

For Amendment to Covenant, see Book 1125
Page 857. This 18th Day of April, 1989.

Phyllis N Wall Reg of Deeds
By: Mary N Ball Dep

REC-1106 PAGE 779

STATE OF NORTH CAROLINA
COUNTY OF JOHNSTON

DECLARATION OF RESTRICTIVE
COVENANTS AND EASEMENT FOR LAKE

This declaration was made on this the 4th day of October, 1988,
by and between:

GRANTOR	:	GRANTEE
	:	
KELLY WHITE FINCH and wife,	:	NEUSE COLONY LAKE
REBECCA FLOWERS FINCH	:	ASSOCIATION II, INC.
	:	
	:	

The designation declarant, member, grantor as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

Declarant is the owner of Lots 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26 (hereinafter referred to Lots 15 through 26) with that plat of Section B of the Neuse Colony Subdivision recorded in Plat Book 31, Page 85, Johnston County Registry. Declarant believes that locating, establishing, constructing, and maintaining a lake and dam system, as shown on the recorded plat in Plat Book 29, Page 297, hereinafter called "the recorded plat", would be of immediate benefit to the use of the lots bordering upon and flooded by the supposed lake system, be of aesthetic benefit to the subdivision as a whole, and would provide a scenic location for a walking easement along the edge of the lake giving access to a jogging trail. Declarant also desires the system to be governed by an incorporated association with the authority to make homeowners assessments.

Now, therefore, due to the mutual benefits to the usage of each of the owners of the lots thereby flooded and to the aesthetic benefits to the subdivision as a whole, Declarants hereby declare, give, grant, and convey to the Neuse Colony Lake Association II, Inc. the perpetual easement and right of way for a certain flood control channel, dam, and lake system hereinafter more particularly designated, described, and restricted, over and across the aforesaid lots as set forth in the recorded plat.

TO HAVE AND TO HOLD the above right of way and easement hereby granted to the Grantee in title forever; it is agreed that the rights hereby granted are for the use of, appurtenant to, and run with Lots 15 through 26 of the rcorded plat.

The right of way hereby conveyed and released is subject to the following terms, conditions, restrictions, and affirmative obligations which are for the purpose of protecting the value, use, desirability, and aesthetics of, which shall run with the Lots 15 through 26 and be binding on all parties having any right, title, or interest in said lots, or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

For Amendment to Covenants See Book 1133 Page
662. This 3rd Day of July, 1989.

Phyllis N Wall Reg of Deeds
By: Mary N Ball Deputy

Amendment to
FOR THE ~~NEUSE~~ Covenants
PAGE 226 THIS 21st DAY OF Oct 1992
PHYLIS N WALL REGISTRY OF DEEDS
BY Rhonda Sherry
DEPUTY

ARTICLE I: DEFINITIONS

1. Section 1: Association shall mean and refer to Neuse Colony Lake Association II, Inc.

2. Section 2: Owner shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

3. Section 3: Common area shall mean the lake as shown on the recorded plat and a 20 foot maintenance and improvement easement extending 20 feet from the edge of the lake on all the borders as shown on the plat in all directions which shall also include such personal property as is located by the Association on the lake and other interest therein, and other resources and improvements located thereon now or hereafter acquired by the Association for the general use and enjoyment of the owners of the lake.

The Association shall have the following rights and obligations to:

1. Construct, reconstruct, inspect, maintain, and repair a flood control channel, namely the flood and water control system as shown on the recorded plat whether open or covered, protection work, and appurtenant structure for the purpose of confining the water of the lake and its tributaries;

2. Enter upon the lands with personnel, vehicles, and equipment within the construction and maintenance easement;

3. Remove from the right of way of the easement of the lake and the construction maintenance easement all trees and vegetation that interfere with the purposes for which the right of way is conveyed and released;

4. Take from or add to the right of way and use earth, rock, sand, and gravel for the purpose of excavating, widening, deepening and otherwise rectifying the lakes and channel, and the construction, maintenance, and repair of the embankment, fencing, protective work, appurtenant structure by the Association, its officers, agents, employees, and by persons under contract with the Association and their employees whenever and wherever necessary for water and flood control purposes;

5. Install, maintain, or remove landscaping or other environmental improvements;

6. Make all necessary earth fills;

Declarant shall have the right to construct on the lake channel necessary facilities and improvements thereto in such manner as they deem appropriate in accordance with the recorded plat, which right shall terminate on June 1, 1989, unless the Declarants waive their right hereunder, in writing, prior to such date.

