

5143
08.9.04

This Document Recorded

09/27/2004

03:46PM

Doc Code: 45

Lancaster County, Recorder of Deeds Office

Doc Id: 5353806

Receipt #: 391115

Rec Fee: 32.50

Recorder of Deeds Office

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS made this 26 day of August, 2004, by J. GLENN WISSLER and MILDRED G. WISSLER, husband and wife, of 355 Clearview Road, Ephrata, Pennsylvania 17522 (individually and collectively hereinafter referred to as "Developer").

WITNESSETH:

WHEREAS, Developer is the owner of the premises located in the Township of Clay, Lancaster County, Pennsylvania, as more specifically described in two deeds recorded in Deed Book P, Volume 73, Page 63, and Deed Book Q, Volume 54, Page 71 in the Office of the Recorder of Deeds in and for Lancaster County, Pennsylvania; and

WHEREAS, Developer is developing a portion of the tract as and for a residential development known as Clearview Gardens Planned Community ("Clearview Gardens") pursuant to a certain Master Declaration of Covenants, Conditions and Restrictions of Clearview Gardens (the "Planned Community Declaration"), recorded or intended for recording in the Office of the Recorder of Deeds in and for Lancaster County, Pennsylvania; and

WHEREAS, the residential development known as Clearview Gardens is more fully shown on a portion of a certain final subdivision plan (the "Plan") prepared by Christian & Gabriel, Inc., Drawing No. 01221-01, dated April 9, 2003, recorded or intended for recording in the Office of the Recorder of Deeds in and for Lancaster County, Pennsylvania; and

WHEREAS, Developer intends to impose on the residential portion of the aforesaid tract, as covenants running with the land, certain conditions, limitations and regulations which shall by virtue of this Declaration be applicable to all the residential lots shown on the Plan; and

WHEREAS, Developer desires to specifically exclude the commercial portion of the tract known as Clearview Plaza from the terms of this Declaration..

NOW, THEREFORE, intending to be legally bound, Developer hereby declares and imposes the following conditions, restrictions, limitations and regulations upon all residential lots shown on the Plan.

RESTRICTIONS

1. No lot within Clearview Gardens may be further subdivided.
2. Except with regard to the open space lot, no structure shall be erected or used on any residential lot within Clearview Gardens for any purpose other than that of a residence. The



5353806

Page: 1 of 11
09/27/2004 03:46PM

foregoing notwithstanding, it is understood that one storage shed not to exceed 120 square feet in floor area may be erected on a residential lot, provided it is constructed with similar material as the house and the same color as the house, and provided further that it is located to the rear of the lot and in accordance with applicable Township regulations.

3. No animals or fowl shall be kept on the lot other than domestic pets, and then with a limitation of two (2) of any one (1) kind over the age of six months. Such domestic pets may not be kept or bred for commercial purposes. When out of doors, such domestic pets shall at all times be on a leash or have some other appropriate means of control and be accompanied by the lot owner or by a member of his family, or by a custodian designated by the lot owner. In such cases, the owner, family member or custodian shall carry a suitable container and pooper scooper to remove all droppings or litter deposited by the domestic pet. Should there be a question as to what constitutes a domestic pet or whether a pet is creating an unacceptable condition within Clearview Gardens, the Clearview Gardens homeowners' association, acting through its Board, may make such determinations and may require the removal of any pet.

4. No business enterprise shall be conducted on any lot (the foregoing is not intended to prohibit the use of part of the residence for professional offices).

5. Fences shall not be erected or maintained on any of the lots, unless required by township or governmental agencies in conjunction with an in-ground swimming pool (fences in conjunction with in-ground swimming pools may not exceed more than (6') feet in height). No electrified fencing is permitted. The foregoing notwithstanding, it is understood that underground electronic pet fence containment systems are permitted. The foregoing notwithstanding, it is understood that decorative-type fences not to exceed 36 inches in height shall be permitted around flower beds and patios. All fence designs must receive the prior written approval of the Developer or its assigns.

6. Only in-ground swimming pools are permitted and must be enclosed as required by law. Above-ground pools are not permitted.

7. No television antennas, radio aerials or satellite dishes shall be installed on any lot or on the exterior of any dwelling or garage. The foregoing prohibition of satellite dishes shall not apply to satellite dishes having a diameter of 18 inches or less.

8. No signs shall be erected or maintained on any of the lots other than one (1) "For Sale", "For Lease", or "For Rent", sign having a size of less than 3' x 3' and a height of not more than 4'. Such sign shall be placed in the front yard only. Community identification signs may be erected by the Developer and signs of the Developer and builder may be displayed during construction or sale of homes. Flags, banners, pennants or similar devices are prohibited from being displayed outside of any dwellings. The foregoing notwithstanding, it is understood that one (1) United States of America flag (not to exceed 4' x 6') may be displayed. Also, one (1) small garden flag may be displayed in the mulched area in front of the dwelling.

