

BK. 198 - Pg. 505

This protective covenant agreement made and entered into this the 10th day of June 1959 by and between James G. W. MacLamroch, and wife, Maxine Pugh MacLamroch, of Lamrocton, Greensboro, North Carolina, William B. McLean and wife, Ruth P. McLean, James A. Singleton, jr., and wife, Virginia McLean Singleton, and George F. Spell and wife, Louise McEarchin Spell, of Robeson County, North Carolina, as parties of the first part, the First Citizens Bank & Trust Company of Smithfield, North Carolina, as Trustee for James G. W. MacLamroch, William B. McLean, James A. Singleton, jr., George F. Spell, Lewis R. Holding, Robert P. Holding, jr., and Frank B. Holding, as party of the second part, all persons, firms and corporations who may hereafter acquire any lot or portion of land which is a part of Blocks fifteen (15), eighteen (18), twenty one (21), twenty two (22), twenty three (23), of Emerald Isle By-the-Sea, as parties of the third part, witnesseth:

That whereas the parties of the first part are individually the owners of Blocks fifteen (15), eighteen (18), twenty one (21), twenty two (22), twenty three (23) of Emerald Isle By-the-Sea, a map upon which are shown the said blocks being recorded in the office of the Register of Deeds of Carteret County, North Carolina, in Map Book 3 on pages 34 thru 45; and,

Whereas, the party of the second part is the owner of the area of land between the high water mark of the Atlantic Ocean and the southern property line of Blocks fifteen (15), thru twenty three (23) of Emerald Isle By-the-Sea and is also the owner of the streets, alleys and walkways shown and designated on said map of Emerald Isle By-the-Sea; and,

Whereas, it is the desire and purpose of the parties of the first part to promote and develop those blocks of Emerald Isle By-the-Sea which are owned by them individually, as a residential community of such type and character as will make it a desirable, attractive and healthful place in which to live, and also a desire to maintain and enhance the value of their property located on Emerald Isle By-the-Sea; and,

Whereas, it is necessary for the party of the second part to join with the parties of the first part in the execution of this agreement for the reason that the party of the second part owns title to the property hereinafter identified as ocean beach and also the streets, alleys and walkways which are shown as a part of the Blocks numbered fifteen (15) thru twenty three (23), inclusive, of Emerald Isle By-the-Sea, and the said party of the second part desires to cooperate with the parties of the first part in the use and development of their property which is Blocks fifteen (15), eighteen (18), twenty one (21), twenty two (22), twenty three (23):

Now, therefore, the said parties of the first and second parts do covenant and agree with the parties of the third part, their heirs, successors and assigns, that the property hereinafter defined and described shall be subjected to the following restrictions:

RESTRICTIONS

The restrictions run with the land and are effective as to all persons who now or hereafter may own any lot or parcel of land located within the areas herein described, and are expressly assented to by the parties of the first part, for themselves and their heirs; and all subsequent owners by their acceptance of any deed or other mode of conveyance of the said property or any portion thereof.

SECTION I
General

These restrictions apply to Blocks fifteen (15), eighteen (18), twenty one (21), twenty two (22), twenty three (23), as shown on map of Emerald Isle By-the-Sea. The restrictions in this section cannot be altered, changed or modified during the term of this agreement, except as provided for in Section VI.

1. The hereinbefore described property shall be used only for residential purposes and no business or commercial activity shall be engaged in or conducted thereupon except hotels, motels, apartment houses or other buildings for the purpose of providing residence.

BK. 198 - Pg. 506

The written consent of the owner, as defined in the succeeding paragraph, must be obtained prior to the construction of a hotel, motel or apartment or multiple family dwelling or building, except a duplex or two-family buildings.

The written consent must be set forth in the deed from the person, or his heirs, who owns the property at the time of the execution of this contract. If the original or first transfer of the property, either as a lot or in its entirety, after the date of this agreement, does not contain the consent of the owner and/or grantor, then the consent cannot be given subsequently.

