

DECLARATION OF PROTECTIVE COVENANTS

AND RESTRICTIONS OF
COLONY ON ROANOKE

FILED 40
'90 JUN 11 PM 4 25
DOUGLAS A. FRY
REGISTERED DEEDS
DARE COUNTY, N.C.

BK 711 PG 0225

THIS DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS, made this the 19th day of May, 1990, by MARY EVANS BASNIGHT and NANCY B. KEBSCHULL and husband, WM DAVID KEBSCHULL, hereinafter called "Developers";

W I T N E S S E T H:

THAT WHEREAS, Developers are the owners of all those certain lots of land of the subdivision known as "Colony on Roanoke", as shown on map or plat thereof made by W. M. Meekins, Jr. & Associates, Surveyors, dated August 18, 1989, and recorded in Plat Cabinet C, Slide No. 112D, Public Registry of Dare County, North Carolina;

AND WHEREAS, the Developers intend to develop the property shown on the aforesaid plats, according to a common scheme with the purpose that the restrictions herein imposed shall inure to the benefit of each and all of the purchasers of lots as shown on the said plats, to insure the best use and most appropriate development and improvements of each building site thereon, to protect the owners of the building sites against improper use of surrounding lots which would depreciate the value of their property, to preserve the natural beauty of the property and guard against the erection of structures of improper or unsuitable materials, and to insure the highest and best development of said property, do declare and make known the covenants, easements, conditions, and restrictions which shall apply to the lots as shown on said plat.

NOW, THEREFORE, Developers hereby declare and make known that the following restrictions, easements, reservations and covenants are hereby imposed upon the said properties which shall run with the lots in the subdivision and shall be binding upon Developers, their agents, heirs and assigns and upon all parties, entities and persons claiming by, through or under the Developers.

1. Easements. The Developers on behalf of themselves and/or such utility companies that may service the subdivision from time to time, reserve a perpetual right, privilege and easement ten (10) feet wide on the front, rear and side lines of each lot to construct, maintain and operate in, upon, across and through said easements in a proper and workmanlike manner, electricity, cable television, telephone, gas, sewage, water drainage and other conveniences and utilities and appurtenances necessary or convenient thereto, together with the right at all times to enter upon the said easement for the purposes of inspecting, altering and repairing the same. Where any two (2) or more lots are in common ownership and used as one (1) building site, the easement reserved herein shall be located around the outside perimeter of the combined lots.

2. An easement of ingress and egress for the benefit of all lot owners in the subdivision is reserved in that portion of the lots adjoining the Roanoke Sound which lies to the East of the East toe of the hills on Lots 8 and 9, and ten (10) feet along the sound on Lots 6 and 7 for the use of the Developers or the Association in maintaining the jetties on said properties.

3. No lot may have direct access to U. S. 64 and 264 with the exception of Lot No. 1 as shown on the plat of Colony on Roanoke.

McCOWN & McCOWN
ATTORNEYS AT LAW
MANTEO, N. C. 27954

4. Each lot in the subdivision shall be used exclusively for residential purposes, and no dwelling thereon shall be erected, altered, placed or permitted to remain on any lot other than a one (1) single-family residence and any accessory buildings or improvements approved by the Developer. Only one (1) family may occupy the residence and its accessory buildings, provided, however, a servants quarters or guest suite which is a part of the main residence, approved by the Developer may be constructed in connection with the main residence. No business activity may be carried on or upon the property at any time provided nevertheless nothing herein shall preclude the Developers, their successors, heirs or assigns from using all or part of the dwelling owned by them for the purposes of carrying on the business related directly to the development and management of the subdivision.

5. No building or structure, including porches, steps, stairways, or garages shall be constructed closer than ten (10) feet from the side-lines of lots as shown on the above plats.

6. No dwelling shall be constructed on any one building site containing less than 2,000 square feet of living area with the exceptions of Lots 1, 2 and 13, and any dwellings constructed on these three (3) lots shall have 1,540 square feet of living area. There shall be excluded from the definition of living area and calculation: garages, breezeways, porches, decks and unfinished attics. No building shall be erected on said lot having an elevation exceeding 35 feet.

7. All toilets and sewage disposal systems installed upon said lots shall be in accord with the rules and regulations of the North Carolina Department of Health and no outside or chemical toilets permitted.

8. No building or other structure or site work preparatory to construction shall be begun, altered, added to, maintained or reconstructed on any lot until the plans and specifications for such work have been received and approved by the Developers. Before commencing such review, a lot owner shall submit to the Developers a complete set of plans and specifications, which shall remain with the Developers, including, but not limited to: site plans; foundation plan; floor plan or plans; the floor directional elevations; and schedule of proposed exterior colors and materials. No change shall be made from such approved plans and specifications nor shall subsequent alterations be caused to the site or building without the expressed written approval of the Developers. In the event the Developers do not deny approval of the plans within thirty (30) days from the date of the submission of the same, the plans shall be and are deemed to be approved and construction may be begun by the owner.

The Developers may approve the plans, site plan, or specifications conditionally, or it may refuse approval upon any grounds, including purely aesthetic considerations, which in their sole discretion shall appear warranted to protect the beauty and harmony of the subdivision. In no event shall the Developers, in the exercise of their discretion, approve plans for any main residence with a total area less than called for in Paragraph No. 6 in the definition of enclosed living area.

The exterior on any building erected on said lot shall be completed within six (6) months after the beginning of construction.

9. In order to preserve the harmony and integrity of the ecosystem, tree and vegetation removal shall be restricted to the ingress and egress area, the dwelling footprint or other Developer approved structures. Any grading of lots or changing of existing contours requiring substantial relocation of soil or sand and destruction of trees and vegetation, shall require prior approval of a grading plan by the Developers before work can proceed. Any excess of soil or sand removed from lot or lots shall remain in the subdivision and be deposited at a location designated by the Declarant.

10. Any lot in the subdivision which lies within the area known as the "historical corridor" must obtain permission from the appropriate agency or organization before commencing any work on the lots in addition to the requirements set forth herein by the Developers.

McCOWN & McCOWN

ATTORNEYS AT LAW

MANTEO, N. C. 27854

11. No lot in the community may be used as a street, lane, right of way or easements over which access might be obtained to adjacent properties without the written, recordable consent of the Association.

12. No signs of any kind, excepting signs advertising the property for rent or for sale, or identifying the owner or occupant of the property, shall be erected on any lots and no animals, livestock or poultry of any kind shall be raised, bred, or kept for any purpose on the lot herein conveyed, other than the commonly accepted domestic pets, which shall not be permitted to run at large.

13. No lot in the subdivision shall at any time be used or occupied for the manufacture or sale of any articles or for any commercial purpose of any kind or character whatsoever, or for the carrying on of any home occupation without the express consent of all lot owners in the subdivision.

14. Each lot owner shall provide screening from public view, approved by the Developer, for garbage stations, fuel tanks, service yards, air condition units, clothes lines, water tanks, rubbish storage receptacles or for any other permanent facility which the Developers, in their sole opinion, shall require to preserve the beauty and harmony of the development.

15. All driveways and parking areas shall be stabilized or paved with a material acceptable to the Developers and such areas must be stabilized and paved with such material prior to the occupancy of the dwelling on the lot. No on-street parking will be allowed in the subdivision. The road shown on the subdivision plat is a private road and in the event any damage is done to the road during construction of a house or other structure on the lot, the lot owner shall be responsible to repair all damage.

16. The lot owners within the subdivision shall be responsible for the maintenance and repairs of the road, the common areas, the easement areas as retained herein, the jetties, and for liability insurance if approved by the Association, and for the purpose of enforcing the restrictive covenants and to provide for maintenance of the private road, common areas, easements and jetties, the Developer caused to be formed the Colony on Roanoke Association, Inc., a non-profit corporation, and all owners of said lots as shown on the said plats shall become members of the said Association:

a. The purpose of the said Association is the operation and maintenance of the road, the community lights, if any, maintenance of the common areas and easements and the jetties;

b. That each lot owner shall initially be assessed the sum of TWENTY-FIVE (\$25.00) DOLLARS per original lot. The Board of the Association, may, after the consideration of maintenance costs and future needs of the Association, fix the actual annual assessment for any year at a higher or lesser amount. The Association may also assess a penalty for late payment.

c. The annual assessment provided for herein shall begin on the 1st day of January, 1991, and be paid in January of said year and the assessment for each succeeding year shall become due and payable in the month of January of each calendar year thereafter;

d. If the assessments are not paid when due, then such assessment shall become delinquent and shall, together with interest, penalties and costs of collection thereof as hereinafter provided become a continuing lien upon the property. The lien created herein shall be prior to all other liens except (a) liens for real estate taxes due and unpaid, (b) all sums unpaid on Deeds of Trust and other encumbrances recorded against the property prior to the docketing of this lien, and (c) materialmen and mechanics liens.

e. The Association may bring an action at law against the owner personally obligated to pay the same or to foreclose the lien against the property, enforceable in the same manner as deed of trust or lien.

f. The responsibility to become a member of the lot owners association is absolute and becomes effective whether or not the lot owner has built a structure on his lot.

g. That no restriction, easement, covenant or condition imposed by this declaration shall be construed or interpreted as personal to the Developers herein and the Association shall have all rights reserved in any easement, covenant, restriction or condition imposed on the said land as shown on said plats in this Declaration, when conveyed to it by the Developers.

h. The Association shall have one (1) class of voting membership. When more than one person owns any original lot, all such persons shall be members and the vote for such lot shall be exercised as they among themselves determine. In no event shall more than one (1) vote be cast with respect to any such original lot. If an original lot is divided, then the owners of the portion of the divided lot and the original lot shall have one (1) vote for the original lot and a percentage of one (1) vote for the divided lot.

i. The Association shall provide in its By-Laws, rules and regulations for the community as adopted by the Association members.

j. That the Developers reserve the right to convey all responsibilities of the Developers under these restrictive covenants to the Association when ninety (90%) percent of the lots have been sold and that from such time the Association shall perform all the duties reserved in these restrictive covenants.

17. Duration. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association, or the owner of any lots subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then owners of two-thirds (2/3) of the original lots has been recorded, agreeing to change said covenants and restrictions in whole or in part. Provided, however, that no such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every owner at least ninety (90) days in advance of any action taken by the Association.

18. Notices. Any notice required to be sent to any member or owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as a member or owner on the records of the Association at the time of such mailing. It shall be the responsibility of each member of the Association to keep the Association advised of his or her current address.

That all plans for construction on the said lot shall be sent to:

Ms Nancy B. Kebschull
216 Goucher Way
Churchville, MD 21028

or to such other address as the Developers may notify the lot owners in writing.

19. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damage, and against the land to enforce any lien created by these covenants; and failure by the Association or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

20. Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in force and effect.

IN WITNESS WHEREOF, the Developers have hereunto set their hands and seals the day and year first above written.

Mary Evans Basnight (SEAL)
Mary Evans Basnight

Nancy B. Kebschull (SEAL)
Nancy B. Kebschull

Wm David Kebschull (SEAL)
Wm David Kebschull

NORTH CAROLINA
DARE COUNTY

I, the undersigned, a Notary Public of the County and State aforesaid, certify that Mary Evans Basnight personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this the 8th day of June, 1990.

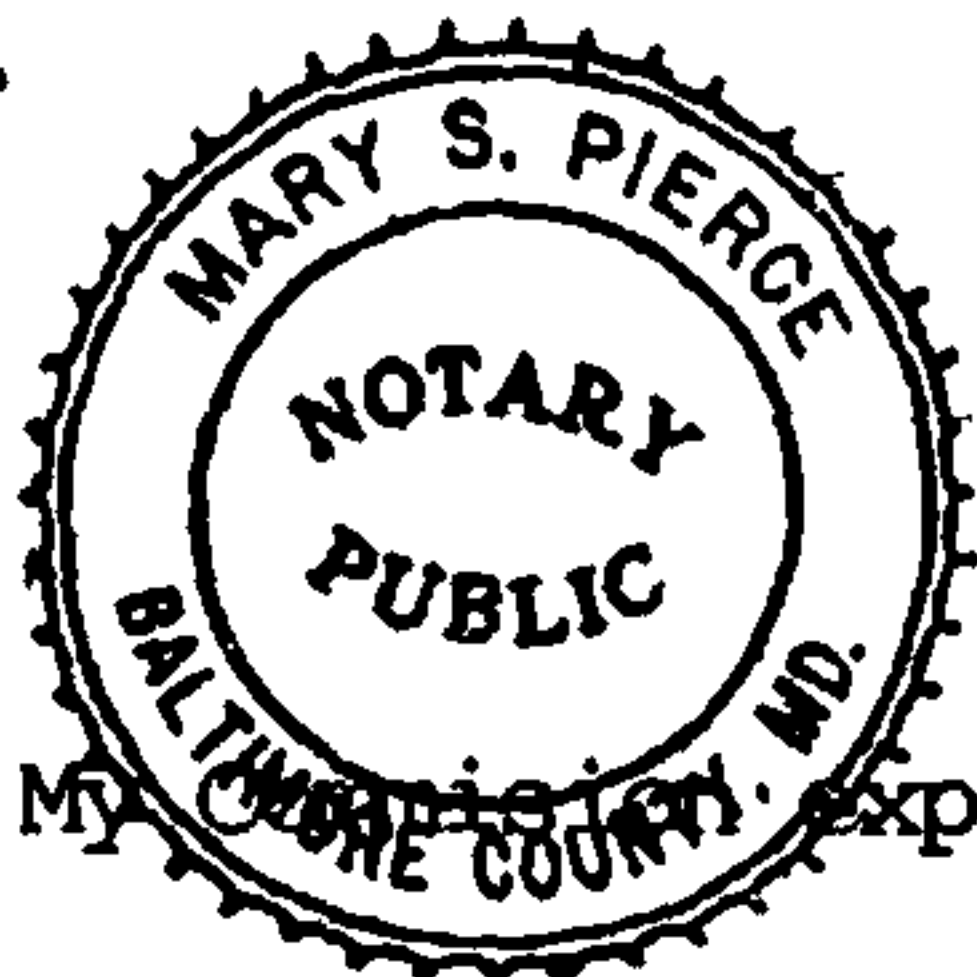
Penny C. Beasley
Notary Public

My Commission expires: 12-10-94

**PENNY C. BEASLEY
NOTARY PUBLIC
TYRRELL COUNTY, N.C.**

NORTH CAROLINA
DARE COUNTY

I, Mary S. Pierce, a Notary Public of the County and State aforesaid, certify that Nancy B. Kebschull personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this the 1st day of June, 1990.

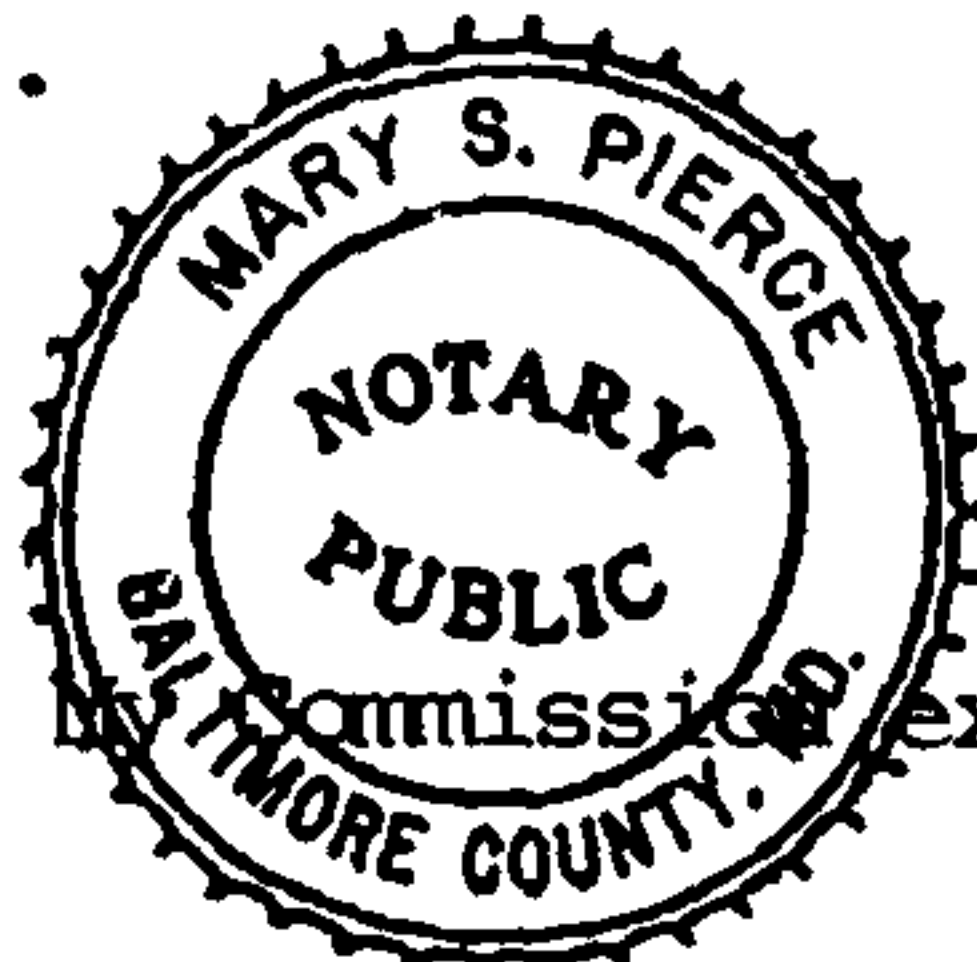


My Commission expires: July 1990

Mary S. Pierce
Notary Public

NORTH CAROLINA
DARE COUNTY

I, Mary S. Pierce, a Notary Public of the County and State aforesaid, certify that Wm David Kebschull, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this the 1st day of June, 1990.



My Commission expires: July 1990

Mary S. Pierce
Notary Public

McCOWN & McCOWN
ATTORNEYS AT LAW
MANTEO, N. C. 27954

The foregoing certificates of Penny C. Beasley a Notary Public of Tyrrell County, North Carolina, and Mary S. Pierce a Notary Public of Baltimore County, Maryland, 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.

Doris A. Day REGISTER OF DEEDS FOR DARE COUNTY
Norma Jean Ward Deputy/Assistant Register of Deeds