9. Motor vehicles and any other permitted vehicles shall be parked only on macadam surfaces, such as driveways and streets. Vehicles may not block access to sidewalks, driveways, or mailboxes. Homeowners' vehicles shall not be parked on streets for a period exceeding 24 hours. No boats, trailers, commercial trucks/trailers/truck cabs, school buses, mobile homes, recreation vehicles or vehicles that are inoperable or unlicensed shall be parked or stored on any part of the premises, community property or the streets of Clearview Gardens for a period exceeding 24 hours.
10. Window coverings of a temporary nature (such as sheets) shall not remain at windows more than (7) days after occupancy of dwelling.
11. An outdoor wash line, not to exceed 20 feet in length, is permitted to be installed upon a residential lot, provided such wash line is located to the rear of the dwelling and further provided that the wash line remains within the two corners of the dwelling (and thus does not extend beyond the corners of the dwelling into either side yard).
12. Each owner shall maintain his lot and residence located thereon in good condition, order and repair. No owner or occupant of any lot shall permit or suffer anything to be done or kept upon the lot which would interfere with the rights of other owners or the other owners' enjoyment of their lot or in any way act to decrease the value of the other owners' lots, annoy them with unreasonable noises or otherwise, nor shall any owner or occupant of any lot commit or permit any nuisance or commit or suffer any immoral or illegal act to be committed upon the lot.
13. No owner shall paint any exterior portion of the residence, including but not limited to, windows, shutters, doors, fences, light posts, light fixtures, mailboxes, eaves, soffit, trim and siding, except in the original color, without the prior written consent of the Clearview Gardens homeowners' association.
14. Developer will designate one style of mailbox to be utilized within Clearview Gardens. No owner or occupant shall deviate from the required style of mailbox.
15. Trash, garbage or other waste, pending removal, shall be stored in designated areas and shall be placed at the curb line for removal no more than 24 hours in advance in accordance with the hauler's schedule.
16. The yards and common areas shall be used only for the furnishing of services and facilities for which they are reasonably suited and which are incident to the use and occupancy of the dwelling. Owners or occupants shall not place or cause to be placed in the yards, public walkways, parking or common areas, any furniture, packages or objects of any kind.
17. All driveways shall be paved with asphalt or its equivalent.

18. Before construction of a building of any character shall be commenced, the plans and specifications, together with a first floor plan shall be submitted to and approved in writing by the Developer or its successors or assigns. Developer may decline to approve any plans or specifications so submitted for aesthetic or other reasons, taking into consideration the effect of the building or other structure as planned on Clearview Gardens and whether the plans are in keeping in general harmony with the surroundings.

19. Nothing contained in this Declaration shall be deemed to restrict Developer in any way in connection with the sale of lots within Clearview Gardens or construction of improvements thereon or to limit use by Developer of any structure or other facility as a construction office, model home or real estate sales or leasing office.

20. Developer shall have the right, in its sole discretion, to encroach upon any lot, including the existing lawn of any lot, in order to: (i) properly blend one lawn into the neighboring lawn; and (ii) provide proper drainage.

21. The covenants set forth in this Declaration shall be binding on all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the owners of the lots has been recorded agreeing to change said covenants in whole or in part.

22. Invalidity of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

23. These conditions, covenants, obligations and restrictions shall be in addition to any applicable provisions of any present or future zoning law or ordinance, and no provision hereof shall be deemed to authorize any act in violation of any such present or future law or ordinance.

24. The Board of the Clearview Gardens homeowners' association may from time to time promulgate rules and regulations, not in conflict with the provisions of this Declaration, concerning the use and enjoyment of the lots within Clearview Gardens, subject to the right of members to amend or rescind such rules and regulations adopted by the Board of Clearview Gardens homeowners' association.

25. These restrictions shall enure to the benefit of and be enforceable by Developer or owners of lots within Clearview Gardens. Violation of any of these restrictions is hereby declared and agreed by acceptance of deed conveying a lot subject to these restrictions, to be a nuisance which may be remedied by legal action. Failure to enforce restrictions shall not be deemed a waiver of the right to enforce. Neither the Developer nor any grantor shall be responsible for the failure of any subsequent owner to enforce restrictions.

26. Developer shall not be liable to any lot owner or any other party for any damage, loss or prejudice suffered or claimed on account of any act or omission of the Developer or otherwise with regard to this Declaration and the owners of said lots hereby indemnify and hold harmless the Developer from all claims, demands and expenses (including reasonable attorneys' fees) arising by reason of any alleged wrongful act or omission.

27. If any restriction or other provision contained in this Declaration shall be in conflict with the terms of the Planned Community Declaration, the terms of the Planned Community Declaration shall control.

28. This Declaration shall not apply to the commercial lots within that portion of the tract known as Clearview Plaza or any other lot except those lots within the Planned Community known as Clearview Gardens.

IN WITNESS WHEREOF, Developer, intending to be legally bound, has executed this Declaration the date and year first above written.

