

# Briar Creek

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## SUBDIVISION PROTECTIVE COVENANTS

1. Residential Parcels: No residence, dwelling house or building shall be constructed, erected, built, moved upon or otherwise placed upon this property, except residences and dwelling houses commonly known and described as detached single family residences or dwelling houses with appurtenant out buildings.

In conjunction with said single family residence, however, a guest house, or cottage may be constructed as an auxiliary to said detached single family residence, but shall never be used for any commercial purpose. The same may be constructed only at the time of, or after, the construction of said single family residence. No barn or out-building may be constructed having metal exterior walls.

Commercial use shall be strictly prohibited, and, specifically, the construction of duplexes, apartments, townhouses or other multi-family dwellings is prohibited.

2. Temporary Structures: No trailer, mobile home, basement, shack, garage, out building nor

any other structure of a temporary character shall be used on any parcel at any time as a residence, either temporarily or permanently.

3. Size and Structure: The main structure, exclusive of open porches and garages, shall have a total heated area of no less than eighteen hundred (1,800) square feet. If the main structure is a two story construction, the ground floor shall be no less than twelve hundred (1,200) square feet of heated area. Each house shall have a garage with retractable door(s) for vehicle parking. Modular and/or manufactured homes and/or outbuildings are prohibited. All houses shall be constructed with a minimum roof pitch of 8:12 and shall consist of shingle roofing material. All houses shall be constructed with a minimum of 70% brick exterior. All houses shall be constructed in accordance with the Pearl River Electric Power Association "Comfort Advantage" energy efficiency program. All Comfort Advantage refunds will be refunded to the developer, Dream Developments, LLC. Plans for all buildings or structures shall be submitted to the Homeowners Association building committee for approval prior to construction. If such approval is not obtained from the Homeowner's Association building committee prior to construction, said construction shall be deemed to have been undertaken in violation of these covenants.

4. Building Location: No building, barn, or enclosure (other than fencing) shall be located on any parcel nearer than twenty-five (25) feet to the front line nor nearer than fifteen (15) feet to any side line, nor nearer than twenty (20) feet to the rear parcel line.

5. Limitation of Parcel Size: No lot shall be subdivided or its boundary lines changed, except with the written consent of the Board of Directors. No residence shall be constructed in the subdivision on a less quantity of ground than the whole of one entire lot, as shown by the official plat of said subdivision; but this restriction shall not prevent any person from combining two or more of said lots, as

shown by the official plat of said subdivision, into a single building site for one residence or dwelling house.

6. Septic System: Individual sewer systems shall be required for residents. Each individual lot shall be subjected to a soil (perk) test administered by the Lamar County Health Department. This test shall be set up by the lot Owner prior to construction (at the Owner's expense). The Developer does not guarantee any lot to pass a soil (perk) test nor does the Developer imply that any lot will be suitable for a Lamar County Health Department pre-designed sewer system. However, if a Lamar County Health Department pre-designed sewer system is deemed unsuitable for the lot, an engineered system can be designed by a Professional Engineer at the lot Owner's expense. All sewer systems shall be designed according to the Mississippi Department of Health regulations. All sewer systems shall be strictly maintained by the lot Owner such that no neighboring lots shall be adversely affected by effluent or odor.

7. Homeowners Association: Each homeowner who is in good standing shall be a Member of the Association. An Owner shall be considered to be in good standing if such Owner is current in the payment of all annual and special assessments with respect to his lot. Additionally, the Developer shall be the sole Member of the Association until such time as it has sold 50% of the lots. Membership shall be appurtenant to and may not be separated from ownership of any lot. Specifically excluded from membership in the Association are persons or entities that hold an interest in a lot merely as security for the performance of an obligation.

The Association is (or will be) formed for the creation, operation, management, and maintenance of all of the committees, services, or facilities herein set forth; the enforcement of all covenants contained herein; the assessment, collection, and application of all charges imposed hereunder or liens

created hereby and such other purposes as or will be set forth in the Charter and By-Laws of the Association.

Until such time as the Developer has sold 50% of the lots, or until such time as the Developer voluntarily waives this provision, the Developer shall be the sole Member of the Association. After the Developer has sold 50% of the lots, or at such time as the Developer voluntarily waives the provision giving the Developer the sole vote, there shall be a total of one vote for each lot owned by a Member. Where two or more persons are owners of a lot, the vote for such lot shall be exercised as such persons may among themselves determine, but in no event shall more than one vote be cast with respect to any one lot.

The Association shall be governed by a Board of Directors. Until such time as the Developer has sold 50% of the lots, or until such time as the Developer voluntarily waives this provision, the Developer shall be the sole Director of the Association. After the Developer has sold 50% of the lots, or at such time as the Developer voluntarily waives the provision making the Developer the sole Director, there shall be five (5) members of the Board of Directors of the Association that shall serve terms of two years. The Directors shall be elected bi-annually by a majority vote of the Members.

