

"PROTECTIVE COVENANTS AND RESTRICTIONS FOR"
DESHA POINT DEVELOPMENT, LLC (DESHA POINT SUBDIVISION)
PHASE 3
Plat Cabinet_6_ Sheet __36__
HARRISON COUNTY, KENTUCKY

THESE PROTECTIVE COVENANTS AND RESTRICTIONS are made and entered into on the __31__ day of __July__, 2006 by DESHA POINT DEVELOPMENT, LLC, a Kentucky limited liability company (hereinafter referred to as the "Developer"), having a business address of 117 North Main Street, Suite 1, Cynthiana, Kentucky.

W I T N E S S E T H

WHEREAS, the Developer is the owner of Phase 3 of the DESHA POINT Subdivision " which property is located approximately 1.3 miles North of Cynthiana on the west side of Hwy. U S 27 North in Harrison County, Kentucky "as shown by that final record plats recorded on the Date _7/31_, 2006 in Plat Cabinet _6_Slide_36_, in the Harrison County Clerk's Office (the "Subdivision"); and

WHEREAS, the Developer intends to establish a general plan for the use, occupancy and enjoyment of the Subdivision; and

WHEREAS, in an effort to maintain uniformity in said use and occupancy, the Developer desires to create certain restrictions as to the lots in the Subdivision.

NOW, THEREFORE, the Developer does hereby establish the following covenants, conditions and restrictions as to the use and occupancy of all lots in Phase3 , being numbered ; 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 of the Subdivision as follows:

1. **PRIMARY USE RESTRICTIONS:** No lot in the Subdivision shall be used except for private single family residential purposes. No structure shall be erected, placed or altered or permitted to remain on any lot except a one single family dwelling designed for the

occupancy of one family (including any domestic servants living on the premises), not to exceed two and one-half stories in height and which shall contain an attached private garage. There is an exception for an additional garage type building in Paragraph 7, Section (b).

2. **APPROVAL OF CONSTRUCTION PLANS:** No house, building, fence, wall, structure or other improvement, or any addition to any of the foregoing, shall be erected, placed or altered on any lot until the construction plans, specifications, plot plan showing the proposed location of the house upon the lot following its completion, and a plan showing the grade elevation (including rear, front and side elevations) and location of the house, structure, fence wall or improvement, the type of exterior material and the driveway (which shall be composed of Portland Cement concrete, blacktop, or paving brick) shall have been approved in writing by the Developer or by any person or association to whom it may assign such approval right. The Developer may vary the established building lines, at its sole discretion, where not in conflict with applicable zoning regulations. No doublewide or singlewide trailers shall be placed on or permitted to remain on any lot in the Subdivision. No manufactured housing shall be placed on or permitted to remain on any lot of the Subdivision.

3. **BUILDING MATERIALS:** The type of exterior building materials utilized in the construction of any house within the Subdivision must first be approved in writing by the Developer. The Developer prefers material of brick and or stone, predominately. Siding may be used if it is of high quality and blended with stone or brick in the design. All construction shall be finished to grade level and any foundations exposed over twelve (12") inches in height must be painted a color complimentary to the color of the completed house. All masonry construction material shall be laid from foundation walls to the soffit on the front and shall be laid to the top of the gable on the sides. An exception will be made on multiple gable homes where the gables may sit inside the foundation walls on one and a half and two story houses. With this type of construction siding may be used if it is of a high quality and approved first by the Developer. Roof shingles must conform to the look of the other residences in the subdivision. Wood or Asphalt, Slate and Standing seam metal roofs are acceptable. No five-v or Corrugated metal or metal building types are allowed. No commercial roofing is allowed. Colors

should be used that enhance the appearance of the design and harmony of the home.

4. **SETBACKS:** No structure shall be located on any lot closer to the front lot line or the side street line than the maximum building set back line set forth on the recorded plat, except bay windows and steps may project into said areas, and open porches may project into said areas not more than eight (8') feet. Side yard setbacks shall be as required by applicable zoning regulations. Improvements, other than fences and gardens, may be constructed in such a manner that any encroachment with respect to the minimum building setback line and side yard requirements shall be averaged in accordance with the rules and regulations promulgated by the Cynthiana/Harrison County/Berry Joint Planning Commission. Construction on any lot in the Subdivision shall be subject to the building set-back lines and utility easements set forth on the recorded plat.

5. **MINIMUM FLOOR AREA:** The minimum floor area of any house built within the Subdivision, exclusive of porches, garages and basements, shall be as follows:

(a) All one (1) story houses shall have a minimum of 1700 square feet living space on the ground floor, exclusive of the garage.

(b) A one and one-half (1-1/2) story house shall have a minimum of total 2200 square feet living space with at least 1400 square feet of space on the main floor, exclusive of the garage.

(c) A two (2) story house shall have a minimum of 2800 total square feet of living space with at least 1400 square feet of space on the main floor, exclusive of the garage.

6. **NUISANCES:** No obnoxious or offensive trade or activity shall be conducted on any lot and nothing shall be done which may become an annoyance or nuisances to the neighborhood.

7. **USE OF OTHER STRUCTURES AND VEHICLES:**

(a) No building or structure of a temporary character, including, but not limited to, trailer, tents, garages, barns or other "out buildings" shall be used upon any lot in the Subdivision at any time as a residence, either temporarily or permanently, nor shall any trailer, tent, shack, barn, "out building", or unmovable vehicle be used and/or maintained upon any lot in the

Subdivision at any time, whether temporarily or permanent. (In certain cases, builders may be Granted the right to place construction trailers or temporary offices on any lot in the Subdivision as long as the builder is actively constructing houses in the Subdivision, provided that the builder obtains the Developer's prior written consent.)

(b) Detached buildings can be erected provided they consist of the same building material as the residential home and approved by the Developer. A minimum size of 484 square feet and a maximum size of 672 square feet; with a roof pitch of not less than 7/12. The building if erected, must be located behind the residential home and approved by the Developer.

(c) No commercial vehicle or truck weighing over one (1) ton capacity shall be regularly parked on any lot or street in the Subdivision other than for delivery or construction purposes unless housed within a garage, and no person shall engage in major car repairs for others within the Subdivision at any time. No recreational vehicle, trailer, or boat shall be parked in any front yard or on any street in the Subdivision for a period in excess of twenty-four (24) consecutive hours, or in any manner that may be construed as an intentional attempt to circumvent this restriction.

8. **GARAGES:** Garages shall be attached to the residence, and will be rear, or side entry garages; and all residences constructed upon the lots in the Subdivision must have garages large enough to accommodate two (2) automobiles; 484 sq. ft. min. (22' X 22').

9. **DRIVEWAYS AND SIDEWALKS:**

(a) Each lot owner shall concrete or pave the driveway within six (6) months (weather permitting) after completion of a single family dwelling. All driveways and approaches shall be constructed of Portland Concrete, paving brick, or black top.

(b) Any person cutting into or tunneling under or damaging in any manner the street, sidewalk, or road serving any lot within the Subdivision must repair and restore the street, sidewalk or road to its original condition, all at such person's own risk and expense. This provision shall not be construed as any permission or consent by the Developer to allow any such action and shall not create any liability on the Developer of the Subdivision, either expressed or implied, if such a cut or damage should occur.

10. **SEPTIC SYSTEMS:** The owners of all lots shall be responsible for the installation of a septic system and drain field that complies with and has been approved by the Harrison County and Kentucky State Health Department Regulations. No septic system other than the drain field pipe shall be placed upon any lot without the approval of the Developer and in no event shall the lagoon type system be permitted.

11. **BUSINESS/HOME OCCUPATIONS:** No trade or business of any kind (and no practice of medicine, dentistry, chiropody, osteopathy and like endeavors) shall be conducted on any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. Notwithstanding the provisions hereof or of Paragraph 1 above, a new house may be used by the builder thereof as a model home for display or for the builder's own office, provided said use terminates with two years from completion of that house (or such later date as may be granted by the Developer in certain cases).

12. **TREES:** Upon completion of construction of the house on each lot, the owner shall be responsible for planting at least three (3) shade trees in the front yard of the lot, and at least (2) shade trees on the rear lot. Ornamental trees are encouraged to be planted in all areas of the lot but not demanded by the developer.

13. **FENCES:** No chain link fence of any kind shall be permitted on any lot. Any fences erected on a lot shall first be approved by the Developer, and no fence, wall or hedge of any nature may be extended toward the front or side of the property line beyond the building set-back line as shown on the recorded plat in the Harrison County Clerk's Office. Any fence used must conform with the character of the Subdivision and shall be in accordance with all appropriate governmental regulations. **All approved fences must have the finished side facing out from the said lot.**

14. **MAILBOXES AND PAPERHOLDERS:** All mailboxes must be black in color and erected on a black metal 4" post. The size is to be the large rural type approved by the U. S. postal service and shall be set back from the street according to U. S. postal rules.

15. **GARBAGE CANS, TANKS, POOLS, ETC.** All garbage cans, above-ground tanks, and other similar items shall be located or screened so as to be concealed from view of

neighboring lots, streets, and property located adjacent to such lot. All rubbish, trash, and garbage shall be regularly removed from the lot and shall not be allowed to accumulate thereon.

No permanent above-ground pools shall be erected, constructed or installed on any lot.

16. **CLOTHESLINES:** No outside clothesline shall be erected or placed on any lot.

17. **DRAINAGE:** Drainage of each lot shall be in conformity with the general drainage plan of the Subdivision.

18. **DISPOSAL OF TRASH:** No lot shall be used as a dumping ground for rubbish, trash, garbage, or other waste. All such material kept upon the lot on a temporary basis shall be placed in a sanitary container, incinerator or similar equipment which shall be maintained in a clean and sanitary condition.

19. **ANIMALS:** No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, with the exception of dogs, cats and other household pets (meaning the domestic pets traditionally recognized as household pets in this geographic area), provided that such pets are not kept, bred or maintained for commercial purposes, and provided that such pets be kept within an enclosed area and not permitted to run or stray upon other lots unless on a leash or under direct control. **Dog runs will not be permitted.**

20. **OWNER'S DUTY TO MAINTAIN PROPERTY:** Each lot owner shall keep the grass properly cut, keep the lot free from weeds and trash, and keep the lot neat and attractive. If a lot owner fails to so maintain the lot, the Developer, or its assignee, may take any action it deems appropriate to make that lot neat and attractive, and the owner shall, upon demand, reimburse the Developer for any expenses incurred plus an administrative surcharge of 25% of the total of such expenses.

21. **SIGNS:** No signs of any kind shall be displayed on any lot, with the exceptions of For Sale or Rent (which shall not be greater in size than nine (9) square feet) and signs deemed acceptable or necessary by the Developer. Builders who are actively constructing houses in the Subdivision shall have the right to display larger signs, provided that the sign is approved in advance by the Developer.

22. **UTILITIES:** Each lot owner shall be responsible for preserving and protecting

underground utilities located on the lot: no utility lines of any kind may be above ground unless approved by the Developer.

23. **GARDENS:** No gardens, except those enclosed within a fence consented by the Developer, shall be planted or extended nearer the street than the building setback line.

24. **ANTENNAS OR SATELLITE DISHES:** No lot owner shall install a satellite dish or telecommunications unit of any kind, size or proportion on a lot unless approved by the Developer in writing. If approved, any such satellite dish or telecommunications unit must be situated in an obscure location of the house, with the exact location, size and height to be approved of in writing by the Developer.

25. **SUBDIVISION/ONE BUILDING PER LOT:** No additional subdivision of any lot shall be made without the written consent of the Developer and the appropriate governmental bodies; further, no more than one (1) building shall be built on any lot; however, this restriction shall not prohibit pool houses, gazebos, or similar structures which have been approved by the Developer.

26. **OBLIGATION TO CONSTRUCT OR RECONVEY:** DELETED and REPLACED Sept. 5th, 2008 with **26.1** (Recorded Sept. 5th, 2008 Harrison County Clerk)
Logged (Linda Furnish, HC Clerk) 11:50 AM. Sept. 5, 2008 Book 305 Page 86

26.1 OBLIGATION TO FINISH CONSTRUCTION: Lot purchasers shall have no time limit requirements to start construction of the residence, however when construction does begin, has an obligation to finish construction in a timely manner. Construction shall be completed within 15 months from the starting date. The Developer will tolerate no uncompleted construction (Completion is considered when all residential construction, grading, seeding, landscaping and debris removal is finished). Failure to complete construction in a timely manner as stated above shall result in a monetary penalty. The Developer will assess the lot owner of record a penalty amount of \$500.00 per month for each and every month of non-compliance. The penalty will begin on the first day of the next full month following the end of the 15-month period mentioned

above. The payment will be due and payable to the Developer on the first day of that month and continue each and every month until the construction is completed.

