

**Protective Covenants for Buckeye Ridge Subdivision
Gilmer, Texas
2-3-11**

WHEREAS, Dean Real Estate hereinafter called "Developer" is the owner of a subdivision located in Upshur County, Texas, known as Buckeye Ridge.

WHEREAS, It is the intention of Developer to sell lots in said subdivision, and by this document to impose on the lots in the plats, restrictions under a general plan of improvement for the benefit of said lots and the future owners of those lots so as to insure the best use and most appropriate development and improvement of each lot. It is also the purpose of this document to maintain harmony of appearance, protect property values and promote the development of the lots as a residential district of the highest class and character and to protect owners against such use that would detract from the residential value and enjoyment of their properties. The further purpose of this document is to guard against the erection of poorly designed and poorly proportioned structures, to obtain harmonious use of materials in the improvement of each building site and to encourage and secure the erection of attractive homes thereon with appropriate location thereof on the building sites to prevent haphazard improvement of the building sites and to secure and maintain proper set-backs from the streets and adequate free space between structures.

NOW Therefore, the undersigned Developer does hereby declare that all lots of the Buckeye Ridge subdivision shall be subject to the following conditions and restrictions which will be construed as covenants running with the land, all of which are declared to be in furtherance of the general plan for improvement of said lots and are established for the purpose of enhancing and protecting the value and desirability of said lots. All the provisions herein, whether they be easements, restrictions, conditions or covenants, shall be construed to run with the land, and shall be binding upon all future owners of said lots and all parties having or acquiring any rights, title or interest in said lots following the recording of this document, whether specific reference is made to this document in future deeds of conveyance or not.

1. **DESCRIPTION OF PROPERTY:** All lots of the plats of Buckeye Ridge Subdivision are affected by this document and shall Hereinafter be referred to as "Lots".
2. **LOT:** It is acknowledged that at the time of executing these Covenants the entire subdivision is zoned as single family residential, with the exception of lots mentioned in item 30. No building shall be used, erected, altered or permitted to remain on any Lot except for residential dwelling purposes. Without in any manner limiting the foregoing, no church, duplex, or multifamily structure, or commercial building shall be placed or permitted on any Lot or portion of any Lot, nor shall any Lot be utilized for access to any other land adjacent to or adjoining the Property without written consent and approval of Developer. Each residential unit shall be for occupancy by persons comprising one family as the term is commonly used, meaning related by blood, marriage or adoption, to also include foster children and other invited residents forming a family unit. Group living arrangements where persons pay to live in the dwelling rather than are a part of the family are particularly prohibited. No warehouse for storage of materials for sale shall be allowed on the premises.
3. **DEWELLING:** All structures shall be designed by a registered architect, home designer or equally qualified individual or firm. No building (principal or otherwise) fence, swimming pool or any other structure shall be erected upon any Lot until the building plans, specification of construction, materials of construction and plot plan have been approved in writing by the Developer or Architectural Review Committee.

No used materials will be permitted in the construction of any building in this subdivision except such materials as reclaimed brick without the written approval of the Developer or Architectural Review Committee.

Above grade foundation walls shall not be of unfaced concrete block or poured concrete. All above grade foundation walls shall be faced with brick, stucco, stone, mortar, wood or otherwise faced in a decorative manner.

All dwellings shall have a pitched roof of not less than 6:12, with house type (30 Year) composite shingle, and adequate overhangs or eaves. All exterior walls of one or one and one-half stories shall be constructed of not less than eighty percent (80%) masonry excluding door and window openings, and all exterior walls of dwellings having two or more stories shall be constructed of not less than sixty-five percent (65%) masonry excluding door and window openings. The term "masonry" as used herein shall mean brick, stone, or stucco. In computing the percentages set forth above, wall masonry to sill line of windows or masonry to mid-point shall be considered thirty-five percent (35%) masonry. This restriction may be waived or varied by the Developer within Developer's sole and absolute discretion to include log, redwood, or other exterior building materials. Any such waiver or variance executed by Developer shall be filed in the County Clerk's Office of Upshur County, Texas with respect to the affected Lot at the Owner's expense.