Witness:

Margaret

J. Glenn Wissler
J. GLENN WISSLER

Margaret

Mildred G. Wissler
MILDRED G. WISSLER

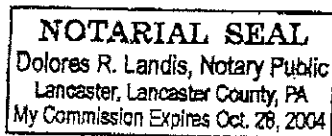
COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF LANCASTER :

On this 26th day of August, 2004, before me, the Subscriber, a Notary Public in and for the aforesaid Commonwealth and County, came the above-named J. GLENN WISSLER and MILDRED G. WISSLER, husband and wife, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged the foregoing instrument to be their act and deed and desired the same to be recorded as such.

IN WITNESS WHEREOF, I set my hand and official seal.

Dolores R. Landis
Notary Public

My Commission Expires



JOINDER BY ASSOCIATION

CLEARVIEW GARDENS MASTER UNIT OWNERS' ASSOCIATION, INC., hereby,
joins in, consents to, and expressly approves the foregoing Declaration of Restrictions.

CLEARVIEW GARDENS MASTER UNIT
OWNERS' ASSOCIATION, INC.

Attest: Mildred H. Wissler
(~~Assistant~~) Secretary

By: Glenn Wissler
(~~President~~) President

[SEAL]

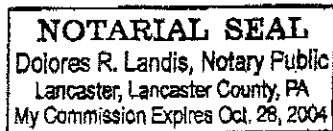
COMMONWEALTH OF PENNSYLVANIA :
:SS:
COUNTY OF LANCASTER :

On this 26th day of August, 20 04, before me, a notary public, the undersigned officer, personally appeared J. Glenn Wissler, who acknowledged himself/herself to be the (~~Vice~~) President of CLEARVIEW GARDENS MASTER UNIT OWNERS' ASSOCIATION, INC., a nonprofit corporation, and that as such officer, being authorized to do so, acknowledged the foregoing instrument for the purpose therein contained by signing the name of the corporation by himself/herself as (~~Vice~~) President.

IN WITNESS WHEREOF, I set my hand and official seal.

Dolores R. Landis
Notary Public

My commission expires:



JOINDER BY MORTGAGEE

The undersigned ("Mortgagee") being the holder of a certain mortgage on the foregoing premises located Clay Township, Lancaster County, Pennsylvania (the "Premises"), which mortgage, in the original principal amount of \$4,670,000.00 is dated December 22, 2003, and was recorded in the Lancaster County Recorder of Deeds' Office on December 24, 2003, at Document No. 5280148, as well as any other mortgages which Mortgagee may now or hereafter hold on the Premises (all such mortgages hereinafter collectively referred to as the "Mortgages"), joins in, consents to, and expressly approves the provisions set forth in the attached Declaration of Restrictions made by J. Glenn Wissler and Mildred G. Wissler, husband and wife, on the 26 day of August, 2004 (the "Instrument").

The Mortgagee, for itself, its successors and assigns (which shall include any assignee of the Mortgages and any purchaser of the premises at a sale in foreclosure of the Mortgages or otherwise), hereby covenants and agrees that any rights and privileges granted in the Instrument with respect to the premises shall not be terminated or disturbed by reason of any foreclosure or other action which may be instituted by the Mortgagee, its successors and assigns, as a result of any default under the Mortgages or the debt instruments that such Mortgages secure. Mortgagee, by consenting to the Instrument, shall not by virtue of its interest as Mortgagee be deemed to have undertaken any of the obligations of the Developer in the Instrument, including but not limited to construction, maintenance, inspection or indemnification.

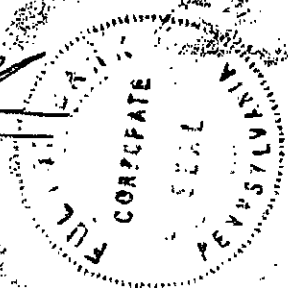
IN WITNESS WHEREOF, Mortgagee hereby joins in the execution of the Declaration, as of this 26 day of August, 2004.

ATTEST:

[SEAL]

FULTON BANK

By:



(MORTGAGEE ACKNOWLEDGMENT)

COMMONWEALTH OF PENNSYLVANIA)

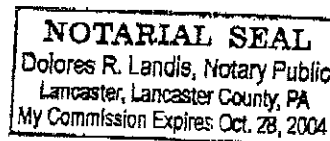
) SS:

COUNTY OF LANCASTER)

On this, the 26th day of August, 2004, before me, a notary public, the undersigned officer, personally appeared Christopher D. Marschka, who acknowledged himself/herself to be a Relationship Manager of FULTON BANK, a Pennsylvania banking corporation, and that as such officer being authorized to do so, acknowledged the foregoing instrument for the purpose therein contained by signing the name of the Bank by himself/herself as Relationship Manager.

Dolores R. Landis
Notary Public

My Commission Expires:



I Certify This Document To Be
Recorded In Lancaster County, Pa.



Steve McDonald
Steve McDonald
Recorder of Deeds