However, the Developer may for weather related conditions, delays in receiving needed materials, and other unforeseen situations grant extensions to the construction time on an as needed basis, provided that by giving such does not interfere with the harmony of the subdivision or its occupants. It is the obligation of the lot owner of record to inform the Developer of needed time extensions in writing and to do so before the penalty is in force.

27. **ZONE CHANGES:** No zone changes for any lot in the Subdivision shall be applied for without the prior approval of the Developer.

28. **ROOF PITCH:** No roof on any residence shall have less than a 7/12 pitch unless approved in writing by the Developer.

29. **LANDSCAPING:** As construction of the improvements on each lot is completed, landscaping shall be done as follows:

The front of each house shall be landscaped with a minimum of ten (10) shrubs. The property owner shall be required to replace any street trees damaged by his action. Street trees shall match in species, quality and size the tree that was destroyed at the time it was destroyed. No existing living tree may be removed without permission of the Developer. All street trees will be planted in unison at a time designated by the Developer based upon completion of development. All lots shall be seeded or sod installed at the completion of construction.

30. **ENERGY CONSERVATION EQUIPMENT:** No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed upon any lot unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Developer.

31. **NO MUNICIPALITY:** No city or municipality shall be formed for the Subdivision or any portion thereof unless approved by the Developer.

32. **SEVERABILITY OF PROVISIONS:** The invalidation of any one of these covenants

and restrictions by a judgment or Court order shall not affect any other provisions hereof which shall remain in full force and effect.

33. **RESTRICTIONS BINDING UPON BUILDERS AND CONTRACTORS:** These covenants and restrictions shall be binding upon and enforceable against a builder or contractor engaged by the owner of a lot in the Subdivision to construct a house or any other improvements upon the lot. The lot owner shall be responsible for ensuring that the builder/contractor is made aware of, and complies with, these covenants and restrictions.

34. **ENFORCEMENT:** Enforcement of these Restrictions by the Developer, or any lot owner shall be by proceedings by law or equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages. Any lot owner at any time may enforce the restrictions and covenants herein contained by appropriate legal procedure. The failure of any owner to demand or insist upon observance of any of these restrictions, or to proceed for restraint of violations, shall not be deemed a waiver of the violation or the right to see enforcement of these restrictions.

35. **AMENDMENTS:** These covenants and restrictions **may be amended at any time by the Developer**, provided that the Developer still owns at least one (1) lot or tract of land in the entire Desha Point residential development, and (a) the minimum floor area requirements set forth in Numerical Paragraph 5 hereof are not decreased and the amendment does not cause direct harm the owner of any lot in the Subdivision, unless such owner consents to the amendment in writing, and (b) written notice specifying the nature of the amendment is sent to the owner of each lot in the Subdivision at least thirty (30) days prior to the effective date of such amendment. Furthermore, these covenants and restrictions may be canceled or amended at any time by the affirmative action of the owners of seventy-five percent (75%) of the lots subject to these restrictions. No amendment to these covenants and restrictions relating to the construction criteria of houses built upon any lot in the Subdivision shall be applicable to any house the construction of which commenced prior to the date such amendment is recorded in the Harrison County Clerk's Office.

36. **RESTRICTIONS RUN WITH LAND:** Unless canceled, altered or amended, under

The forgoing Protective Covenants and Restrictions was acknowledged, subscribed and sworn to before me by Frazer D. LeBus, III , duly authorized managing partner in DeSha Point Development, LLC. a Kentucky limited liability company, on this the _____ day of _____, 2006.

My commission Expires: _____

Notary Signature _____ on file _____

Prepared by:

Frazer D. LeBus, III
Managing Partner DeSha Point Development, LLC.
117 North Main Street, Suite 1
Cynthiana, Kentucky 41031
(859) 234 – 5007

STATE OF KENTUCKY)

COUNTY OF HARRISON)

I, Linda Furnish, Clerk of the Harrison County Court do certify that the foregoing Protective Covenants and Restrictions was on the _____ day of _____, 2006, at _____ o'clock in the ____ M., lodged in my office certified as above for record, the same and this certificate are now duly recorded.

Given under my hand, this the _____ day of _____, 2006.

CLERK

D. C .