- 4. **GARAGE:** Each residential unit shall include at least a two-car attached or detached garage and not more than a three-car garage whose doors do not face the road. The exterior of the garage shall be constructed of the same materials used on the exterior of the dwelling. No garage shall be permitted to be enclosed for living or used for purpose other than storage of vehicles and related normal use.
- 5. **MINIMUM BUILDING SIZE, DESIGN and MATERIALS:** The minimum building area for each residential unit exclusive of porches, garages, bays, patios, breezeways and similar structures shall not be less than the following schedule:

On Small Ponds (3 to choose from)2400 Square Feet Minimum above grade
On Lake Gilmer.....2800 Square Feet Minimum above grade

Piers are allowed to be constructed on any of the small ponds. All pier construction plans must be approved in writing by the Developer or ARC prior to construction.

Water from the ponds may be used to water lawns of lot owners. Developer or ARC may control the amount of water usage by lot owners during low water levels.

- 6. **PROHIBITED CONSTRUCTION:** No mobile homes, modular or manufactured type housing shall be placed on any lot. No structure of a temporary nature, trailer, basement, tent or shack, garage, barn or other out buildings shall be used on any Lot at any time as a residence, either temporarily or permanently. No structure of any Nature shall be erected on the property other than for residential dwelling and a single outbuilding. No dwelling shall be moved onto or placed on any Lot, with all dwellings to be constructed of new materials on site.
- 7. **BUILDING SETBACKS:** No principal dwelling on any Lot shall be erected, placed or maintained nearer than seven and one half feet (7.5') from the sideline of any Lot, or fifty feet (50') from the front or any Lot, or twenty five feet (25') from the rear or any Lot.
- 8. **OUTBUILDINGS:** A maximum of one outbuilding is allowed subject to the approval of the Developer or the Architectural Review Committee. The plans for any proposed outbuilding shall be approved by the Developer or Architectural Review Committee prior to any outbuilding being erected or placed upon the Lot. No accessory structure such as a barn, utility, or storage type of building shall be erected, placed or maintained nearer than twenty-five feet (25') from the sideline of any Lot or one hundred fifty feet (150') from the front line of any Lot, and in no event shall any accessory structure be situated closer to the road than the dwelling.

Any such accessory structure shall not exceed 1500 square feet. No portable structures or buildings shall be permitted on any Lot. All construction materials and colors to be used in constructing

outbuildings shall be compatible with the materials and colors used in constructing the residential building on said Lot. Asphalt roof shingles and wood, stone or brick veneer materials only will be allowed in such construction. Tin or steel including steel or tin-sided or steel or tin-roofed, plastic or fiberglass outbuilding will not be allowed. The Developer or Architectural Review Committee shall have final approval of all materials to be used in said outbuilding as aforesaid.

9. **SWIMMING POOLS:** No above ground swimming pool shall be permitted on any Lot.
10. **DRIVEWAYS, PARKING AREAS and CULVERT ENDWALLS:** The owner of each residence shall install a concrete or asphalt driveway to a minimum width of ten feet (10') extending from the vehicle entry into the garage to any intersection with the street section, parking areas or turnabouts before occupying the dwelling. No permanent gravel drives, parking areas or turnabouts will be permitted. If a culvert pipe is used for a driveway, the owner of the residence shall install some culvert end-wall treatment other than only metal-flared end-walls.

No driveways or roadways may be constructed on any Lot to provide access to any adjoining Lot or land unless the express written consent of the Developer within the Developer's sole and absolute discretion shall have first been obtained.

11. **UTILITY RESTRICTIONS:** All residence shall be provided with electric, natural gas, telephone service, cable, sewer and water by means of underground installation only. No residence or other building or structure on any Lot shall be serviced by the use of any secondary overhead or above ground service. All cost and expense involved in installing underground utility service connections on any Lot between the utility companies' pedestals and the buildings on any Lot shall be paid by the owner of each residence. No water wells are permitted on any Lot.
12. **SEPTIC SYSTEMS:** All septic systems shall conform and be in compliance with all rules and regulations of the Upshur County Health Department or the other governmental authority or agency having jurisdiction over the construction, installation and maintenance of septic systems.
13. **FENCING:** Privacy fencing with a maximum height of six feet (6') shall be allowed on the area to the side and rear of a dwelling. In no event shall privacy fencing extend further than thirty feet (30') either side of or one hundred feet (100') to the rear of any dwelling. No barbed wire or chain link fencing will be allowed within one hundred fifty feet (150') of a road. The design and character of any fencing within one hundred fifty feet (150') of any road must be approved in writing by the Developer prior to the installation of said fencing.

