

**FOURTH AMENDMENT TO
THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
OF
CHERRYWOOD, PHASE II
OLDHAM COUNTY, KENTUCKY**

This Fourth Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions for Cherrywood, Phase II, is made, entered into and effective as of January __, 2009, by Dominion Homes of Kentucky, Ltd., a Kentucky limited partnership, having an address at 10035 Forest Green Boulevard, Louisville, Jefferson County, Kentucky, 40223 ("Developer").

RECITALS:

- A. Developer has previously entered into that certain Declaration of Covenants, Conditions and Restrictions (the "Declaration") pertaining to Cherrywood, Phase II, dated as of September 29, 2003, of record in Restriction Book 8, Page 319, in the Oldham County Clerk's office, as amended by an Amendment dated October 23, 2003, of record in Restriction Book 8, Page 345, by a Second Amendment dated April 6, 2004, of record in Restriction Book 8, Page 447, and by a Third Amendment dated July 30, 2004, of record in Restriction Book 8, Page 507, all in the office aforesaid.
- B. Section 12.3 - Amendments of the Declaration provides "Until the turnover date, the Developer may, in its sole and absolute discretion, unilaterally amend this Declaration at any time and from time to time, without the consent of any owners. Any such amendment may impose covenants, conditions, restrictions, and easements upon the Property in addition to those set forth herein including, without limitation, restrictions on use and covenants to pay additional charges with respect to the maintenance and improvement of the Property."
- C. That said turnover date has not occurred, and the Developer maintains control over the Declaration.
- D. The Developer now desires to amend the Declaration, to change, modify, clarify and add the following prohibitions contained in this Declaration relating to pools, saunas, hot tubs, trampolines, fences, decorations, antennae and satellite dishes, trash storage, gardens, parking and fines.

NOW THEREFORE, for and in consideration of the above recitals, Developer hereby declares as follows:

- 1. 10.11 Vehicles of the Declaration is hereby amended and restated in its entirety as follows:

10.11 Vehicles

(a) Continuous parking of an un-driven vehicle on a Lot for more than a fourteen (14) consecutive days is prohibited unless prior arrangements have been made and permission granted by the Managing Agent. Vehicles parked in violation of this rule will be considered "stored" vehicles. Stored vehicles must be parked out of sight in the owner's garage or they must be removed from and stored off the property.

(b) Mobile homes, buses, boats, personal watercraft, trucks, trailers of any kind, campers, and all other types of recreational vehicles may not be parked anywhere on the Lot. Recreational vehicles may be parked in a unit owner's driveway for a period not to exceed 24 hours and then only for the purpose of loading or unloading the vehicle immediately prior to or returning from a trip.

(i) The word "trailer" shall include trailer coach, house trailer, mobile home, automobile trailer, camp car, camper or any other vehicle, whether or not self-propelled, constructed or existing in such a manner as would permit use and occupancy thereof, or for storage or the conveyance of personal property, whether resting on wheels, jacks, tires or other foundation.

(ii) The word "trucks" shall include and mean every type of motor vehicle other than a passenger car or commercial vehicle as defined in paragraph (c) below, so licensed by the Commonwealth of Kentucky, and other than any light pickup truck or van which is used exclusively as an automobile by an Owner or a member of Owner's family.

(c) Commercial Vehicles: Parking of commercial vehicles are broken into three categories; (i) Service Vehicles; (ii) Small Commercial Vehicles; and (iii) Prohibited Commercial Vehicles.

(i) Service Vehicles are defined as vehicles used in public services such as firefighting or police protection. Service vehicles may be parked in the driveway overnight.

(ii) Small Commercial Vehicles (SCV) are defined as any vehicle less than twenty-one (21) feet in length, having a height of less than nine (9) feet, weighing less than 6000 pounds when fully loaded; and/or displaying less than eight (8) square feet (per side) of any type of advertising, signage, or placards. SCVs are allowed to be parked on the property only if they are used on a daily basis in their normal course of their profession and drive the SCV to their place of work from their residence. SCV's that fit in a garage are to be parked in the owner's garage at all times when not in use. SCV's that do not fit in a garage may be parked in the owner's driveway overnight.

(iii) Prohibited Commercial Vehicles (PCV) are defined as all vehicles that weigh when fully loaded, more than 6000 pounds; have a vehicle length of more than twenty-one (21) feet in length; all vehicles with a height greater than nine (9) feet, display more than twelve (12) square feet (per side) of any type of advertising, signage, or placards, and all vehicles that include any open exterior storage of tools or materials except no more than two visible ladders. Dump trucks, tow trucks, flat bed car hauling trucks, panel vans and "step vans" larger than one-ton capacity, full size cargo vans, pickup trucks larger than one ton capacity, and semi type tractors and trailers shall all be considered in every instance to be prohibited commercial vehicles.

(iv) The violation lot assessment or fine for the violation of the Commercial Vehicle rules shall be established initially as \$50 per day, however, the Board of Directors may change the amount and/or rate of violation, Lot Assessment, or fine from time to time, by a majority vote of the Board of Directors. The Board may begin assessing fines for violation of the Commercial Vehicle rules within five days after issuing a violation notice either via regular U.S. Postal service or hand delivery.

(d) No vehicle maintenance can be performed on driveways, or public streets. Vehicles may be washed in the driveway.

(e) The owner of the home responsible for the vehicles in violation of any of these rules will be subject to sanctions as may be imposed by the Board of Directors.

(f) The Association, developer, and the managing agent shall not be responsible to individual members for the non-observance or violation of the Association's parking unless the violator is an employee of the Association.

2. Trash. 10.12 of the Declaration is hereby amended and restated in its entirety as follows:

10.12 Trash.

No burning or storage of trash of any kind shall be permitted on the Property. All trash shall be deposited in covered, sanitary containers which are either stored inside of the garage or outside, either in the backyard of the house or along the side of the garage. Any trash containers stored outside of the garage shall be screened from view from the street when facing the front of the house with either a wooden fence, or lattice screen, or landscape planting. Such screening shall be tall enough to screen the top of the trash container and of a length to screen the sides of all containers stored along the building.

3. **Antennae.** 10.13 of the Declaration is hereby amended and restated in its entirety as follows:

10.13 Antennae

No exterior television or radio aerial or antenna, or other aerial antenna or antenna tower, for the reception or transmission shall be installed or maintained on the Property except satellite dishes with a diameter not to exceed 24 inches may be installed as long as they are not be located on any portion of the front half house of the house when facing the front of the house from the street. Roof mounted satellite dishes with a diameter not to exceed 24 inches must be located on the back portion of the roof behind the roof peak out of visible sight from the main street facing the front of the house. Satellite dishes with a diameter not to exceed 24 inches mounted on posts along the side of the house need to be screened from view of the street facing the front of the house either with wood fence or lattice screening or landscape plantings.

4. **Fencing.** 10.19 of the Declaration is hereby amended and restated in its entirety as follows:

10.19 Fencing

No fence or wall shall be constructed or placed on any of the Lots except for (i) enclosure of an in-ground pool to meet safety requirements, (ii) white vinyl split rail fencing similar to the fencing in the entrance area, to be no higher than 48", (iii) dark mesh contained within the above-referenced split rail fence, and (iv) picket-style or board-on-board ("shadow box") type of wooden fencing constructed of pressure-treated material. A drawing illustrating an acceptable picket-style or board-on-board fence is attached hereto as Exhibit A. All exterior wood fences may be treated with a clear sealer, or painted or stained with a neutral or earth tone color paint or stain. For the purposes of this rule an earth tone color is defined as any shade of brown. All colors must be submitted for approval along with the Architectural variance request that must be submitted and approved prior to construction and installation of the fence. No fencing shall be installed or erected until plans therefore have been approved in writing by the Developer or the Design Review Committee and shall be permitted only in the back yard of a Lot (IE: such fence shall be constructed no closer to the street than the rear building line of the home located on the Lot, and in the case of a corner Lot, cannot encroach upon or extend beyond the building line). Any enclosure of an in-ground pool under item (i) above shall be located immediately surrounding the pool and any pool patio area, and shall not be located within ten (10) feet of any Lot line. Ornamental fences integrated with a landscape design are permitted with approval of the Developer or the Design Review Committee.

5. **Swimming Pools.** 10.20 of the Declaration is hereby amended and restated in its entirety as follows:

10.20 Swimming Pools, Hot Tubs, and Exterior Saunas

(a) **Inflatable, Temporary Above Ground Swimming Pools.** Inflatable and/or temporary above ground swimming pools of a depth not to exceed two (2) feet six (6) inches (30 inches total) measured from the ground to the top edge of the pool side, are allowed between the dates of May 1 through September 31 of the calendar year. These swimming pools must be located in the back portion of the Lot, behind the house structure, out of visible sight from the main street facing the front of the house. Inflatable pools not surrounded by an approved fence must be removed upon receipt of a violation notice and the Board may begin assessing fines within five days after issuing a violation notice either via regular U.S. Postal Service or hand delivery. Outside of the permitted calendar period, the above ground pool must be dismantled and stored out of sight. Outside of the permitted calendar period, the Board may begin assessing fines within five days after issuing a violation notice either via regular U.S. Postal Service or hand delivery. Any type of permanent or semi-permanent above ground pools other than the above are not allowed. All fences must be submitted with an architectural application for approval prior to installation.

(b) **Hot Tubs and Exterior Saunas.** Installation of hot tubs and exterior saunas is allowed provided they are located in the back portion of the Lot, behind the house structure, out of visible sight from the main street facing the front of the house and in a location no more than 20 feet away from the rear of the house structure. Hot tubs and exterior saunas installed on corner Lots that are visible from a side street need to be screened from the street with landscape plantings. All hot tub and sauna enclosure structures require an approved Architectural variance that must be submitted and approved prior to construction and installation.

6. **ADDITIONAL SECTION TO DECLARATION.** The Declaration is hereby amended to include a Section 10.22 and Section 10.23.

10.22. Trampolines.

Trampolines are allowed but they must be located in the back portion of the Lot, behind the house structure, out of visible sight from the main street facing the front of the house. Trampolines must be maintained in good maintenance and repair and the grass below the trampoline must be maintained free of weeds and trimmed on a regular basis. If a trampoline is not maintained in a good condition or the grass beneath the trampoline maintained and trimmed on a regular basis, the Board may begin assessing fines within five days after issuing a violation notice either via regular U.S. Postal service or hand delivery.

10.23. Holiday Decorations

Holiday decorations are allowed as long as they are not excessive and do not disturb immediate neighbors. Decorations cannot be displayed prior to the first Saturday after Thanksgiving and must be removed no later than the second Saturday following New Year's Day. The Board may extend the date due to weather conditions. Decorations for other Holiday periods may be displayed for a period not to exceed two weeks in advance of and one week after the Holiday date. Any retaining clips or other fasteners used on Gutters or other parts of the house must also be removed with the removal of the decorations.

7. Enforcement. 12.2 of the Declaration is hereby amended and restated in its entirety as follows:

12.2 Enforcement

- (a) This Declaration may be enforced by any proceeding at law or in equity by the Developer, any Owner, the Association, the Design Review Board, and each of their respective heirs, successors and assigns, against any person(s) violating, or attempting to violate any covenant, restriction, or rule to restrain and/or to enjoin violation, to obtain a decree for specific performance as to removal of any nonconforming improvement, and to recover all damages, costs of enforcement and any other costs incurred (including without limitation reasonable attorneys' fees) in connection with any violation. The failure or forbearance to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of these rights.
- (b) The violation lot assessment or fine for the violation of any association restriction or rule shall be established initially as twenty-five (\$25) dollars per day unless another fine is specifically set out in another section of the association restriction, bylaw, or rule. However the Board of Directors may change the amount and/or rate of violation lot assessment or fine from time to time by a majority vote of the Board of Directors.

8. **RATIFICATION.** Except as modified by this First Amendment, the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, Developer has entered into this Agreement as of the date first written above

Dominion Homes of Kentucky, Ltd.

By: Dominion Homes of Kentucky GP, LLC

By: [Signature]
Mark Hammel, Director of Homeowner Associations, Kentucky
("Developer")
MIRK Anetta - PRESIDENT

Commonwealth of Kentucky)

County of Jefferson)

SS

The foregoing instrument was subscribed, sworn to and acknowledged before me this 31 day of January 2009, by Mark Hammel, Director of Homeowner Associations, Kentucky, of Dominion Homes of Kentucky GP, LLC, as general partner of Dominion Homes of Kentucky, Ltd. ("Developer").

My Commission Expires: 11-14-2011

Kendra M. Dunaway
NOTARY PUBLIC

Kendra M. Dunaway
Notary Public
State at Large, Kentucky
Expires 11-14-2011

THIS INSTRUMENT IS PREPARED BY:

HEBEL & HORNUNG, P.S.C.

By: _____
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