

**DEDICATION AND RESTRICTIONS  
FOR  
BRIAR CREEK III  
AN ADDITION TO THE CITY OF BEAUMONT  
JEFFERSON COUNTY, TEXAS**

THE STATE OF TEXAS §

COUNTY OF JEFFERSON §

WHEREAS, **duPerier Real Estate Corp., Inc.** (the "Developer"), a Texas corporation, is the owner of a certain 13.411 acre tract of land (the "Land") located in Beaumont, Jefferson County, Texas, said Land being more fully set out and described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Developer has caused the Land to be subdivided and platted into an addition to the City of Beaumont, Jefferson County, Texas, known and to be known as "**BRIARCREEK III, an Addition to the City of Beaumont, Jefferson County, Texas**" (the "Addition"), as shown and reflected upon the Final Plat of said Addition (the "Plat"), prepared by Schaumburg & Polk, Inc., and filed for record in the office of the County Clerk of Jefferson County, Texas, contemporaneously with the filing of this Dedication, reference being here made to said Plat for all purposes; and

WHEREAS, Developer desires to dedicate the easements for streets, utilities and drainage reflected and designated as such upon the Plat and to create, impose or reserve additional drainage easements upon certain of the Lots in the Addition, as more fully provided below herein; and

WHEREAS, Developer further desires to impose the protective and restrictive covenants hereinafter set forth upon the Lots in the Addition:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that **duPerier Real Estate Corp., Inc.** (the "Developer"), acting herein by and through its duly authorized Executive Vice President, does hereby and herewith adopt the Plat of the Addition and does hereby dedicate the easements for street, utility and drainage purposes reflected and designated as such upon said Plat.

For the purpose of enhancing and protecting the value, attractiveness and desirability of the Lots (which term shall mean and refer to platted lots or building sites as reflected by the Plat, and each of the Lots being singularly referred to as a "Lot") in the Addition, and for the purpose of providing for the orderly development of the Addition, Developer hereby imposes upon all the Land constituting the Addition the following covenants, conditions and restrictions (the "Protective Covenants"), which shall constitute covenants running with the Land and shall be binding upon any owner, purchaser, grantee or lessee of any of the Land and upon the respective heirs, executors, administrators, personal representatives, devisees, successors and assigns of such owners, purchasers, grantees or lessees.

**Sec. 1 - Permitted Use**

All Lots in said Addition shall be used for single-family residential purposes only. However, temporary construction and sales offices may be placed or constructed on specific Lots, provided that written approval from the Committee (herein so called) is first obtained, and provided further that any such office(s) shall be removed not later than the date set by the Committee in its written approval.

**Sec. 2 - Permitted Structures**

No structure shall be erected, altered, placed, or permitted to remain on any Lot other than one (1) detached single-family dwelling not to exceed two and one-half (2½) stories in height and a private garage for not more than four (4) cars, and such other accessory buildings as are incidental to the single-family residential use of such Lot, not inconsistent with the other Protective Covenants contained herein, if the plans for such accessory building(s) are submitted to and approved by the Committee in the manner provided in Sections 3 and 4 below.

### Sec. 3 - Plan Approval

No building, fence, wall, screening device, patio, patio enclosure, swimming pool, spa, tennis court, driveway or other improvements (of whatever kind or description), including those on the Common Areas (if any) defined in Section 30 hereof, shall be commenced, constructed, erected, placed or reconstructed on any Lot in the Addition; no grading, excavating, or tree removal shall be commenced on any Lot; and no exterior changes or alterations in or additions to any structure or improvements on any Lot in the Addition shall be commenced or made; until at least two (2) complete sets of plans and specifications (the "Plans") showing (i) the kind, shape, size, height and exterior color scheme thereof; (ii) the location of all improvements, including driveways, sidewalks and off-street parking; (iii) utility installations; (iv) the kind, nature and quality of materials; (v) finished grade, topography and elevation; and (vi) site landscaping; have been submitted to and have been approved by the Architectural Control Committee (herein called the "Committee") as to (w) the type and quality of materials; (x) the conformity of the planned improvements with the covenants contained herein; (y) the harmony of external design (including type, quality and color of roof, exterior materials and exterior color scheme) with other existing or planned structures in the Addition; and (z) location of planned improvements with respect to topography and set back lines and in relation to other existing or planned structures in the Addition. The Plans shall also reflect all driveways and sidewalks serving the Lot, even though same may, in part, extend beyond the perimeter boundaries of the Lot. Approval or disapproval shall be as provided in Section 4 below. The Committee may, in its discretion, provide developmental guidelines for site planning, architecture and landscaping and may establish a requirement for sidewalks on designated Lots or Blocks; and, if and when such guidelines are provided, they shall be used as the basis for review and Plan approval (or disapproval).