In no event shall any Lake Lot Owner construct any fences or other obstructions that that may restrict access or views from other Lot owner's.

14. **TREE'S:** No healthy timber shall be sold and/or removed from any Lot. Removal of timber shall be permitted only when trees interfere with the construction of a dwelling, driveway or permitted outbuilding. Any other removal of timber shall be approved in writing by the Developer within Developer's sole and absolute discretion.
15. **SIGNS:** No signs of any kind shall be displayed to the public view on any Lot except one sign not more than two feet square in size identifying the property of the owner, one sign not more than five feet square advertising a residence for sale or rent, but only during the period of time the property is actually held for sale or rent. Such signs shall be located within the building setback lines and shall not be illuminated. Except from provisions of this paragraph shall be not more than two large signs promoting the sale of Lots in this plat which will be erected in locations designated by the Developer, a single sign not more than two square feet located on each Lot indicating if the Lot is sold or available and any signage approved by the Developer or Architectural Control Committee. Further, this restriction shall not apply to any signs the Developer may erect or place at the entrance.

16. **CASUALTY LOSS:** In the event that all or any part of an Owner's improvements on any Lot are damaged by fire or other casualty, Owner shall promptly either (a) remove from such Lot the debris and damaged material or other damaged property caused by such damage or loss and secure same so that it will not constitute a hazard or menace to public safety or health; or (b) repair or replace said damage or loss. In either event, such action is to be completed within ninety (90) days of the date of such damage or loss, unless an extension of time is granted in writing by Developer at Developer's sole and absolute discretion.
17. **RE-SUBDIVISION:** Subject to the prior written consent and approval of the Developer, which consent may be withheld within the Developer's sole and absolute discretion, and further subject to the Owner's compliance with any applicable governmental requirements at the Owner's expense, an Owner may re-subdivide a Lot; provided, that in no event shall any re-subdivision of a Lot result in a density of more than one (1) residence for each one and one-half (1.5) Lot.
18. **ANTENNAE:** No exterior antennae other than those commonly associated with Direct TV or Dish Network type television services. Antennas must be attached to the residence or placed within building setbacks. Antennas not attached the residence must not be visible from public roads.
19. **EROSION CONTROL:** Prior to and during construction of any building of Lots, the Lot owner shall implement such erosion control measures as required by City of Gilmer and other regulatory agencies.
20. **RESTORATION OF DISTURBED AREAS:** Within a one and one half (1.5) year period from the commencement of construction, the owner of each Lot shall cause to be completed the finish grading, replacement to top soil and seeding or establishment of ground cover or other plant materials over all areas which were previously disturbed during the time of and by the activities of construction.

Commencing from the date of purchase, the Lot owner shall be responsible for erosion damage to the downstream properties resulting from the lack of proper landscaping or erosion control measures creating the problem.

21. **LANDSCAPING and MAINTENANCE:** A landscape plan shall be submitted to the Developer or Architectural Review Committee no later than six (6) months from the commencement of the construction of a dwelling. Landscaping plans shall be approved in writing prior to commencing work. All landscaping must be completed within one and one half (1.5) year after the commencement of construction. All areas disturbed by construction shall be landscaped.

Retaining walls shall be subject to the City of Gilmer regulations and shall be built of wood, stone, brick or formed decorative concrete retaining wall block. They shall not be built of unfaced block, poured concrete, railroad ties, etc.

Landscaping shall include the area between the front Lot line and the edge of the street pavement. In addition to the normal maintenance and mowing of lawn areas of the Lot, the owner shall also maintain the lawn and yard area in front of the Lot from the property line (front Lot line) to the edge of the pavement section. All Lots whether vacant or upon which a residence is constructed shall be kept mowed, groomed and maintained in a manner conforming to well-groomed and maintained Lots. Lots shall be kept free of noxious weeds and brush. Exception from the provision of this paragraph will be the time that a home is being constructed on the Lot.