2. The parties of the first part reserve an easement or right of way, which they at any time in the future may use themselves or grant to others, for the purposes of rights of way for water and sewer pipes and telephone and electric light poles, wires, cables and all equipment necessary for the installation, use and maintenance of utilities including water, electricity and telephone. The said easement and/or right of way across and upon said lots shall be confined to a distance of not more than five feet from the street property line.

3. There is reserved by the grantors all rights of commercial fishing upon the beaches of this property.

4. The areas of land which are designated and referred to as building lots are defined as follows:

The minimum width which is the distance between the side boundary lines of the area of land which shall be used as a building lot, is to be no less than 75 feet.

The minimum length, which is the distance between the front and back boundary lines of the said building lot is the length of the lots shown on the maps of the subdivision of Blocks fifteen (15), eighteen (18), twenty one (21), twenty two (22), twenty three (23).

Front and side boundary lines are defined in the succeeding paragraph number five.

The term building lot is used to distinguish the area of land which may be used for a building, from that which is shown as a lot on the maps of the subdivision of Blocks fifteen (15), eighteen (18), twenty one (21), twenty two (22), twenty three (23). The references in this agreement to building lots are to the areas of land described in this section.

The maps of the subdivision of Blocks fifteen (15), eighteen (18), twenty one (21), twenty two (22), twenty three (23) are the maps prepared by William S. Ragsdale, Jr., C. E., in August, 1955, and which maps are recorded in Map Book 3 at pages 34-45 in the office of the Register of Deeds of Carteret County.

5. No building or other structure shall be erected upon any building lot which is at a location nearer to the boundary lines of said building lot than the following distances:

The Building set back line shall be no less than:
Front boundary line fifteen (15) feet
Back and side boundary lines ten (10) feet.

DEFINITIONS

Front boundary lines are defined as being the boundary lines nearest the ocean or sound for water front lots and street for inside lots.

Back boundary lines are defined as being the boundary line opposite the front boundary line.

Side boundary lines are defined as being the two boundary lines other than the front and back boundary lines.

BK. 198- Pg. 507

6. The disposal of sewage and all waste matter, which includes garbage, rubbish, etc., shall be in compliance with regulations of the Boards of Health of Carteret County and the State of North Carolina and all other governmental authorities which have jurisdiction over the property hereinbefore described. It is prohibited that any sewage, garbage, rubbish, etc., shall be placed in or permitted to drain into Bogue Sound, the Atlantic Ocean or any other body of water adjacent to the hereinbefore described tract or parcel of land.

7. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

SECTION II Buildings

The individual owners of Blocks numbered fifteen (15), eighteen (18), twenty one (21), twenty two (22), twenty three (23), reserve the right to alter, change or modify the restrictions set forth in this section.

The term "owner of the block" is defined as being the person who owns the block at the time this agreement is signed or his heirs or their guardian, if he should be dead or his assigns if he or his heirs should sell the block in its entirety or the portion that has not been sold as individual lots. All references to the owner in this or Section I are to the person or persons identified in this paragraph.

1. The plans of all buildings to be erected upon any building lot, which is a portion of Blocks fifteen (15), eighteen (18), twenty one (21), twenty two (22), twenty three (23) must be submitted to and approved in writing by the owner of the block of which said lot is a part. The approval in writing must be obtained prior to the commencement of construction of any building or structure upon said building lot, and the building must be constructed in accordance with the plans as approved.

2. No garage is to be built and occupied as a residence, except as supplemental to the residence.

3. All buildings shall be constructed of painted wood sidings, cinder concrete or slag blocks, brick or asbestos. No building shall have wood shingle roofs.

4. The water pumps and septic tanks upon the said lots are to be located as directed by the person or persons who are identified in the preceding paragraph numbered one to whom plans for buildings must be submitted to and approved.

5. No solid fence or wall shall be erected or allowed to remain on any lot which is higher than three feet above the general level of the ground.

6. No sign or billboard of any kind shall be erected or allowed to remain on any lot other than a "for sale" or "for rent" sign not larger than one foot by two feet.

7. No residence which has less than One thousand (1,000) square feet of space within its living area shall be erected on any building lot.

8. Only one residence and such outbuildings as are appurtenant thereto shall be erected or allowed to remain on any one building lot. Outbuildings are to be of the same materials as the principal building located upon said lot.

The limitation as to the number of buildings does not apply to hotels, motels, apartment houses and multiple family dwellings. All buildings must be of the same material regardless of the type of use of the buildings.

9. No structure of an temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently.

BK. 198-
Pg. 508

SECTION III
Ocean Beach, Streets, Walkways and Alleys

The party of the second part holds the title to the property to which this section relates, as Trustee of James G. W. MacLamroch, William B. McLean, George F. Spell, James A. Singleton, jr., Lewis R. Holding, Frank H. Holding and Robert P. Holding, jr., by virtue of deed dated the 30th day of March 1954 and recorded in the office of the Register of Deeds of Carteret County in Book 154 at page 173. It joins in the execution of this agreement for the sole and exclusive purpose of permitting the use of the property identified in this section by the persons herein designated and restricting the use of the said property as herein set forth.

The ocean beach is defined as being that area of land which lies between the high water mark of the Atlantic Ocean and the southern property line of Blocks fifteen (15) thru twenty three (23), inclusive, as shown on the map of Emerald Isle By-the-Sea.

The streets, alleys and walkways are defined as being those areas of land shown and designated on the map of Emerald Isle By-the-Sea as streets, alleys and walkways and located between the northern and southern boundary lines of Blocks fifteen (15) thru twenty three (23), inclusive.

1. The ocean beach shall be used only for recreational area, surf bathing and other uses which are commonly associated with and incidental to the use of ocean beaches.

2. The ocean beach is to be used by and the use limited to the owners of all property located in blocks fifteen (15), thru twenty three (23), inclusive, of Emerald Isle By-the-Sea. The use of said beach is also extended to those persons who are specifically invited upon the said beaches by those persons owning land within the said blocks numbered fifteen (15) thru twenty three (23).

The property owners who are entitled to use the ocean beach do not include the owners of the streets, alleys and other walkways which are, or may be, dedicated to the use of the general public.

3. There are to be no buildings or structures erected on the said ocean beach which shall interfere with the view of the ocean and the natural passage of air and/or ocean breeze from the ocean to the area of land which comprises Blocks fifteen (15) thru twenty three (23), inclusive, of Emerald Isle By-the-Sea.

4. There is reserved the right to erect or have erected upon the said ocean beach by the Trustee, its successors, assigns or agents, a walkway commonly known as a boardwalk, life guard stations or stands and other structures which are commonly associated with the use of ocean beaches and are designated, designed and intended primarily for the convenience and safety of persons entitled to use the said beach.

5. The streets, alleys and walkways shown as a part of Blocks fifteen (15) thru twenty three (23), inclusive, shall be used by and the use limited to the owners of land within the boundaries of Emerald Isle By-the-Sea, and those persons specifically invited thereupon by the owners of said land. The use of said areas shall be limited to streets, alleys and walkways, unless changed as provided for in the succeeding paragraph.

6. The Trustee specifically reserves the right to change the location of or change and convert to any other use, any of the streets or walkways as shown on said map of Emerald Isle By-the-Sea, if within its discretion, the change or closing of any street or walkway shall not interfere with the use of any lot or parcel of land located within Blocks fifteen (15) thru twenty three (23), inclusive. The Trustee may, within its discretion, convey either all or any portion of the streets, alleys, and walkways to the State of North Carolina; it may also convey, within its discretion, either all or any portion of the streets, alleys, walkways, or ocean beach to those persons who own land on Emerald Isle By-the-Sea. The discretion of the Trustee is defined as being its act with the written approval of five of the seven shares which compose the interest of the cestuis que trustent.

SECTION IV
Enforcement of Restrictions

BK. 198-49509

If the parties hereto, their heirs, assigns, or successors shall violate or attempt to violate any of the restrictive covenants or provisions hereinbefore setout, it shall be lawful for the other parties hereto or any person, firm or corporation owning any real property situate in the blocks numbered fifteen (15) thru twenty three (23), inclusive, as shown on the map of Emerald Isle By-the-Sea, hereinbefore referred to, to prosecute any proceeding at law or in equity against the persons, firms or corporations violating or attempting to violate any of the foregoing restrictive covenants or provisions and either to prevent him or them from the violations of such restrictions or provisions by restraining order or injunction or to recover damages to be paid in money for such violations.