The Members may adopt bylaws governing the Association as the Members shall determine, provided, however, that such bylaws shall not be inconsistent with the terms and provisions of these covenants. In the event of any conflict between the terms of such bylaws and these covenants, then the terms and provisions of these covenants shall control.

Each owner of any lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: a) annual assessment of charges, and b) special assessments for capital improvements, such assessments to

be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interests, cost and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each assessment, together with such interest, cost, and reasonable attorney's fees shall also be the personal obligation of the person who was the owner of such property at the time when the assessment became due and payable.

The assessments levied by the Association shall be used exclusively for the purpose of promoting recreation, health, safety, and welfare of the residents in the properties and in particular for the improvement and maintenance of the common areas and easements appurtenant thereto, for upkeep of street lighting and for the payment of utility, maintenance and similar bills related thereto.

There shall be an annual assessment with respect to each lot (other than those owned by the Developer for initial sale) of One Hundred Dollars (\$100.00) per calendar year for the maintenance of the common areas located within the development. The amount of such annual assessment may be changed effective for the following calendar year by vote of eighty percent (80%) of the Members who are entitled to vote, which vote shall be taken at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than ten (10) days in advance of the meeting.

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement relating to any other Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of eighty percent (80%) of the Members who are entitled to vote, (or during such time that the Developer is the sole voting member, eighty percent (80%) of the Members

regardless of their inability to vote) which vote shall be taken by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than ten days (10) in advance of the meeting.

The annual assessments provided for herein shall be due and payable on the 1<sup>st</sup> day of each June. The annual assessments shall be prorated with respect to any lots sold by the Developer during the calendar year and such assessment shall be due at closing. Unpaid assessments shall accrue interest at the rate of eight percent (8%) per annum until paid.

The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot which is subject to any mortgage, pursuant to a foreclosure under such mortgage or any proceeding in lieu of the foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof which became due prior to the sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

A building committee shall be formed to review and approve individual building plans prior to construction.

The Developer shall deliver and convey title to certain common areas to the ownership of the Association, upon completion of the development and sale of 50% of the lots owned by the Developer, for the common use and enjoyment of the lot owners.

8. Nuisances: No noxious or offensive activity shall be carried on upon any parcel, nor shall anything be done thereon which may be an annoyance or nuisance to the neighborhood, but the raising of domestic animals is specifically allowed and shall not be deemed a noxious or offensive activity. Dogs shall be confined to the owner's property. The following breeds are strictly prohibited: pit bulldog,

rottweiler, and doberman pinscher. Pets must be leashed when walked. No permanent parking will be permitted on street. Permanent play structures and/or use of excessive yard art is prohibited in front of residence.

9. Enforcement: If the owner shall violate or attempt to violate any of the conditions, restrictions or covenants herein contained, then, in such event, any other person or persons who are or may be adversely effected by a violation or attempted violation of any of these conditions may institute and prosecute any appropriate proceeding or proceedings either in law or in equity for the purpose of enjoining any such violation or attempted violation and/or damages therefor, but there shall be no forfeiture or reversion of title because of any such violation or attempted violation of any of said conditions, restrictions or covenants. Failure to enforce any covenant or any restriction herein contained shall not be a waiver of the right of any person claiming herein to do so thereafter.

10. Severability: If any one or more of the conditions, restrictions or covenants herein contained shall be held by any court of competent jurisdiction to be invalid for any reason, any such holding shall not affect the validity and effectiveness of other conditions, restrictions and covenants herein contained.

11. Term: These restrictive covenants shall run with the land and title thereto and shall be binding on all parties owning or claiming under them by purchase, inheritance, or otherwise, for a period of twenty (20) years from the date of filing of this covenant with the Lamar County Chancery Court. These covenants may be modified within a period of six (6) months following the expiration date. If no modifications are made during this six (6) month period, the covenants shall automatically renew for a period of ten (10) years from the date of expiration. Any modifications of the covenants shall have the assent of eighty percent (80%) of the Members who are entitled to vote.

END OF PROTECTIVE COVENANTS

The filing of these protective covenants shall supersede the previously filed protective covenant document for Briar Creek Subdivision (recorded on October 3, 2006 in Land Deed Book 18-T, page 150). These amended covenants are hereby agreed to and ratified by, the current owners as follows:

By: \_\_\_\_\_

Dream Developments, LLC  
Mark Smith

By: \_\_\_\_\_

Dream Developments, LLC  
Kristy Breazeale

**ACKNOWLEDGMENT**

STATE OF MISSISSIPPI

COUNTY OF LAMAR

Personally appeared before me, the undersigned authority in and for the said county and state, on this \_\_\_\_\_ day of \_\_\_\_\_, 2006. Within my jurisdiction, the within named Mark Smith, Member and Kristy Breazeale, Member, who acknowledged that he/she executed the above and foregoing instrument, after first having been duly authorized by said corporation to do so.

My commission expires on: \_\_\_\_\_

Notary Public

Contact Information:

Dream Developments, LLC  
Mark W. Smith  
69 Powe Road  
Purvis, MS 39475  
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