No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall be kept in sanitary, covered containers and shall be located either within the structure or in an area suitably screened from view. There shall be no burning of trash or garbage. Burning of leaves and similar material may only be conducted to the extent allowed by City of Gilmer ordinances.

22. **UTILITY EASEMENTS:** Easements for the installation and maintenance of utilities are reserved as shown on the recorded plat. Within these easements no structures or planting shall be placed or

permitted to remain which will damage or interfere with the installation and maintenance of utilities. No landscaping or plantings shall be erected which will materially change the direction of flow of drainage channels for surface water so as to cause damage to neighboring property due to diversion or change in the flow of surface water.

23. **AIR CONDITIONER:** No window or wall type air conditioner which is visible from any road or street shall be used, placed, or maintained on or in any part of a Lot.
24. **STRUCTURE HEIGHT:** No structure of any sort may exceed two stories in height or thirty (30') feet.
25. **EXTERIOR LIGHTING:** No exterior light shall be installed or maintained on any Lot which is objectionable to Developer or the Association. Upon being given written notice by Developer or the Association that any exterior light is objectionable, the Owner of the Lot on which same is located will immediately remove said light or have it shielded in such a way that it is no longer objectionable to Developer or the Association.
26. **COMMENCEMENT AND COMPLETION OF CONSTRUCTION:** In order to protect ditches, natural amenities and landscape of a site, before any construction shall commence on any Lot, the driveway shall be rough graded and stone placed as required. All access to and from the construction area by material suppliers, contractors and other individuals shall be via this driveway and no other way.

The owner of the Lot shall be responsible for the building contractors and others coming on the site during the construction period adhering to the above requirement. In the event a ditch or other infrastructure is damaged by access to a Lot other than as outlined above, the owner shall be liable for repair. During any earth moving activities for structures, and/or appurtenant structures, erosion control practices shall be installed to prevent sedimentation into storm water drainage easements.

Any exterior construction commenced shall be completed and the residence ready for occupancy within a one year period from the date of commencement. No building shall be occupied until it has been substantially completed in accordance with the plans and specifications submitted to and approved by the Developer or Architectural Review Committee.

During the time of construction, the Lot owner shall be responsible to see that the contractor maintains a constant clean-up of all scraps, paper or other waste materials. In the event the owner or contractor fail in this responsibility, the Developer or Architectural Review Committee shall have the right to have the necessary clean-up performed and to recover all costs.

27. **NUISANCES:** Noxious or offensive activities including excessive noise shall not be conducted upon any Lot, body of water, or in any residence, nor shall anything be done thereon which if continued would constitute an annoyance to other residents.

No sheep, goats, chickens or other such small animals be kept, bred, or maintained for any commercial purpose. No hogs or swine of any kind shall be raised, kept or bred on any Lot. No large animals such as horses and cattle shall be raised, kept or bred on any Lot. Domestic animals such as dogs and cats are permitted (no more than 2 of each), provided they are kept on Owner's property and not permitted off the Owner's property except on a leash and accompanied by the Owner.

Trash, garbage and other waste shall not be kept except in sanitary containers which shall be properly screened from public view. The burning of trash is strictly prohibited on any Lot. The placement, holding, locating, disposal, manufacture, storage, or dumping of any Hazardous Materials on any Lot is prohibited. As used herein, the term "Hazardous Materials" means any hazardous materials or toxic substances as those terms are used and defined in any applicable state or federal laws, rules and regulations including, without limitations, the Comprehensive Environmental Response, Compensation

and Liability Act (CERCLA), the Resource, Conservation and Recovery Act (RCRA), the Texas Solid Waste Disposal Act, or the Texas Water Code.

No shooting or hunting is allowed within Buckeye Ridge subdivision.

No repair work on or dismantling of assembling of motor vehicles or other machinery or equipment shall be done or permitted on any street, yard, or driveway. No motor bikes, motorcycles, motor scooters, go-carts, 4-wheelers or other vehicles shall be permitted to be operated on the Property if such operations, by reason of noise or fumes emitted, or by reason of manner in use, shall constitute a nuisance as determined by Developer or the Association within their sole and absolute discretion.