SECTION V
Term

1. The covenants set forth in this agreement are to run with the land and shall be binding upon all parties to this agreement and all persons claiming any rights to the said property thru or under them, for an initial period of one hundred years from the date of this agreement. The duration of the said term is subject to the following provisions:

2. This agreement shall be automatically extended for successive periods of ten years upon the termination of the original period of one hundred years, unless the owners of sixty per cent of the area of land within Blocks fifteen (15), eighteen (18), twenty one (21), twenty two (22), twenty three (23), inclusive, of Emerald Isle By-the-Sea, execute and record in the Public Registry of Carteret County, within six months immediately preceding the end of the current term, an instrument, the terms of which state that this agreement and extensions shall terminate.

3. The ocean beach, streets, alleys and walkways affected by Section III shall revert to and be dedicated to the use of the general public when this agreement and extensions thereof shall terminate, if those areas have not been conveyed as provided for in Section III.

SECTION VI
Modification

Those covenants relating to the residential use of the property set forth in Sections I and II may be altered, amended, changed or modified to permit the erection of one commercial building upon any one building lot which fronts or adjoins Emerald Drive, in each of the blocks numbered fifteen (15), eighteen (18), twenty one (21), twenty two (22), twenty three (23), and each block shall be considered individually, if, and upon the sole condition, the procedure herein set forth is complied with, to-wit:

1. If eighty percent of the owners of land, not including minors, persons who are non compos mentis, or under other legal disability, in any one of the blocks numbered fifteen (15), eighteen (18), twenty one (21), twenty two (22), twenty three (23), inclusive, of Emerald Isle By-the-Sea, execute a written instrument, and have such recorded in the Public Registry of Carteret County, in which instrument it is specifically stated and provided that they, the said owners of land within the specified block, desire to modify the restriction and limitation set forth in this agreement which limits and restricts the use of the property within said block to residential purposes, and permit the erection of one commercial building upon a building lot which is adjacent to Emerald Drive.

2. It shall also be necessary that the owners of sixty per cent of the square footage of all areas of land located within the bounds of Emerald Isle By-the-Sea, the use for which is limited to commercial activities, agree to the said modification and signify their consent to the erection of the commercial building as specified in this section, by their execution of the instrument referred to in Paragraph 1.

Bk. 198-19 510

If all of the land in the area of Emerald Isle By-the-Sea outside of Blocks fifteen (15) thru twenty three (23), inclusive, has not been designated as or restricted to use as either commercial or residential property, then, and in that event, the owners of sixty percent of the land area, which is not subject to overflow by the normal flow of the tides, the use of which has not been designated as either commercial or residential, must join with the owners of the commercial area in the execution of the instrument called for in the preceding Paragraph 1.

3. If the consent of the two groups of landowners is obtained in strict compliance with the foregoing paragraphs 1 and 2, then it shall be permissible for the person authorized in the instrument designated in paragraphs 1 and 2 to erect one commercial building upon any one building lot which adjoins Emerald Drive in the specific residential block in which the landowners have agreed to such building. The plans for the commercial building must be submitted to and approved by the owners of the block, as defined in Section II, and the building must be erected in accordance with the plans as approved.

4. The provisions in paragraphs 1, 2, and 3 of this section may be exercised at the end of the first three year period during the existence of this agreement or at any time thereafter.

SECTION VII
Severability

Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions or covenants and they shall remain in full force and effect.

The references to parcels, blocks, and sections in this agreement refer to those which are shown on map of Emerald Isle By-the-Sea recorded in the office of the Register of Deeds of Carteret County in Map Book 3 on pages 34 thru 45.

