

1931 NOV 26 AM 8:08
30.00
LARGE PLATS
GREENE CO. RECORDER
XENIA, O.

SUBDIVISION RESTRICTIVE COVENANTS

The undersigned, being all of the owners and mortgagees of the following described property (the "Property"):

Situated in the County of Greene, State of Ohio and in the Township of Beaver Creek and being Lots numbered ONE through SEVENTEEN, Narrows Pass as recorded in Plat Book 26, Page 148 of the Greene County, Ohio records.

do hereby make, declare and adopt the following covenants, restrictions and limitations upon the uses of the Property in furtherance of the following purposes:

- (i) The compliance with all zoning and similar governmental regulations;
- (ii) The promotion of health, safety and welfare of all owners and residents of the Property;
- (iii) The preservation, beautification and maintenance of the Property and all structures thereon;
- (iv) The preservation and promotion of environmental qualities; and
- (v) The establishment for development of the Property of requirements relating to land use, architectural features and site planning.

The restrictions and covenants are hereby declared to be covenants running with the land and shall be binding upon and inure to the benefit of any owners of any Lot within the Property ("Owners"). They are to be recorded as plat restrictions and to be read in conjunction with and considered part of the restrictions recorded in the Plat Book and covering the subdivision.

100 / 3 PART 001

It is hereby declared that irreparable harm will result to the undersigned and the beneficiaries of these restrictive covenants by reason of violation of the provision thereof or default in the observance thereof and therefore each beneficiary (including all Owners) shall be entitled to relief by way of injunction, damages or specific performance to enforce the provisions of these restrictive covenants as well as any other relief available at law or in equity.

The following restrictions are hereby created, declared and established:

1. Purpose of Property. All Lots comprising the Property shall be used exclusively for single-family, private residence purposes. No more than one dwelling house shall be erected, placed or suffered to remain upon any Lot. Any such dwelling shall not exceed two and one-half stories in height and have an attached garage of not more than three cars unless otherwise granted a variance by the Architectural Review Board.

2. Subdivision. No Lots shall be hereafter subdivided for any reason except for recombination of Lots from two or three Lots to one Lot.

3. Permitted Structures. The living area of each dwelling house, exclusive of one-story garages and open porches and basements, shall contain not less than 2,400 square feet of finished living area for a one-story dwelling and not less than 2,800 square feet of finished living area for a two-story dwelling. In addition to the minimum space requirement above, the house shall contain not less than a two car attached garage. Approval of the placement and style of a front garage entry shall be first obtained in writing from the Architectural Review Board, its successors, and assigns. Side or rear entry garages are preferred in such placement. (Approval of the placement and style of side and rear entry garages that are visible from the Lots of the other Owners shall be first obtained in writing from the Architectural Review Board.)

4. Approval of Permitted Structures. In addition to the minimum space requirements, no approval shall be granted unless the following have been fully complied with:

- A. No aluminum siding, vinyl siding or plastic siding of any nature may be incorporated into the construction.
- B. No processed, pressed or particle board materials shall be incorporated into the structure (except as roof sheathing or sub-flooring). Only natural wood materials, stone or brick may be used.

10573 PAGE 50

- C. All structures on any Lot shall contain either wood frame windows, vinyl clad wood windows or such windows as approved by the Architectural Review Board.
- D. All buildings in the Property shall be placed at least 200 feet back from the center line of the existing public road, no closer than 25 feet from any side property line. Lots of irregular shape can apply to the Architectural Review Board for a variance to this restriction upon a submittal of a complete site plan showing the placement of the septic system and appropriate screening.
- E. No log cabins are permitted.
- F. Every house shall have a carriage light and post at least six (6) feet in height where the driveway meets the road right-of-way. The carriage light shall be on a photo cell that remains lit during all hours of darkness.
- G. All residences shall have blacktop paved driveways.

100 / 3 445 02

4.1 The Architectural Review Board ("ARB") shall consist of one registered architect or design consultant experienced in residential design and initially selected by Robert Abernathy. This architect shall serve for twenty-four months commencing the date this document is recorded with the Greene County, Ohio Recorder's Office. Thereafter, the Homeowner's Association established pursuant to Paragraph 25 shall select the architect.

4.2 No residence, building, fence, wall, hedge, walk or other structure and no grading or general landscaping shall be commenced, erected or permitted to remain on any lot unless the plans and specifications therefore, showing the nature, kind, shape, height, material, color, scheme, and location of such structure and/or general landscaping scheme have been submitted to and approved, in writing, by the ARB, its successors or assigns. In so passing upon such plans, specifications and other requirements, the ARB may take into consideration the suitability of the proposed dwelling house and the materials of which it is to be built and the site upon which it is proposed to erect same, the harmony thereof with the surroundings and the effect of the dwelling house as planned on the outlook from the Lots of the other Owners of the development. The foundation walls of such dwelling house shall consist of poured concrete and such foundation walls shall be stepped to ground elevation.

5. Outbuildings. Any outbuildings erected or placed upon any Lot shall have same quality finish and roofing as that prescribed for the dwelling house in Paragraph 1 above. No outbuildings shall be made of unsightly material or boxed or similar lumber, and must be kept painted, stained, or varnished. All outbuildings and dog kennels shall be put to the rear of any dwelling.

6. Septic System. Each dwelling house shall have a private sewage disposal system, the location and construction of which shall be approved by the proper health authorities of Greene County, Ohio. No outside toilets are permitted.

7. Prohibited Activity. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done, placed or stored thereon which may be or may become an annoyance or nuisance to the neighborhood, or occasion any noise or offensive odor which might disturb the peace, comfort, or serenity of the occupants of neighboring Lots. In addition, no house trailers, cabins, tents, metal storage sheds, or other outbuildings are permitted on any Lot, other than those permitted by Paragraph 5 hereof, nor is any basement, garage or outbuildings of any kind to be used as a temporary or permanent residence.

8. Rubbish. The Lot and all improvements located thereon shall be kept in good order and repair, in a safe, clean and attractive condition, and maintained in a first class manner. No accumulations of garbage, trash or other debris shall be permitted on the Lot. Upon the commencement of construction (other than road construction), no tractor other than a lawn or agricultural equipment, or other construction equipment of a similar nature shall remain or suffer to remain in the public view on any Lot for a period exceeding seven (7) days. Each Owner of such Lot or the builder contracted to erect a dwelling upon such Lot, shall remove daily all trash (including cardboard materials and the like) from the Lot so that each Lot is free of debris and clutter. Each Owner or builder shall be responsible for keeping the streets free of mud and debris during the construction of the dwelling. The ARB reserves the right to bill the Owner or builder for the cleaning of mud and debris from the public right-of-way which they have caused to remain in that right-of-way for an extended period. Straw bales for erosion control shall be used on all low end sides of Lots during the entire construction process.

9. Containment of Rubbish. No such Lot shall be used or maintained as a dumping ground for refuse or garbage or the like. Garbage or other waste shall be kept in sanitary containers. All Lots shall be free and clear of all debris, including any period of construction upon any Lot.

NOIS 73 PARTS 04

10. Vehicles, etc. No worn out, discarded automobiles, machinery or vehicles, or parts thereof shall be stored on any Lot and no part thereof shall be used for automobile junk piles or the storage of any kind of junk or waste material. Boats, trailers, motorcycles, recreational vehicles, vans, vehicles to be restored, or other similar items must be kept free from public view and must be parked within a garage or screened parking area.

11. Swimming Pools. No above ground swimming pools shall be constructed on any Lot.

12. Animals, Pets. No animals, livestock or poultry of any type shall be kept, except dogs, cats and other domestic household pets provided they are not kept, bred, boarded or maintained for any commercial purpose, and further provided that pit bulls shall not be kept. No more than three (3) household pets may be kept on any Lot.

13. Signs. All individual 'For Sale' signs shall be no larger than 3' x 3'. No individual signs of any kind shall be allowed at the entrances to the subdivision except developer subdivision signs no larger than 8' x 8'. No signs of any kind except Lot number signs shall be allowed on any Lot before January 1, 1994 except the following: (i) Builder build-to-suit signs (ii) House 'For Sale' signs (not Lot 'For Sale' signs). No advertising signs, billboards or other advertising devices shall be erected, placed or allowed to remain on any Lot.

14. Fences. No fencing may be constructed in front of any residence structure except of a decorative nature, provided the same is a split-rail fence, wood fence, or picket fence. Any other type of fencing and its location must be approved by the ARB as provided herein. No chain link fencing may be used on any Lot in the subdivision.

15. Roof. A minimum of a U.L. Class A mineral surfaced, self-sealing, fiberglass based, dimensional shingle, complying with ASTM D-3018 and bearing a U.L. Class A external fire exposure label and U.L. wind resistance label shall be used. Other types of roofing may be used subject to the approval of the ARB.

16. Alterations of Easements. Any Lot area designated for the natural flow of surface water shall be at all times kept free from any obstruction to such natural flow of surface water. In addition each Owner shall be responsible for the maintenance of the easement area on their Lot. Any improvements made on or under any easement shall be made at the risk of the Owner of the Lot on which such improvements

are made, and in no case shall any improvements, alteration or construction upon such easement be made without the approval of the Engineer of Greene County, Ohio. In addition, no free flowing creeks, streams, or springs shall be dammed or have their natural flow altered.

17. Construction Period; Lien. All construction must be done by a professional builder or contractor. All construction commenced on any Lot must be completed within eighteen (18) months after the plans and specifications have been approved by the ARB, subject to delays: delays caused by acts of God, strikes, lock-outs, or labor disputes. The other Lot Owners of the development shall have the right, either individually or collectively, to remove from the Lot any building not completed within the allotted time, provided the Owner of the Lot is not proceeding with diligence to complete construction of same. The Owner of the Lot, by acceptance of this deed, hereby consents in advance to such removal and to pay on demand the costs thereof, which costs shall be deemed to be a lien on the Lot from the date such removal is commenced.

18. Maintenance of Lot. Each Lot and all improvements located thereon shall be kept in good order and repair, in a safe, clean and attractive condition, and shall be maintained in a first class manner. No accumulations of garbage, trash or other debris shall be permitted on the Lot.

19. Adjoining Owners' Fencing. The Owners of adjoining lands shall build, keep up and maintain in good repair, in equal shares, all partition fences between them unless otherwise agreed upon by them in writing and witnessed by two persons. The fact that any land or tract of land is wholly unenclosed or is not used, adapted or intended by its Owner for use for agricultural purposes shall not excuse the Owner thereof from the obligations imposed by Section 971.01 ET. SEQ. of the Ohio Revised Code on him as an adjoining Owner.

20. Propane/Bottled Gas. Any dwelling using propane, bottled gas or oil heat shall have the supply tank buried.

21. Cutting of Timber. No Owner or anyone acting for or on behalf of the Owner shall cut or remove more than 5% of any timber from any Lot unless such cutting or removal is necessary to clear a portion of such Lots to construct a building, to remove dead or diseased trees, or to protect a building from potential damage in the event of windstorm. No commercial logging or dragging activities shall be permitted on any Lot. No tree cut for any reason shall be sold in any fashion regardless of its reason for cutting. Tree cutting for a building site shall begin no sooner than thirty (30) days prior to the pouring of the foundation.

PLANS / 3 PARTS OF

22. Planting of Grass. All Lots that are not built upon or under construction by June 15, 1992 that are not wooded or are slightly wooded shall have the first seventy-five feet from the edge of the pavements planted in ground cover or sown in a perennial rye grass, e.g., Kentucky Blue Grass, a blend of fescue, etc. The area shall be sown at the rate of at least eight (8) pounds of seed per 1,000 square feet and covered with straw. All areas of grass on all the Lots shall remain cut at all times. The areas that are not cut and kept in a neat appearance on a regular basis shall be cut by a commercial operation retained by the Association or the developer. The Owner of the Lot, by acceptance of this deed, hereby consents in advance to such cutting and to pay on demand the cost thereof, which costs shall be deemed to be a lien on the Lot from the date such cutting is commenced.

23. Satellite Dishes. All satellite dishes shall have either mounds and/or evergreens that totally shield the satellite dish from public view. The vegetation planted to surround the satellite dish shall, at the time of planting, be of a sufficient height to totally block its view from the public. Any such system must be approved in advance pursuant to the procedure provided for above.

24. Mailboxes. All the mailboxes in the subdivision shall conform to the details and specifications outlined in Addendum A.

25. Unit Owners Association.

25.1 Declarant has caused or will cause to be formed an Ohio corporation not for profit called, NARROWS PASS HOMEOWNERS ASSOCIATION (the "Association"), which shall be responsible for the administration of this Declaration, the ARB, maintenance for the entry ways and facades, and other matters pertaining to the subdivision that its members elect to pursue. Each Lot Owner, upon acquisition of title to a Lot, shall automatically become a member of the Association, and no party other than a Lot Owner shall be a member of the Association. Such membership shall terminate upon the sale or other disposition by such member of his or her Lot, at which time the new Owner of such Lot shall automatically become a member of the Association.