Nothing shall be done or kept on the Property which would increase the rate of insurance or cause the cancellation of insurance on any Lot or any of the improvements located thereon without the prior written approval of the Association.

28. **SPORTS STRUCTURES:** No permanent sports-related structures such as baseball backstops, tennis courts, football goal post, etc. shall be permitted in front of any residence.
29. **OUTDOOR STORAGE:** No house-trailers, commercially used trucks, campers or buses shall be stored or permitted to remain on any property in the subdivision on a long-term basis (greater than 6 months per year) unless under permanent roof. This restriction does not apply during the period of construction of a dwelling.
30. **OTHER LOTS:** The developer reserves the rights to zone Block 1, Lot 6 and Block 4, Lot 8 as light commercial. The covenants in this document do not apply.
31. **ARCHITECTURAL REVIEW COMMITTEE:** All improvements to all Lots in said subdivision shall be reviewed and governed in accordance with the provisions of this paragraph. All buildings, structures, fences, grading or landscaping involved in the erection, alteration or repair on any Lot in said subdivision may be made following the approval of the plans and specifications by the Developer or Architectural Review Committee hereafter referred to as the ARC. Plans and specifications for structures must show the location, the external design, the topography, the finish grade elevation, the general landscaping and specifications to be used and shall be provided to the Developer or ARC for approval. Approval review shall consider the quality of workmanship to be used, the materials, the harmony of design, and exterior appearance and the compatibility of the location, topography and finish grade relative to the surrounding area for compliance with all applicable restrictions contained in these covenants.

In the event the ARC fails to approve or disapprove within 30 days after complete plans and specifications herein called for have been submitted to it for its approval, approval will be deemed to have been given and the related covenants and provisions shall be deemed to have been fully complied with.

In the event an improvement or change is erected on any particular Lot or residence and it is completed for one year and there is no notice recorded in the Register of Deeds office for Upshur County giving notice of an action taken by any individual Buckeye Ridge subdivision property owner to enforce the provision of this agreement in regard to any violation thereof caused by said improvements, the improvements so made shall be conclusively deemed to conform with the regulations and ARC approval of this agreement and a purchaser for value or mortgage of the property may rely upon this presumption without any further inquiry.

The ARC shall initially consist of the Developer. After the sale of 5 Lots, the ARC shall be made up of 3 individuals consisting of at least one Lot or residence owner selected by the Developer. So long as the Developer owns any Lot covered by this agreement, the Developer shall appoint the ARC.

When the Developer no longer owns any of the Lots in the subdivision, then the ARC shall be elected by the owners of the Lots and residences in this subdivision with each Lot and residence having one vote.

- 32. BUCKEYE RIDGE HOMEOWNER'S ASSOCIATION:** The Buckeye Ridge Homeowner's Association (hereinafter called the Association) shall be formed for the purpose of managing the infrastructure and business affairs of the Buckeye Ridge Subdivision, to enforce these deed restrictions and any amendments thereto and to consider the concerns of the property owners in the subdivision. The Association may be incorporated as a Texas non-stock, non-profit corporation. The owners of each Lot and residence in the subdivision whose ownership interest is properly recorded with the Upshur County Register of Deeds shall be a member of the Association. All Lot and residence owners shall be entitled to one vote for each Lot or residence owned. When more than one individual holds an interest in any Lot or residence, the vote for such Lot or residence shall be exercised as they among themselves determined, but in no event shall more than one vote be cast with respect to any Lot or residence. All decisions shall be based on a simple majority vote. Notwithstanding any other provision for voting, the developer shall have sufficient votes to constitute a majority of votes until all Lots are sold. The Association shall elect three board members (one of which is a Lot Owner), a Chairman who shall serve to manage the business of the Association and a Treasurer who shall manage the financial requirements of the Association, and one other member.

ASSOCIATION RESPONSIBILITIES AND EXPENSES: In addition to those responsibilities set forth in these restrictions and By-Laws adopted by the Association the Association shall finance the purchase of all insurance, equipment, the repairs and maintenance of all property owned by the Association and services deemed necessary by the Association.