The references to lots and building lots are to those lots shown on maps which show the subdivisions of Blocks fifteen (15), eighteen (18), twenty one (21), twenty two (22), twenty three (23), which are part of Emerald Isle By-the-Sea and which maps of the individual blocks are recorded in the office of the Register of Deeds of Carteret County in Map Book 4 at pages 26, 22, 24, 25 and 23.

In testimony whereof the said parties of the first part do hereunto set their hands and seals and the party of the second part, the First Citizens Bank & Trust Company, Trustee, has caused this agreement to be signed in its corporate name by its Vice President and attested by its Assistant Secretary and sealed with its common seal on this the day and year first written above.

James G. W. MacLamrock (SEAL)
James G. W. MacLamrock

Maxine Pugh MacLamrock (SEAL)
Maxine Pugh MacLamrock

William B. McLean (SEAL)
William B. McLean

Ruth P. McLean (SEAL)
Ruth P. McLean

James A. Singleton, Jr. (SEAL)
James A. Singleton, Jr.

Virginia McLean Singleton (SEAL)
Virginia McLean Singleton

George F. Spell (SEAL)
George F. Spell

Louise McEarchin Spell (SEAL)
Louise McEarchin Spell

First Citizens Bank & Trust Company, Trustee
By [Signature]
Vice President



Joseph M. Jordan
Assistant Secretary

BK. 198-19. 511

The undersigned notary public of Guilford County, North Carolina, hereby certifies that James G. W. MacLamroch and wife Maxine Pugh MacLamroch this day appeared before the undersigned within the City of Greensboro, North Carolina, and acknowledged the due execution of the foregoing agreement.

My commission expires 3 October 1959.

Witness my signature and official seal this 10th day of July 1959.

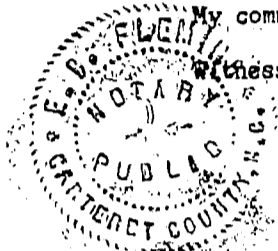


Ruth N. Rogers
Notary Public

The undersigned notary public of Carteret County, North Carolina, hereby certifies that William B. McLean and wife Ruth P. McLean this day appeared before the undersigned within the County of Carteret, North Carolina, and acknowledged the due execution of the foregoing agreement.

My commission expires 6-7-61

Witness my signature and official seal this 20 day of August 1959.



E.B. Fleming
Notary Public

The undersigned notary public of Robeson County, North Carolina, hereby certifies that James A. Singleton, jr., and wife Virginia McLean Singleton, and George F. Spell and wife Louise McEarchin Spell this day appeared before the undersigned within the City of Red Springs, North Carolina, and acknowledged the due execution of the foregoing agreement.

My commission expires 3-13-61

Witness my signature and official seal this 15 day of August 1959.



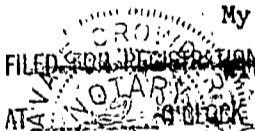
J. M. Owen
Notary Public

Wake

The undersigned notary public of Johnston County, North Carolina, hereby certifies that ~~John M. Pleasant~~ ^{W. M. Pleasant} this day appeared before the undersigned within the City of ~~Smithfield~~ ^{Raleigh}, North Carolina, and being by me duly sworn says that he is Vice-President and that Joseph W. Nordan is Assistant Secretary of First Citizens Bank & Trust Company; that the foregoing agreement was signed by himself as Vice-President and attested by said Assistant Secretary, all by authority of the Board of Directors of the corporation, and that the foregoing instrument is the act and deed of the corporation acting as Trustee as aforesaid.

My commission expires March 28, 1960

Witness my signature and official seal this 10 day of July 1959.



FILED FOR REGISTRATION
AT 9 O'CLOCK P.M. ON
10th DAY OF August 1959
Ava E. Crowder
REG. NORTH CAROLINA

Ava E. Crowder
Notary Public

CARTERET COUNTY

The foregoing Certificates of Ava E. Crowder, NP of Wake County, J. M. Owen, NP of Robeson County, E.B. Fleming, NP of Carteret County and Ruth N. Rogers, NP of Guilford County are hereby adjudged to be correct. Let the instrument with this certificate be recorded. This the 20th day of August, 1959.

Mary S. Austin, Asst
S.C.