The Association shall have one class of voting membership as follows: All Owners shall be member of the association and 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 Lot shall be exercised as the Owners determine, but in no event shall more than one (1) vote be cast with respect to any Lot. Except as otherwise provide by law, there shall be a quorum at any meeting of Lot Owners where Lot Owners in good standing are present, in person or by proxy. The voting rights of the Lot Owners shall be set forth in greater detail in bylaws (the "Bylaws") to be adopted at the first meeting of the Association to be held not later than January 1, 1994 at a time and place selected by Robert Abernathy, his successors or assigns. The board of Managers and officers of the Association elected or appointed as provided in the Bylaws shall exercise the powers, discharge the duties and be vested with the rights conferred by the operation of law, by the Bylaws and by this Declaration upon the Association, except as otherwise specifically provided.

25.2 Service of Process. The person to receive service of process for the Association until the President of the Association is a Lot Owner shall be Robert Abernathy. After a President is elected who is a Lot Owner, his or her name and address (and that of each successor) shall be filed with the State of Ohio on such forms as are prescribed for the subsequent appointment of a statutory agent for an Ohio corporation not for profit.

25.3 Assessments. The Association shall have the right to assess each Lot Owner an annual assessment to pay for the costs of operating the Association, which assessment shall not exceed \$50.00 per year and which shall be uniform for each Lot, subject to increase by the Association pursuant to Paragraph ___.

VOL 5 / 3 PARAG 3 U /

26. Remedies. A breach of any of the covenants, conditions, reservations, or restrictions hereby established shall give cause to each and every other Lot Owner for the enforcement thereof, and these covenants, conditions, reservations and restrictions shall be covenants running with the land and the breach of any thereof or the continuance of any such breach may be enjoined or remedied by appropriate proceedings by the Owner of any other Lot.

The breach of any of the foregoing covenants, conditions, reservations, or restrictions shall not defeat or render invalid the lien of any mortgage made in good faith for value as to any Lot or Lots or portions of Lots, but these covenants, conditions, reservations, or restrictions shall be binding upon and effective against any such mortgagee or Owner.

No delay or omission on the part of the Owners of other Lots in exercising any rights, power, or remedy herein provided, or in the event of any breach of the covenants, conditions, reservations, or restrictions herein contained, shall be construed as a waiver thereof or acquiescence therein, except as expressly provided herein.

In the event any one or more of the foregoing covenants, conditions, reservations, or restrictions shall be declared for any reason, by a court of competent jurisdiction, to be null and void, such judgement or decree shall not in any manner whatsoever affect, modify, change, abrogate, or nullify any of the covenants, conditions, reservations or restrictions not so declared to be void, but all of the remaining covenants, conditions, reservations, and restrictions not so expressly held to be void shall continue unimpaired and in full force and effect.

In the event the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event such terms shall be reduced to a period of time which shall not violate the rules against perpetuities as set forth in the laws of the State of Ohio.

27. Duration of Covenants. All of the foregoing covenants, conditions, reservations and restrictions shall continue and remain in full force and effect at all times and against the Owner of any Lot, regardless of how he acquired title, until January 1, 2025, on which date these covenants, conditions, reservations and restrictions shall automatically renew for successive ten (10) year increments unless a majority of the Owners then in possession vote not to renew the restrictions. Any or all of these restrictions except for Paragraph 16 ("Alterations of Easements") may be amended, in whole or in part, or terminated by written instrument, executed by a majority of the then current Owners of the subdivision ("Property"); notwithstanding the foregoing, no amendment to the covenants, conditions, reservations or restrictions shall cause: (i) any Lot to be unbuildable under general residential building practices then in effect in the community; and/or (ii) any provision as presently set forth in Paragraph 3 hereof to be amended as to square footage of size of house or garage.

60 5398 2 510A
VOL 5 7 3 PAGE 5 0 9

IN WITNESS WHEREOF, the undersigned have hereunto set their hand
as of the 22nd day of November, 1991.

Signed and acknowledged
in the presence of:

William H. Frapwell
James E. Couch
James E. Couch

ABERNATHY INVESTMENTS, INC.,
AN OHIO CORPORATION

Robert D. Abernathy
Robert D. Abernathy, President

STATE OF OHIO
COUNTY OF MONTGOMERY)

SS:

The foregoing instrument was acknowledged before me this
22nd day of November, 1991, by Abernathy Investments, Inc., by
Robert D. Abernathy, President.



William H. Frapwell
Notary Public

~~TERESA J. WEDREN, Notary Public
in and for the State of Ohio
My Commission Expires Oct 21, 1993~~

WILLIAM H. FRAPWELL, Attorney at Law
Notary Public, State of Ohio
My Commission has no expiration date
Section 147.03 O. R. C.

VOL 573 PAGE 511

This Instrument prepared by Robert D. ABernathy