The Association shall make assessments to cover its expenses against the owners of all Lots and residences in the Buckeye Ridge subdivision. Each Lot and residence owner shall be equally responsible for the expenses of the Association. Until all Lots are sold in the Buckeye Ridge subdivision, the Developer shall be responsible for a percentage of expenses based on the remaining unsold Lots. Such expenses may be charged as maintenance fees due annually, semi annually or onetime assessment.

All assessments and maintenance fees, when past due, shall immediately become a personal debt of the Lot and residence owner and also a lien, until paid, against such Lot or residence. All funds collected by the Association shall be in control of the Treasurer and placed into an interest bearing account at a bank or similar financial institution until required for use. An accounting of funds shall be made available to all Association members.

All costs incurred by the Association with respect to collection of delinquent assessments and maintenance fees and enforcement of these restrictions shall become a personal debt of the Lot or residence and a lien against such Lot or residence. Any lien created hereunder may be recorded with the Upshur County Register of Deeds.

ENFORCEMENT: The restrictions and covenants contained herein may be enforced by the Association and by any Lot or residence owner by proceeding at law or in equity against any person or persons violating or attempting to violate the same either to recover damages or to demand compliance, provided however, that no such actions shall be commenced after one year from the date on which violation occurred. Any person or entity enforcing these Covenants shall be entitled to reasonable attorney's fees and costs from any person or persons violating or attempting to violate these Covenants. The Association shall have the authority to assess any Lot or residence owner violating these Covenants a reasonable fee for each day the violation continues.

- 33. TERM OF DEED RESTRICTIONS:** These Covenants shall run with the land and shall be binding upon all persons claiming under the Developer for a period of ten years from the date these Covenants are recorded. After the expiration of such ten-year period, these Covenants shall automatically be renewed for successive period of ten years, unless there is recorded an instrument executed by at least

sixty percent (60%) of the owners of the Lots and residences subject hereto for the purpose of terminating these Covenants, in which case these Covenants shall terminate at the end of the initial or renewed term which next expires following the recording of such instrument or termination. Notwithstanding the above, these Covenants shall not terminate without the approval of Upshur County and the City of Gilmer.

- 34. **INVALIDITY:** The invalidity of a provision of these Covenants, regardless of how determined, shall in no way affect any other provision, which shall remain in full force and effect.
- 35. **AMENDMENT:** These Covenants may be annulled, waived, changed, modified or amended at any time by written declaration setting forth said changes, executed by at least sixty percent (60%) of the owners of the Lots and residences and also approved by the Developer so long as it owns any parcel or lot in said subdivision. Said changes to the Covenants shall be subject to the approval of Upshur County and City of Gilmer and shall become effective only upon duly recording with the Office of the Register of Deeds for Upshur County, Texas.

Notwithstanding any other provisions of the Covenants to the contrary, if any amendment is necessary in the judgment of the Developer to cure any ambiguity or to correct or supplement any provisions of the Covenants that are defective, missing or inconsistent with any other provisions thereof, or if such amendment is necessary to conform to the requirements of applicable law, then at that time and from time to time the Developer may affect an appropriate corrective amendment without the approval of the Lot or residence owners or the holder of any liens of all or any part of Buckeye Ridge, upon the receipt of the Developer of an opinion from independent legal counsel to the effect that the proposed amendment is permitted. In the event an amendment to the Covenants is necessary in order to comply with applicable federal or state law, the consent of Upshur County and the City of Gilmer shall not necessary. Each amendment of the type described shall be effective upon the recording of an appropriate instrument setting forth the amendment, which is recorded has been acknowledge by the Developer Anything to the contrary notwithstanding and expect as required to comply with the requirements of applicable law, so long as Developer owns any parcel or Lot in Buckeye Ridge, no amendment shall be adopted that would unreasonably interfere with the sale, lease or other disposition of any parcel or Lot.

- 36. **CONFLICT:** In the event of any conflict between these Covenants and the zoning and building regulations of the City of Gilmer and Upshur County, the stricter provision shall apply.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day of _____, 2011.

In The Presence Of:
