, one parking area so designated. (Parking area is understood to include not less than sixteen designated spaces)

It is not intended that lot owners shall pay or contribute toward costs of common areas and amenities to which access is not provided them.

In the event that the lot owners fail to form an association or fail to maintain such a group or fail to pay those sums allocable as described in the preceding paragraphs, the Condominium Owners Association shall have a right to collect the sums due from each lot owner and shall have the appropriate lien rights for enforcement of the powers of collection.

The dedications of access made in this instrument are made by Colony by the Sea Partnership as the owner of all lands subject hereto and as owner and developer of the Sea Colony or Colony by the Sea Condominium Project and not solely as owner of the lots described and referred to herein. Lots within the residential subdivision of Sea Colony are owned subject to this Declaration, and conveyance of said lots, with or without reference to this instrument, will obligate the successive owner to maintain the prorata share of costs described herein and shall grant to each successive owner the rights created by this Declaration.

In witness whereof the undersigned has signed this Declaration for the purposes herein expressed.

COLONY BY THE SEA PARTNERSHIP

BY: James Belchor (SEAL)
JAMES BELCHOR

Seth P. Talley (SEAL)
SETH TALLY

Terry J. Dixon (SEAL)
TERRY J. DIXON

Sea Colony Ltd joins in the execution of this instrument for the purpose of indication of consent as original developer.

SEA COLONY, LTD.

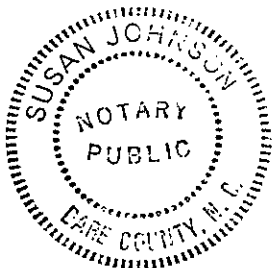
BY: [Signature] (SEAL)

NORTH CAROLINA
DARE COUNTY

I, THE UNDERSIGNED NOTARY PUBLIC, certify that Terry J. Dixon and Seth P. Talley and James Belchor personally appeared before me and acknowledged the execution of the foregoing instrument. This is the 18th day of October, 1983.

My commission expires: 10-2-88

Susan Johnson



NORTH CAROLINA DARE COUNTY

The foregoing Certificate(s) of Susan Johnson a Notary Public
of Dare Co., NC

is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

Noma L. Wilson Register of Deeds For Dare County

By Noma L. Wilson Deputy/Assistant-Register of Deeds

RECORDED: Oct 19, 1983