### Sec. 4 - Architectural Control Committee

The Committee shall be composed of three (3) members, namely Jack L. Koshkin and W. E. Wilson, Jr. (the "Developer Representatives"), and a "Builder Representative" appointed by the Developer Representatives, who shall serve for a twelve (12) month term. The Committee shall not have the right to demand, charge or receive any fee or other compensation as a condition to the review of any Plans submitted hereunder or for granting approval (or disapproval) thereof.

If either of the Developer Representatives shall die, resign, or fail or cease to serve as a member of the Committee, the remaining Developer Representative shall have the sole power and authority to designate a successor Developer Representative to serve on the Committee. If both of the Developer Representatives die, resign, or fail or cease to serve as members of the Committee, the Developer shall have the power and authority to appoint successor Developer Representatives to the Committee. If the Builder Representative shall die, resign, or fail or cease to serve as a member of the Committee during his appointed twelve (12) month term, the Developer Representatives shall have the sole power and authority to appoint a successor Builder Representative. Any designation of a representative of the Committee or of a successor member or members of the Committee shall be in writing and shall be recorded in the office of the County Clerk of Jefferson County, Texas.

If all the members of the Committee shall die, resign or fail or cease to serve for any reason and no successors therefor are designated in accordance with the preceding paragraph, the then record owners of fifty-one percent (51%) or more of the Lots in the Addition may, by written instrument filed of record in the office of the County Clerk of Jefferson County, Texas, appoint successor members to the Committee. Furthermore, at any time after the expiration of ten (10) years from the date of this Dedication, the then record owners of fifty-one percent (51%) or more of the Lots in the Addition shall have the power, to be exercised by a written instrument filed of record in the office of the County Clerk of Jefferson County, Texas, to: (a) change the membership of the Committee; (b) change the number of members of the Committee; or (c) withdraw powers and duties from, or restore powers and duties to, the Committee.

The herein granted powers and duties of the Committee shall cease and terminate twenty (20) years after the date of this Dedication, and the approval of the Committee required by this Dedication shall not thereafter be required, unless, prior to the expiration of said twenty (20) year period, the then record owners of fifty-one percent (51%) or more of the Lots in the Addition shall exercise their right to restore to the Committee its powers and duties under this Dedication in the manner provided in the next preceding paragraph.

Decisions with respect to Plan approval or disapproval shall be by either (a) the majority vote of the Committee, including at least one (1) Developer Representative and the Builder Representative. The approval or disapproval of the Committee, as required in this Dedication, shall be in writing and signed by at least one (1) member of the Committee. If the Committee fails to give written approval or disapproval within thirty (30) days after Plans meeting the requirements of Section 3 above have been submitted to it, Plan approval will not be required, and the covenants contained in Section 3 of this Dedication shall be deemed to have been fully satisfied. However, the approval or disapproval of Plans by the Committee, or the failure of the Committee to approve or disapprove the Plans within thirty (30) days after the submission thereof, shall in no way authorize any use or improvement of a Lot in violation of any of the other covenants contained in this Dedication, except where the Committee had the express power and authority to grant a waiver or variance from such covenant. There shall be no review of any action of the Committee, except by procedures for injunctive relief when such action is patently arbitrary and capricious, and under no circumstances shall the Committee, any member or members of the Committee, be subject to any suit by anyone for damages for any actions or failures to act on the part of the Committee, or any member or members of the Committee.

#### **Sec. 5 - Construction in Accordance with Plans**

All buildings and other improvements shall be constructed or made strictly in accordance with the Plans submitted to and approved by the Committee, or in strict accordance with the Plans submitted to the Committee, but for which no approval is required by reason of the failure of the Committee to approve or disapprove the same within thirty (30) days after the submission thereof, as set forth in Section 4 above.

#### **Sec. 6 - No Liability for Plan Approval**

Neither the Committee, nor any member of the Committee, shall be liable to any person or entity under any theory or under any circumstances in connection with the Committee's approval (whether actual or deemed) or any disapproval of any Plans submitted to the Committee for approval, including, without limitation, any liability based upon the soundness of construction or adequacy of plans and specifications, mistake of judgment, negligence or nonfeasance. Neither the Committee, nor any member of the Committee, shall have any liability to any person or entity by reason of construction of buildings or the making of other improvements which shall depart from or be at variance with the approved Plans.

#### **Sec. 7 - Minimum Building Setback Line**

No dwelling structure, including any attached or detached garage or other accessory building, shall be located nearer the front Lot line or nearer the side street Lot line than the building setback lines shown on the Plat. The Committee, at its sole discretion, shall determine in which direction a dwelling or other building shall face on a Lot.

#### **Sec. 8 - Minimum Square-Footage**

No one-story or split-level dwelling shall be permitted on any Lot in the Addition in which the living floor area of the main structure (inclusive enclosed utility and storage rooms, but exclusive of open porches, carports and garages) shall be less than two thousand four hundred fifty (2,450) square feet; nor shall any one and one-half story, two story, or two and one-half story dwelling be permitted on any Lot in the Addition in which such living floor area of the first or ground floor shall be less than one thousand two hundred (1,200) square feet or which shall have a total living floor area of less than two thousand four hundred fifty (2,450) square feet.

#### **Sec. 9 - Minimum Interior Line Setback**

No one-story dwelling shall be located nearer than five feet (5') to an interior or side Lot line, nor shall any one and one-half, two-story, or two and one-half story dwelling be located nearer than ten feet (10') to an interior or side Lot line, and no building permitted hereunder shall be located nearer than twenty-five feet (25') to the rear Lot line; except that a one-story unattached garage or other accessory building permitted hereunder may be located not nearer than two and one-half feet (2 1/2') to an interior or side Lot line and not nearer than twenty feet (20') to the rear Lot line on an interior Lot or not nearer than ten feet (10') to the rear Lot line on a corner Lot, provided

that such garage or accessory building (i) is located in the rear yard or as close to the rear yard as existing utility or drainage easements will permit, (ii) does not cover more than sixty percent (60%) of the rear yard, (iii) is less than twenty feet (20') in height, and (iv) does not extend into any existing utility or drainage easement(s) on the Lot.

#### **Sec. 10 - Garage Door Openers**

Any garage located on any Lot in the Addition must be equipped with an electronic automatic garage door opener, and each owner shall maintain, repair and (as required) replace same so that such garage door opener is at all times in good working order and repair.

#### **Sec. 11 - No Construction on Less Than Platted Lot**

No dwelling shall be constructed on a building site consisting of less than one (1) full platted Lot. Nothing herein contained shall prohibit the construction of a dwelling on a building site consisting of more than one (1) full platted Lot, such as a building site consisting of two (2) platted Lots or one (1) platted Lot and a portion of an adjacent platted Lot. Any such composite building site meeting the foregoing requirements of this paragraph shall be deemed to constitute a "Lot" under the terms and provisions of this Dedication.

#### **Sec. 12 - No Noxious or Offensive Use**

No noxious, offensive or unlawful activity shall be carried on upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. Garage Sales are not to be held in this neighborhood.

#### **Sec. 13 - Radio and Television Antennas**

No antenna or other device for the transmission or receipt of "ham radio", citizens' band radio, or short wave radio signals shall be permitted on any Lot. No antenna of any type, including, but not limited to, a dish-type satellite signal receiver, shall be erected on any Lot until plans for the construction and location of such antenna and plans for screening such antenna from view from the streets and other residences in the Addition have been submitted to and approved by the Committee in accordance with the provisions of Sections 3 and 4 of this Dedication. Notwithstanding anything contained herein to the contrary, the Committee, in its absolute discretion, shall have the right to refuse the approval of the placement of any such dish-type receiver on any Lot in the Addition.

#### **Sec. 14 - Chimney Screening**

If any metal chimney is used in the construction or remodeling of any dwelling in the Addition, it will be encased in wood, brick or other material approved by the Committee in the same manner as any other exterior building materials, and all chimneys shall be capped with the same or similar materials as approved by the Committee.

#### **Sec. 15 - Yard Landscaping**

The front yard and side yards of a Lot must be planted with grass and landscaped in a manner acceptable to the Committee before the dwelling constructed on such Lot may be occupied as a residence.

#### **Sec. 16 - Exterior Christmas Lights**

No exterior Christmas lights or Christmas decorations shall be erected, placed, installed, or displayed on any Lot in the Addition between February 1 and October 31 of any calendar year. Whether exterior lights or decorations constitute "Christmas lights" or "Christmas decorations" within the meaning of this section shall be determined by the Committee in its sole discretion.

#### **Sec. 17 - No Temporary Residences**

No structure of a temporary character, mobile home, manufactured housing, trailer, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

**Sec. 18 - Signs**

No signs of any kind shall be displayed to the public view on any Lot except one (1) sign of not more than five (5) square feet advertising the property for sale or rent, or signs used by a builder, developer or lender in advertising property during the construction and sales period.

**Sec. 19 - Animals**

No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that not more than two (2) dogs, cats, or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes, and provided further that they are not permitted to roam unattended through the Addition.

**Sec. 20 - Rubbish, Trash and Garbage**

No Lot shall be used or maintained as a dumping ground for rubbish, trash, refuse or other waste materials. Trash, garbage or other waste shall be kept in sanitary closed containers pending collection thereof; and garbage cans and other receptacles shall (except when placed on the street for regular collection purposes) be hidden or screened from public view. No Lot shall be used for open storage of any materials whatsoever, except for materials used or to be used in the construction of improvements upon such Lot, and then only for so long as such construction progresses. Upon completion of the improvements, any remaining materials, together with all rubble, rubbish, trash and debris shall be promptly removed from such Lot.

**Sec. 21 - Fences, Walls, Etc.**

No fence, wall, hedge, structure or other improvements (including, without limitation, a swimming pool, tennis court or other recreational facility) shall be constructed, erected, placed, altered or permitted on any Lot in the Addition nearer to any street than the building setback line shown on the Plat. No fence, wall, hedge, tree or other planting shall be permitted on any corner Lot which obstructs lines of sight at elevations of between two feet (2') and six feet (6') above the adjacent streets within the triangular area formed by the street-side property lines of the Lot and a line connecting them at points twenty-five feet (25') from the intersection of the street-side property lines. No tree shall be permitted to remain within such triangular area unless the foliage line is maintained at sufficient height to prevent obstruction of such lines of sight.

**Sec. 22 - Parking or Storage of Boats, Etc.**

No boats, trailers, campers, buses, mobile homes, recreational vehicles, trucks (except for pickup trucks or vans having a manufacturer's rated carrying capacity of not more than three-quarters [3/4] ton), or similar vehicles shall be parked or stored upon any Lot in the Addition on a permanent basis in such manner as to extend beyond the front of a dwelling, nor shall same extend beyond the side of a dwelling constructed on a corner Lot, nor shall same be parked or allowed to remain on a permanent basis in any street within or abutting the Addition, or in any utility, drainage or street easement or right-of-way on or adjacent to any Lot in the Addition. A "permanent basis" as that term is used above, shall mean any period or periods in excess of forty-eight (48) consecutive hours, or periods in excess of eight (8) consecutive hours on three (3) or more successive days.

**Sec. 23 - Utility Service and Meters; Equipment Screening**

All utility service lines between meter points and dedicated utility easements shall be underground. All underground electric service lines are to be installed by the electric utility company at the expense of the owner of the Lot being served. Meters for utilities shall not be visible from any street. Air conditioning compressors, condensing units and any other mechanical equipment and any playground equipment (such as swings, playhouses and the like) shall be not be visible from the streets in or abutting the Addition, and, if necessary, same shall be screened by adequate shrubbery or fencing.

**Sec. 24 - Owner's Obligation to Maintain**

Each Lot owner (which term, as used herein, shall mean and refer to the record owner[s]), whether one [1] or more persons or entities, of fee simple title to any Lot which is a part of the

Addition, including contract sellers, but excluding those persons or entities having an interest merely as security for the performance of an obligation) shall, at his sole cost and expense, perform or cause to be performed such repairs and maintenance as shall be reasonably required to keep the dwelling and other improvements located on his Lot in a condition comparable to the condition of such dwelling and other improvements at the time of their initial construction, excepting ordinary wear and tear. Each Lot owner shall also maintain the yard area of his Lot, together with the street right-of-way abutting his Lot.

**Sec. 25 - Owner's Obligation to Rebuild**

If all or any portion of a dwelling located in the Addition is damaged or destroyed by fire or other casualty, it shall be the duty of the owner thereof, with all due diligence, to rebuild, repair or reconstruct such dwelling in a manner which will substantially restore it to its appearance and condition immediately prior to such casualty. Reconstruction will be undertaken within three (3) months after the damage occurs and shall be completed within twelve (12) months after the damage occurs, unless prevented by causes beyond the control of the owner. Also, any rebuilding, repair or reconstruction shall be subject to the requirements of plan and specification submission and approval contained in Sections 3 and 4 of this Dedication.

**Sec. 26 - No Oil Drilling Operations**

No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted on any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot; no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

**Sec. 27 - New Construction Only**

No existing or used dwellings shall be moved and placed on any of the Lot in the Addition from another location, and all dwellings and other structures must be new construction. No modular homes or mobile homes shall be located on any Lot in the Addition. The term "modular home" for the purposes hereof shall mean and refer to a prefabricated home which is constructed in a number of parts or sections off the Lot and then brought upon the Lot to be assembled.

**Sec. 28 - Utility and Drainage Easements**

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat. No structure of a permanent nature may be erected in or on any of such easements.

**Sec. 29 - Home Owners Association**

It is contemplated that at some future date the owners of the Lots in the Addition may desire to form a home owners association for the purpose of acquiring and maintaining: (a) facilities providing security or protection from intruders into the Addition, or (b) recreational facilities for the benefit and use of owners of the Lots in the Addition, or (c) facilities for any other purposes that the Electing Owners (herein so called) deem appropriate. At any time hereafter, the then record owners of two-thirds (2/3rds) or more of the Lots in the Addition (the "Electing Owners") may, by written instrument (the "Supplementary Dedication") elect to form a Texas non-profit corporation or unincorporated association (the "Association") to be known as "Briarcreek III Homeowners Association", or by such other name (whether similar or dissimilar) as shall be authorized in the Supplementary Dedication.

The Supplementary Dedication shall be recorded in the office of the County Clerk of Jefferson County, Texas, and may amend this Dedication in any respect relating to the operation, purpose, and formation of the Association; except, however, that the Supplementary Dedication may not impose assessments upon the owner of any Lot where such imposition is prohibited by this Dedication. The Supplementary Dedication may, among other things, provide for a periodic maintenance charge or assessment (an "assessment") to be levied against each owner to pay for the maintenance, operation and other expenses of the Association and for a lien against all Lots in the Addition; provided, however, that such lien shall be subordinate to: (a) all recorded first mortgages (together with all charges and sums coming due thereunder) on any Lots in the Addition, whether

granted, created or perfected prior to or after the execution and recording of the Supplementary Dedication, (b) any valid lien created or reflected by instrument filed for record in the office of the County Clerk of Jefferson County, Texas, prior to the recording of the Supplementary Dedication, and (c) any tax or special assessment liens in favor of the State of Texas, or any political subdivision thereof, or of any special improvement districts or any other taxing or assessing authorities. The Supplementary Dedication may also contain provisions for the collection of the assessments, for enforcement of the lien securing the payment of the assessments, for the form of articles of incorporation or association and bylaws of the Association, for rules and regulations for the use of any Common Areas (herein so called) by members of the Association, and for the acquisition, maintenance and control of the Common Areas. The term "Common Areas", as used herein, shall mean and refer to real property, either within or without the Addition, acquired by the Association by purchase, gift, lease, or otherwise to further the purposes of the Association.

The Association shall have no power to levy assessments on any Lot owned by Developer, nor against any Lot owned by a builder (as that term is defined later herein), until the completion of construction of a dwelling upon any such Lot. The term "builder", as used in this paragraph, shall mean and refer to a person or entity regularly engaged in the construction of residences for sale to the public, and who shall have purchased from Developer one (1) or more of the Lots in the Addition for resale (with a residence thereon) to the public or to a specific contract purchaser.

The Association may be formed in conjunction with the owners of residential real property in other residential subdivisions, provided that the Electing Owners specify in the Supplementary Dedication that the owners of lots in the other residential subdivisions shall also be members of the Association. In addition, the Supplementary Dedication may provide that the Association may, upon compliance with applicable law and such other conditions (if any) that the Electing Owners deem appropriate, merge with other home owners associations of other residential subdivisions.

#### **Sec. 30 - Time for Completion of Construction**

Any dwelling, structure, or improvement commenced on any Lot shall be completed with two hundred ten (210) days after the beginning of such construction, and no partially completed dwelling, structure or improvement of any type shall be permitted to remain on any Lot beyond said period of time.

#### **Sec. 31 - Conflict Between Ordinances and Restrictions**

In the event of any conflict between the Protective Covenants contained herein and the ordinances, statutes, rules or regulations of any municipal or other governmental authorities having jurisdiction over the Addition, then such ordinances, statutes, rules or regulations shall control; except, however, that if the Protective Covenants herein contained in any respect or respects are more restrictive than such ordinances, statutes, rules or regulations, then these Protective Covenants shall control.

#### **Sec. 32 - Enforcement**

The forbearance of enforcement of any restriction, covenant or reservation herein contained for any violation or proposed violation shall not constitute a waiver or forbearance to thereafter enforce the same for any similar or different violation or proposed violation. Any action for enforcement of these Protective Covenants shall be commenced within one (1) year after such violation, or attempted violation, began or first occurred, and not thereafter.

If any party hereto, or its heirs, successors or assigns, or any other person or persons violate or attempt to violate any of the Protective Covenants contained herein, any person or persons owning any real property situated in the Addition, or the Committee, or the Developer, or any combination thereof, may prosecute any proceedings at law or in equity against the person or persons violating, or attempting to violate, any such Protective Covenant(s), either to prevent it, him, her, or them from so doing or to recover damages or other dues from such violation; and any party who shall obtain judgment against any person or persons for a violation, or attempted violation, of any of the Protective Covenants contained herein shall be entitled, in addition to all other remedies and recoveries, to recover all reasonable attorneys' fees and expenses incurred in enforcing any such Protective Covenant(s) contained herein.

**Sec. 33 - Term and Amendment of Covenants**

The covenants and restrictions contained in this Dedication shall be binding for a period of twenty (20) years from the date of this Dedication. Upon the expiration of such initial twenty (20) year period, such covenants and restrictions shall be automatically extended for successive periods of ten (10) years each.

This Dedication may be amended, or the covenants and restrictions herein contained may be terminated, in whole or in part, as follows:

(a) During the initial twenty (20) year period, any such amendment or termination shall be effected only by a written instrument signed by the owners of not less than eighty percent (80%) of the Lots in the Addition and duly recorded in the office of the County Clerk of Jefferson County, Texas.

(b) At any time after the initial twenty (20) year period, any such amendment or termination shall be effected only by a written instrument signed by the owners of not less than seventy-five percent (75%) of the Lots in the Addition and duly recorded in the office of the County Clerk of Jefferson County, Texas.

**Sec. 34 - Severability**

The illegality, invalidity or unenforceability of any one (1) or more of the restrictions, covenants or reservations contained herein or any other provision hereof, in any instance or as applied to any particular situation, shall in no way affect or invalidate the other restrictions, covenants, reservations or provisions hereof or their application to other circumstances; but, to the contrary, all restrictions, covenants or reservations contained herein or other provisions hereof shall remain in force and effect to the full extent to which and in all circumstances in which they may be legally enforceable.

EXECUTED on this 30<sup>th</sup> day of November, 1992.

**duPerier Real Estate Corp., Inc.,  
a Texas corporation  
("Developer")**

By: Jack L. Koshkin  
Jack L. Koshkin,  
Executive Vice President

THE STATE OF TEXAS §

COUNTY OF JEFFERSON §

This instrument was acknowledged before me on November 30 1992, by **Jack L. Koshkin**, Executive Vice President of **duPerier Real Estate Corp., Inc.**, a Texas corporation, on behalf of said corporation.



Susan Tibbits  
Notary Public, State of Texas

Susan Tibbits  
(Typed or Printed Name)

My Commission Expires: 7-30-94



**EXHIBIT "A"**

Fieldnote description of a 13.411 acre tract or parcel of land out of the H. Williams Survey, Abstract or No. 56 in Beaumont, Jefferson County, Texas.

All that certain tract or parcel of land out of and part of that certain 50.93 acre tract out of the Amoco Fee 900611, said tract or parcel being more fully described by metes and bounds as follows:

**BEGINNING** at the Southwest corner of that certain first tract of Briar Creek Townhomes, Section Two, plat which appears in Volume 14, Page 204 of the Map Records of Jefferson County, Texas, and being a point in the East line of that certain 6.24 acre tract for Hillebrandt Bayou identified as tract one of that certain the deed recorded in Volume 1924, Page 23 of the Deed Records of Jefferson County, Texas;

Thence North 87°25'34" East along the south line of the said first tract of Briar Creek Townhomes, Section Two, at a distance of 271.65 feet (271.65') pass a one inch rod in concrete for the Southeast corner of the said first tract of Briar Creek Townhomes, Section Two, and the most westerly Southwest corner of Briar Creek Townhomes, Section I, plat which appears in Volume 14, Page 168 of the map records of Jefferson county, Texas, and continuing for a total distance of 340.65 feet (340.65') to an iron rod for corner;

Thence South 02°34'26" East along the southerly West line of Briar Creek Townhomes, Section One, at a distance of 176.50 feet (176.50') pass a one inch rod in concrete for the most southerly Southwest corner of said Briar Creek Townhomes, Section I, and being the Northwest corner of that certain second tract of said Briar Creek Townhomes, Section Two, and continuing for a total distance of 292.00 feet (292.00') to the Southwest corner of said second tract of Briar Creek Townhomes, Section Two;

Thence North 87°25'34" East along the South line of said Briar Creek Townhomes, Section Two, for a distance of 144.00 feet (144.00') to a point for corner in the west line of Briar Creek Drive, a 60 foot wide street right-of-way;

Thence North 02°34'26" West along the west line of Briar Creek Drive for a distance of 19.00 feet (19.00') to a point for corner;

Thence North 87°25'34" East at a distance of 30.00 feet (30.00') pass the southeast corner of said second tract of Briar Creek Townhomes, section Two, and the Southwest corner of Briar Creek Subdivision, plat which appears in Volume 14, Page 158 of the Map Records of Jefferson County, Texas, and continuing for a total distance of 150.03 feet (150.03') to a one half inch iron rod found for corner in the west line of Briar Creek Subdivision II, as recorded in Volume 14, Page 208 of the Map Records of Jefferson County, Texas;

Thence South 02°34'26" East along the west line of Briar Creek subdivision II, for a distance of 715.15 feet (715.15'), (plat call distance of 714.72'), to a one half inch iron rod found for the southwest corner of said Briar Creek Subdivision II;

Thence South 88°24'03" West for a distance of 711.40 feet (711.40') to a one-half inch iron rod found for corner in the east line of said 6.24 acre tract;

Thence along and with the East line of said 6.24 acre tract, the following courses and distances:

North 03°28'24" East for a distance of 18.47 feet (18.47') to a point for corner;

North 13°34'21" East for a distance of 153.97 feet (153.97') to a point for corner;

North 03°53'21" East for a distance of 175.67 feet (175.67') to a point for corner;

North 15°31'39" West for a distance of 349.81 feet (349.81') to a point for corner;

North 11°30'21" East for a distance of 115.11 feet (115.11') to a point for corner;

North 21°40'21" East for a distance of 158.08 feet (158.08') to a point for corner;

North 06°10'39" West for a distance of 38.61 feet (38.61') to the place of beginning;

Containing in area 13.411 acres of land.

**AFTER RECORDING RETURN TO:**

Mr. Jack Koshkin  
duPerier Real Estate Corp., Inc.  
P. O. Box 5696  
Beaumont, Texas 77726-5696

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FILED FOR RECORD

'92 DEC 14 P2:32

*Leticia Thomas*  
COUNTY CLERK  
JEFFERSON COUNTY, TEXAS

12/14/92 502 72 49267 1-31/90

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RATIFICATION AND CORRECTION FOR BRIAR CREEK III

STATE OF TEXAS

COUNTY OF JEFFERSON

11-

Whereas, du Perier Real Estate Corp., Inc. (hereinafter "du Perier") is the owner of that certain 13.411 acre tract out of the H. Williams Survey, Abstract 56, Beaumont, Jefferson County, Texas as said tract is more particularly on Exhibit "A" attached hereto and incorporated herein;

Whereas, du Perier has caused the property described on Exhibit "A" to be platted into a subdivision known as Briar Creek III, an Addition to the City of Beaumont, Jefferson County, Texas, as shown on the plat thereof, recorded in Vol. 15 Page 63 Map Records, Jefferson County, Texas as said Briar Creek III is dedicated and created under Dedication and Restrictions recorded under Film Coded No. 104-56-1991 Official Public Records of Real Property, Jefferson County, Texas;

Whereas, it has come to the attention of du Perier that through inadvertent misstatement and error the plat was executed by Jack Koshkin in his individual compacity rather than in his compacity as Executive Vice-President of du Perier;

Whereas, said plat contained an inadvertent misstatement that the owners of the property were Bill Wilson and Jack Koshkin individually rather than du Perier;

Whereas, it is the desire of all parties to correct the above described inadvertent misstatements and error;