4. Section 4: Lot shall mean and refer to the Lots 15 through 26, Plat Book 31, Page 85, Johnston County Registry.

5. Section 5: The community and property shall mean and refer to that certain lake and dam and the maintenance easement extending 20 feet from the edge of its waters on all its borders and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

6. Section 6: Declarant shall mean and refer to Kelly White Finch and Rebecca Flowers Finch.

BOOK 1106 PAGE 786

-8-

IN WITNESS WHEREOF, the Declarant has hereunto set their hands and seals, this the 4th day of October, 1988.

NEUSE COLONY

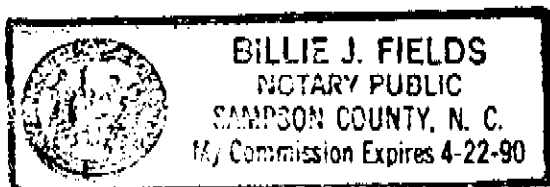
Kelly White Finch (SEAL)
KELLY WHITE FINCH

Rebecca Flowers Finch (SEAL)
REBECCA FLOWERS FINCH

STATE OF NORTH CAROLINA
COUNTY OF JOHNSTON

I, a Notary Public of the County and State aforesaid, certify that KELLY WHITE FINCH and wife, REBECCA FLOWERS FINCH, Grantor, personally appeared before me this date and acknowledged the execution of the foregoing instrument.

Witness my hand and notarial seal, this the 4th day of October, 1988.



Billie J. Fields (Hood)
NOTARY PUBLIC

MY COMMISSION EXPIRES: 4-22-90

State of North Carolina - Johnston County
The foregoing certificate(s) of Billie J. Fields (Hood)

Notary(Notaries) Public is(are) certified to be correct.
This instrument was presented for registration and recorded

in Book 1106 Page 779
This Oct 4 1988 at 12:45 PM

Phyllis Wall
Register of Deeds

Deputy Register of Deeds

ARTICLE II: PROPERTY RIGHTS

Section 1: Owner's Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the common area which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees and set rules of conduct limiting the use of the lake and any recreational facility situated upon the common area;

(b) the right of the Association to suspend the voting rights and right to use of the lake recreational facilities by 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;

(c) 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 an instrument agreeing to such dedication or transfer signed by two-third (2/3) of each class of members has been recorded.

Section 2: Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the common area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property, but it shall not give any owner the right to give blanket approval for the use of the lake to others than those specified in this paragraph on a permanent basis. Any use by invitees shall be restricted to occasional daily invitations.

Section 3: Easement for Utilities. There is hereby reserved to the Declarant and the Neuse Colony Homeowners Association, Inc. blanket easements upon, across, above and under all property within the community for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the community or any portion thereof, including, but not limited to, gas, water, sanitary, sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Declarant and the Association might decide to have installed for either themselves or their designee, as the case may be, as well as the right to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables, and other equipment relating to the providing of any such utility or service. Should any party requesting such utility or service, request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.

ARTICLE III: MEMBERSHIP AND VOTING RIGHTS

Section 1: Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

Section 2: The Association shall have one (1) class of voting membership which shall be all owners who shall be entitled to one (1) vote

for each lot owned. When more than one (1) person holds an interest in any lot, all such persons shall be members. The vote for such lots shall be exercised as they determine, but no event shall more than one (1) vote be cast with respect to any lot.

ARTICLE IV: COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1: Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot owned within the properties, hereby covenants, and each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2: Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the properties and for improvement and maintenance of the common easements and the common area.

Section 3: Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first lot to an owner, there shall be no assessment. The first and the maximum annual assessment shall be Fifty Dollars (\$50.00) commencing and due on January 1, 1989. Assessment, however, shall be subject to the following provisions for changing the amount of assessment:

(a) from and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased each year not more than five (5%) percent above the maximum assessment for the previous year without a vote of the membership.

(b) from and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased above five (5%) percent by a vote of two-third (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) the Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

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 that 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 area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3)

of the votes of the members who are voting in person or by proxy in a meeting duly called for the purpose.

Section 5: Notice and Quorum for Any Action Authorized Under Section 3. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty (60%) percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6: Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.

