

22
5/2

FOR REGISTRATION REGISTER OF DEEDS
REBECCA T. CHRISTIAN
NEW HANOVER COUNTY, NC
2002 JUL 23 01:47:42 PM
BK:3368 PG:845-859 FEE:\$53.00
INSTRUMENT # 2002036516

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

DECLARATION OF COVENANTS
AND RESTRICTIONS FOR
CARMEL AT VINEYARD GREEN SUBDIVISION
Section II

KNOW ALL MEN BY THESE PRESENTS THAT:

LOBOS DEVELOPMENT, INC., a North Carolina Corporation, (herein called the Developer) is the Owner and Developer of that certain tract and land located in Masonboro Township, New Hanover County, North Carolina, conveyed to the Owner by Deed recorded in Deed Book 2011 at Page 1107, in the Office of the Register of Deeds of New Hanover County, North Carolina, and part of which is known as **CARMEL AT VINEYARD GREEN SUBDIVISION, SECTION II**, the map of which is recorded in Map Book 42 at Page 296 in the New Hanover County Register of Deeds; and

WHEREAS, the Developer desires to establish a uniform plan for the development of the lands above described, to insure the peaceful enjoyment, health and welfare of its residents, and to provide for the economic opportunity and stability of the neighborhood.

NOW, THEREFORE, the Developer does hereby declare that the following Covenants, Conditions and Restrictions shall apply to the lots as shown on the recorded map referenced above, and shall constitute covenants running with the land, and all parts thereof, and that the use and ownership of such lots within the Subdivision shall comply with these covenants, restrictions and

RETURNED TO *Aleen & MacDonald*

conditions and shall be binding upon all lot owners, their heirs, successors and assigns and upon all parties claiming by, through or under the Developer and all subsequent owners.

1. **Residential Use.**

A. All lots shall be used exclusively for single family residential purposes. No structure of a temporary nature or trailer used as a dwelling shall be permitted on any lot either temporarily or permanently.

B. No more than one residential building may be located on a lot. A garage may be constructed as an accessory building to a dwelling in the rear yard of a residential lot, provided that the type and quality of construction of such accessory building is compatible with that required for the residential buildings. No garage or similar accessory building may be constructed before construction of the residential building is begun, and no such garage or accessory building shall be occupied as a residence. No dwellings or accessory buildings shall exceed two stories in height unless the Developer or Architectural Control Committee, as the case may be, approves in writing a structure of more than two stories.

2. **Restriction on Impervious Area.**

No more than 3,498 square feet, exclusive of street right-of-way, of any lot in the Subdivision shall be covered by structures and/or paved surfaces, including walkways, driveways or patios all of which constitute effective impervious cover controlled by North Carolina Storm water regulations promulgated pursuant to Article 21, Chapter 143 of the North Carolina General Statutes. The Developer reserves the absolute right to recalculate the maximum allowable built-upon area for each lot if required to bring the restrictions into compliance with the North Carolina Coastal Storm Water Regulations. This covenant is intended to insure continued compliance with the storm water run-off

rules adopted by the State of North Carolina, and therefore, compliance may be enforced by the State of North Carolina.

3. Dwelling Area and Parking.

A. No dwelling shall be constructed having heated living area of less than 1,650 square feet; Provided, however, the Developer or Architectural Control committee, (whichever is in charge), may permit a house to have a minimum of 1,600 square feet if the Developer or Committee in its sole discretion finds that the variance will not adversely impact property values within the Development. Porches and attached carports or garages shall not be included in the computation of heated living area.

B. Not less than two off-street parking spaces must be provided for each dwelling unit on a lot. Off-street parking shall be connected to a street adjacent to one or more of the lot's boundary lines by a driveway having sufficient strength and diameter to accommodate the weight of motor vehicles and to accommodate the flow of surface water without its being impounded to the damage or annoyance of any other lots in the Subdivision. Parking areas and driveways shall be constructed of concrete, brick, asphalt, turf stone or other material approved by the Developer or Architectural Control Committee.

4. Building Set-Back Requirements.

Since the establishment of standard 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, no specific setback liens are established by these Restrictions. In order to assure, however, that the foregoing considerations are given maximum effect, Developer, or its successor,

reserves the right to control and approve absolutely the site and location of any house or dwelling or other structure upon any lot and a plot plan shall be furnished for approval before construction begins. In any event, no house shall be erected closer to the front lot line or nearer to any side line than the maximum distances established by applicable New Hanover County Ordinances.

5. Prior Approval of Construction Plans.

A. No dwelling or accessory structure shall be constructed or placed upon a lot without prior approval of the Developer, or by Architectural Control Committee. In the event the Developer or its designee, or if applicable the Architectural Control Committee fails to approve or disprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article shall be deemed to be fully complied with. Refusal or approval of any such plans, location, or specification may be based upon any ground, including purely aesthetic and environmental considerations, that in the sole and uncontrolled discretion of the Developer or Architectural Control Committee shall be deemed sufficient. When copy of all plans of related data shall be furnished to the Declarant, Architectural Control Committee, as the case may be, for its records, neither the Developer, nor the Architectural Control Committee shall be responsible for any structural or other defects in plans and specifications submitted to it or any structure erected according to such plans and specifications.

B. All structures erected on any lots in the Subdivision shall be built of new materials (except that old brick may be used). All exposed surfaces of exterior walls and gables shall consist of wood (painted or stained), brick, stone, stucco, or manufactured wood, metal or vinyl siding or such other siding as approved by Developer and/or Architectural Committee. Concrete or block or exposed surfaces of exterior walls or foundations are not permitted unless covered by a veneer,

stucco or brick.

C. All structures which are not heated and cooled by natural gas or electricity shall have fuel storage tanks located in such a manner as to be concealed from view.

D. No house trailer, mobile home, travel trailer or other recreational vehicle, tent, shack or temporary structure of any nature shall be located on any lot or used at any time as a residence, temporarily or permanently, nor may any modular and prefabricated homes and previously constructed houses be erected or placed on any lot, without the express written consent of the Developer. However, this shall not prevent the Developer, its designee or assign from maintaining a construction trailer or office on any part of the development until the construction of all dwellings on all lots is completed.

6. COMPLETION OF CONSTRUCTION.

Once construction of a house begins on a lot, said construction must be completed within 12 months of the commencement date, except where such completion is impossible for the owner or builder due to strike, fires, national emergency, materials shortages not attributable to owner or builder or acts of God. Provided, the Developer or its successor or assigns for good cause shown may extend the time for the completion of a house provided said consent shall be given in writing.

7. Reserved Easements.

A. Maintenance responsibility of landscaping within islands of the cul de sacs is the responsibility of the Homeowners Association, subject to restrictions of the North Carolina Department of Transportation.

B. Developer, its successors and assigns, reserve easements as necessary in the lands constituting the development for the installation and maintenance of utilities and drainage facilities

including the right of Developer to go underground with men and equipment to erect, maintain, inspect, repair and use electric and telephone lines, wires, cable, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in or over each lot and such other areas as are shown on the Plat of the Property or any other Additional Property recorded or to be recorded in the Office of the Register of Deeds, New Hanover County; the right to cut drain ways for surface water, wherever such action may appear to the Developer to be necessary in order to maintain reasonable standards of health, safety and appearance; the right to cut any trees, bushes or shrubbery; the right to make any grading of the soil or to take any other similar actions reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance; the right to located wells, pumping stations and tanks within residential areas or right to subject the property and any additional property to a contract with Carolina Power and Light Company for the installation of street lighting, which contract requires a continuing monthly payment to Carolina Power and Light Company by each resident consumer for street lighting services (such rights may be emphasized by any licensee of the Developer, but this reservation shall not be considered and obligation of the Developer to provide or maintain any such utility or service.

C. The following easements are granted by Declarant to others:

a) An easement is hereby granted to all police, fire protection ambulance and all similar persons, companies or agencies performing emergency services, to enter upon all lots and common areas in the performance of their duties.

b) In case of any emergency originating in or threatening any lot or common areas, regardless whether any lot owner is present at the time of such emergency, the Association or any

other person authorized by it, shall have the right to enter any lot for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the lot owners and such right of entry shall be immediate.

8. Subdivision of Lots.

The Developer reserves the right to re-subdivide one or more lots owned by him when necessary to correct errors of survey; to increase the square footage area of a lot, or to comply with requirements of local or state land use laws, ordinances or regulations. Otherwise, no lot may be re-subdivided by its owner, except that a lot may be divided into portions by conveyance to adjoining lot owners with each portion becoming a part of another lot. Each of the resulting lots so combined shall then become one lot for the purpose of this Declaration. Provided, that the Declarant or Architectural Control Committee may approve, in writing, the subdivision of a lot or change of boundary line.

9. Water and Sewage.

A. All water to be used in said Subdivision for any purpose whatsoever shall be obtained from a County Water System, unless other sources are approved by the City or County Board of Health and the Owner or the Community Water System, or their successors, or the Developer. An eight (8) foot radius from each water meter shall be an easement for maintenance and repair of such meter.

B. Lot owners may, however, with the Developer's consent, drill shallow wells for irrigation purposes and for non-domestic use provided said wells and pumps are located so as not to be visible from the streets and are properly enclosed and landscaped.

C. Sewage disposal shall be only by tapping onto the County of New Hanover Sewer System

or other suitable system, except as to those lots that may be expressly exempted here from by the Developer. Each lot in said Subdivision is further subjected to a sewer maintenance and utility easement across the front of each said lot as shown on the recorded map.

10. **Lot use and Maintenance.**

A. Each lot owner shall at all times keep and maintain his lot in a clean, well kept condition, free from debris and trash. Each lot owner shall remove all construction debris and plant and cultivate grass in the yards and shrubbery along foundations of such structures within a reasonable time after construction is finished. Upon a lot Owner's failure to collect and dispose of such trash within fifteen (15) days after receipt of a written notice from Developer, Developer may collect and dispose of such rubbish and trash at the lot owner's expense.

B. It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly, or unkept condition of buildings or grounds on such lot which would tend to decrease the beauty of the neighborhood as a whole or the specified area.

C. The owner of each lot shall keep the lot mowed regularly, including that area from the lot line to the edge of the paved street and clear of any unsightly objects. In the event that the owner of any lot within the said Subdivision breaches this restriction, the Developer reserves the right to enter upon the said lot and mow the grass, clean up the lot and remove unsightly structures and objects at the property owner's expense.

D. No noxious, offensive or unlawful activity or condition shall be permitted to exist on any lot, nor shall anything be done on a lot which is, or may become, a nuisance to the community or to an adjoining lot owner. No hazardous substances or materials shall be used, stored, spilled or emptied upon any lot except as permitted by applicable local, State or Federal law, ordinance or

regulation.

E. No fowl, livestock or farm animals may be maintained on any lot, except customary household pets. Provided, however, that no customary household pets shall be maintained in such numbers as to constitute a nuisance or annoyance to other lot owners, or for a commercial purpose. All such household pets must be contained within an area on their owner's lot, and the grounds within which they are kept shall be regularly well cared for, maintained and cleaned as necessary to avoid the attraction of flies or other insects, odor, sickness, or nuisance to other lot owners within the Subdivision. Said household pets are allowed subject to city and/or county ordinances and leash laws. F. No quantities of salvaged construction or other materials, shall be stored or kept on any lot.

G. No boat, motor boat, camper, trailer, motor or mobile homes, tractor/trailer, or similar type vehicle, shall be permitted to remain on any lot or on any street at any time, without the written consent of the association or its designee. No inoperable vehicle or vehicle without current registration and insurance will be permitted on any lot, street or common area. The Association shall have the right to have all such vehicles towed away at the owner's expense. No repairs to any vehicle may be made on streets or in driveways but only in garages or other areas and not visible from the street.

H. All mail and newspaper boxes shall be uniform in design for mail and newspaper boxes shall be furnished by the Developer and paid for by each lot owner.

I. Fences shall be permitted on any lot; provided, however, that the design and materials of any fence are approved by the Developer, Board or the Architectural Control Committee and provided further, that no fence shall be located forward of a point that is three feet to the rear of the

front of the dwelling.

J. No clothesline shall be permitted except portable clothes tree stands which shall not be visible from the street.

K. All light bulbs and other lights installed in any fixture located on the exterior of any building or any lot shall be clear, white, non-frost lights or yellow bug bulbs.

L. No television satellite signal receiving dishes will be permitted on any lot and no outside radio or television antennas shall be erected on any lot or dwelling unit within the properties unless and until permission for the same has been granted by the Developer. Provided, a television satellite receiving dish no longer than twenty-four inches in diameter is permitted on the rear yard of each lot so long as it is not visible from any street within the Development.

M. No advertising signs or billboards shall be erected on any lot or displayed to the public on any lot subject to these Restrictions, except that one sign of not more than five square feet in area may be used to advertise complete dwelling for sale. No "For Sale" signs are allowed on any unimproved lot. This covenant shall not apply to signs erected by the Owner, Developer used to identify and advertise the Subdivision as a whole, or by a contractor for an item of work being performed on a given lot.

11. Additional Development or Phases to Carmel at Vineyard Green

A. The Developer reserves the right to annex other sections or phases to CARMEL AT VINEYARD GREEN Subdivision without the consent of lot owners, and does covenant that such additional sections or phases shall be subjected to one or more Declarations not incompatible with this Declaration or the general purposes stated herein.

B. The Developer is not liable and makes no representation as to the development of any

other phase or section except the phase or section covered by these Restrictions. Developer may make changes in future sections of the Development not subject to these Restrictions, including but not limited to changes in design, type of structures, restrictions or character of section. All maps, brochures and plans are purely for planning and illustration purposes and are not to be relied upon as any promise or covenant of whatsoever kind or nature. Developer shall be obligated for and any Owner shall solely rely on the plans, plats, and restrictions that are recorded for the section herein described.

12. **Assignment of Development Rights.**

If the Developer should transfer or assign title to the Subdivision, or if the Developer shall be succeeded by another in the development of the Subdivision, voluntarily or involuntarily, then such transferee, assignee or successor in the title shall be vested with the several rights, powers, privileges, liabilities and duties given or reserved to the Developer in this Declaration.

13. **Enforcement of Covenants.**

A. In the event of violation of any of these Covenants, Conditions or Restrictions the Developer, (even if the Developer has sold all lots and is no longer a property owner in the Subdivision), or any owner of property within the Subdivision shall have the right to proceed in court against such violator, at law or equity, to compel compliance with the terms of this Declaration or to prevent a violation or breach of the terms of this Declaration. The failure to enforce any covenant, condition or restriction in this Declaration, however long continued, shall not be deemed a waiver of the right to do so hereafter as to the same violation or breach, or as to a violation or breach occurring before or after such failure to enforce, and shall not bar or affect the enforcement of such covenant, condition or restriction.

B. Invalidation of any one of these covenants by judgments or court order shall in no way affect any of the other covenants herein, which shall remain in full force and effect.

14. **Additional Covenants.**

The Developer may include in any contract or deed, or both, for the sale and conveyance of a lot in the Subdivision, one or more covenants, conditions and restrictions not contained in this Declaration, provided that such provision is not inconsistent with this Declaration and its stated intent and does not lower the standards of the Subdivision.

15. **Binding Effect and Duration of Covenants.**

All Covenants, Conditions and Restrictions of this Declaration shall run with the land and shall be binding upon all persons acquiring an interest in any real property located within the Subdivision, including, but not limited to, the successors and assigns of the Developer, if any, for a period of 20 years from the date hereof, and after expiration of that time shall be automatically extended for additional successive periods of 5 years, unless a majority of the then lot owners (not including mortgagees or trustees and beneficiaries in secured loan transactions) in the Subdivision agree in writing to amend or to rescind one or more of these Covenants, Conditions and Restrictions and a written memorandum thereof, signed by all lot owners voting affirmatively, and specifically setting forth the changes to this Declaration, is recorded in the Office of the Register of Deeds of New Hanover County, North Carolina.

16. **Discretionary Street Lighting.**

The Developer reserves the right (but is not obligated) to subject the land within part or all of the Subdivision to a contract with the electric utility company furnishing electric power to the Subdivision for the installation of street lighting which will require a continuing monthly payment

to that utility company by each residential customer in the Subdivision. By the acceptance of the title to a lot within the Subdivision which is subject to this provision for street lighting, the lot owner covenants and agrees to pay all pro-rata electric utility charges for street lighting as billed by the utility company.

17. **Homeowners' Association.**

A. Subdivision streets have been constructed in accordance with engineering standards required by the North Carolina Department of Transportation and the New Hanover County Subdivision Ordinance. Maintenance of the Subdivision streets will be the responsibility of the Developer within the Subdivision until such time as North Carolina Department of Transportation takes them over.

B. There are, or may be islands in some cul de sacs, a sign identifying the subdivision or other like items that will be owned or become owned by the Home Owners Association or maintained and developed by said Association, including not only this section but future sections and improvements of same shall be the responsibility of the Home Owners Association through assessments.

C. The Subdivision has been developed with engineered storm water controls to comply with the North Carolina Watershed Management and Protection Program. Maintenance of the engineered storm water controls will be the responsibility of the Home Owners Association within the Subdivision. This will include ditches within the Subdivision.

D. The developer has or will organize an association of lot owners as a non-profit corporation known as CARMEL AT VINEYARD GREEN HOME OWNERS' ASSOCIATION which shall be the entity that owns the storm water controls and which will be the entity responsible

for maintenance of these facilities, including ditches.

E. By accepting a deed for a lot in the Subdivision, each lot owner thereby agrees that (i) he is a member of CARMEL AT VINEYARD GREEN HOME OWNERS' ASSOCIATION, (ii) he is obligated to pay assessments for maintenance of the Subdivision facilities, including a one time working capital charge of \$350.00 upon purchase from the Developer or Builder, and (iii) he is subject to the by-laws of the association and its duly adopted rules and regulations.

IN WITNESS WHEREOF, this Declaration has been executed by Developer, as of this the 23rd day of July, 2002.

LOBOS DEVELOPMENT, INC.

By: Arnold L. Sobol
PRESIDENT

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

I MARY JANE POZZI, Notary Public, certify that ARNOLD L. SOBOL Personally came before me this day and acknowledged that he/she is PRESIDENT of LOBOS DEVELOPMENT, INC., a corporation, and that he/she as PRESIDENT, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this the 23rd day of July, 2002.

Mary Jane Pozzi
Notary Public

My Commission Expires:

MARY JANE POZZI
NOTARY PUBLIC
STATE OF NORTH CAROLINA
NEW HANOVER COUNTY
COMMISSION EXPIRES FEBRUARY 23, 2005



REBECCA T. CHRISTIAN
REGISTER OF DEEDS, NEW HANOVER
JUDICIAL BUILDING
316 PRINCESS STREET
WILMINGTON, NC 28401

Filed For Registration: 07/23/2002 01:47:42 PM
Book: RE 3368 Page: 845-859
Document No.: 2002036516
DECL 15 PGS \$53.00

Recorder: MARVIS ANN STORER

State of North Carolina, County of New Hanover

The foregoing certificate of MARY JANE POZZI Notary is certified to be correct. This 23 RD of July 2002

REBECCA T. CHRISTIAN , REGISTER OF DEEDS

By: *Marvis Ann Storer*
Deputy/Assistant Register of Deeds

2002036516

2002036516