Section 7: Date of Commencement of Annual Assessments - Due Dates. The annual assessments provided for herein shall commence as to all lots upon sale by Declarant. The first annual assessment shall be due in full on January 1, 1989. The Board of Directors shall fix the amount of the annual assessment of each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. 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. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8: Effect if Nonpayment of Assessments. Remedies of the Association. Any assessments not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six (6%) percent per annum. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose lien against the property. 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.

Section 9: Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10: Exempt Properties. Each lot owned by Declarant shall be exempt from these covenants until the lot is sold by Declarant and the deed to the lot is recorded. This exemption applies regardless of possibly

apparent contradictory language elsewhere in these covenants.

Section 11: Loans to the Association. The Association's Board of Directors may borrow monies from time to time, so long as the repayment of the principal borrowed and the interest thereon shall be accomplished within the term of five (5) years. Loans that shall require repayment over a longer term shall first be approved by two-thirds (2/3) of the votes of the members present in person or by proxy at a meeting duly called for this purpose.

In order to secure the repayment of any and all sums borrowed by it from time to time, the Association is hereby granted the right and power: (1) to assign and pledge revenues received and to be received by it under any provision of this Declaration; and (2) to enter into an agreement with Noteholders with respect to the collection and disbursement of funds; and (3) to apply fund received by the Association first to the payment of the principal and interest, when due, on such loans; and (4) to establish such collection, payment and lien enforcement procedures as may be required by the Association's Board of Directors.

Section 12: Reserves and Surplus. The Association's Board may establish, from time to time, reserves for such lawful purposes as in its sole discretion it may determine necessary to be desirable for the greater financial security of the Association and its effectuation of its purposes. The Association shall not be obligated to spend in any fiscal year all of the sums collected in such year, and may carry forward, as surplus, any balance remaining; nor shall the Association be obligated to apply any such surplus to the reduction of the amount of the annual assessment in the succeeding year, but may carry forward the same from year to year.

Section 13: Contractual Authority. The Association shall be entitled to contract with any corporation, firm or other entity for the performance of the various duties imposed on the Association hereunder and the performance by any such entity shall be deemed the performance of the Association hereunder.

Section 14: Basis of Current Assessment. This Declarant based the current assessment on projected maintenance costs for the maintenance of the lake, dam and related facilities servicing the lake.

ARTICLE V: GENERAL PROVISIONS

Section 1: Enforcement. The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by 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. The Court may award reasonable attorney fees to the prevailing party.

Section 2: Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 3: Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they

shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than 70 percent (70%) of lot owners, and thereafter by an instrument signed by not less than sixty-six percent (66%) of the lot owners. Any amendment must be recorded.

ARTICLE VI: USE RESTRICTIONS

- (1) No boats, boat docks, piers or structures are permitted in or on the water.
- (2) Swimming, scuba diving and related activities will be permitted.
- (3) Fishing will be permitted. Related activities not approved will be trapping, in any manner, electrical shock, explosives, or the setting of trot lines. The lake(s) will be stocked in accordance with N.C. Wildlife Resources Commission recommendations. Additional and/or other type fish and other forms of wildlife will not be intentionally introduced into the lake.
- (4) Herbicides will be used to control algae and related plant growth. Cottonseed meal, superphosphate, and gypsum will be used to clear muddy water. Fertilizer will be used to enhance fish production. Dilution rates and methods of application will be in accordance with N.C. Wildlife Resources Commission recommendations. No chemical products of any type will be used unless they have been approved and registered with the U.S. Environment Protection Agency.
- (5) No building or structure shall be erected, altered, placed or permitted to remain on the maintenance/construction easement around the lake.

ARTICLE VII: CONSTRUCTION EASEMENT/LAKE MAINTENANCE/JOGGING EASEMENT

The construction easement hereby dedicated extending 20 feet from the edge of the water line of the lake is for the purpose of maintaining the same. Any maintenance or reconstruction should also be within the easement granted Neuse Colony Association, Inc. for a walking/jogging easement that is part of the system of the whole Neuse Colony Subdivision; therefore, it shall be the affirmative duty of the Grantee to repair any damage done to that jogging or walking easement in the process of maintaining or reconstructing the lake or the improvements thereon.

In the event Neuse Colony Lake Association II, Inc. fails to reasonably maintain the lake and their channels, or repair the jogging easement around the lake pursuant to the terms of this Declaration, Neuse Colony Association, Inc. may sue to enforce maintenance by equitable relief or maintain the lake and/or easement and assess all costs, including reasonable attorney fees to Neuse Colony Lake Association II, Inc. and its members individually.