Now, Therefore, Know All By These Presents, for good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned do hereby correct, amend, and modify the plat so as to correctly name the owner as du Perier Real Estate Corp., Inc., a Texas Corporation and to correct, amend and modify the plat to show that Jack Koshkin executed the plat on behalf of the owner in his capacity as Executive Vice-President of du Perier Real Estate Corp., Inc., a Texas Corporation on behalf of said corporation;

Furthermore, for good and valuable consideration, the receipt of which hereby is acknowledged, du Perier does hereby ratify, confirm and adopt the plat recorded in Vol. 15 Page 63 Map Records, Jefferson County, Texas (as herein amended) as the true, correct and final plat for Briar Creek III, an Addition to the City of Beaumont, Jefferson County, Texas as said addition is created and established by Dedication and Restrictions recorded under Film Code No. 104-56-1991 Official Public of Real Property, Jefferson County, Texas.

Executed this 15<sup>th</sup> Day, of January, 1993 to be effective November 30, 1992.

du Perier Real Estate Corp., Inc.,  
a Texas Corporation

Jack Koshkin  
Jack Koshkin, Executive Vice-President


Jack Koshkin  
Jack Koshkin

104 62 0485

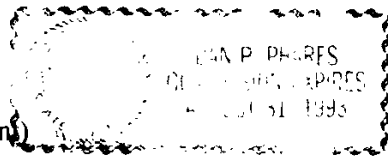
(Acknowledgment)

STATE OF TEXAS  
COUNTY OF JEFFERSON

This instrument was acknowledged before me on the 15 day of January, 1993 by Jack Koshkin.

  
\_\_\_\_\_  
Notary Public, State of Texas  
Notary's name (printed):


Notary's commission expires:



(Corporate Acknowledgement)

STATE OF TEXAS  
COUNTY OF JEFFERSON

This instrument was acknowledged before me on the 15 day of January, 1993 by Jack Koshkin, Executive Vice President, of du Perier Real Estate Corp., Inc., a Texas Corporation, on behalf of said corporation.

  
\_\_\_\_\_  
Notary Public, State of Texas  
Notary's name (printed):

Notary's commission expires:



AFTER RECORDING RETURN TO:  
Beaumont Title Company  
P.O. Box 7501  
Beaumont, Texas 77726

## EXHIBIT "A"

FIELDNOTE DESCRIPTION OF A 13.411 ACRE TRACT OF PARCEL OF LAND OUT OF THE H. WILLIAMS SURVEY, ABSTRACT NO. 56, IN BEAUMONT, JEFFERSON COUNTY, TEXAS.

ALL THAT CERTAIN tract or parcel of land out of and a part of that certain 50.93 acre tract out of the Amoco Fee 900611, said tract or parcel being more fully described by metes and bounds as follows:

BEGINNING at the Southwest corner of that certain FIRST TRACT of Briar Creek Townhomes, Section Two, plat which appears in Volume 14, Page 204 of the Map Records of Jefferson County, Texas, and being a point in the east line of that certain 6.24 acre tract for Hillebrandt Bayou identified as TRACT ONE of that certain deed recorded in Volume 1924, Page 23 of deed records of Jefferson County, Texas;

THENCE North 87 degrees 25 minutes 34 seconds East (N. 87 25' 34" E) along the south line of the said FIRST TRACT of Briar Creek Townhomes, Section Two, at a distance of 271.65 feet (271.65') pass a one inch rod in concrete for the southeast corner of the said FIRST TRACT of Briar Creek Townhomes, Section Two, and the most northerly southwest corner of Briar Creek Townhomes Section I, plat which appears in Volume 14, Page 168 of the Map records of Jefferson County, Texas, and continuing for a total distance of 340.65 feet (340.65') to an iron rod for corner;

THENCE South 02 degrees 34 minutes 26 seconds East (S 02 34' 26" E) along the west line of Briar Creek Townhomes, Section One, at a distance of 176.50 feet (176.50') pass a 1" rod in concrete for the most Southerly Southwest corner of said Briar Creek Townhomes, Section I, and being the Northwest corner of that certain SECOND TRACT of said Briar Creek Townhomes, Section Two, and continuing for a total distance of 292.00 feet (292.00') to the Southwest corner of said SECOND TRACT of Briar Creek Townhomes, Section Two;

THENCE North 87 degrees 25 minutes 34 seconds East (N 87 25' 34" E) along the sough line of said Briar Creek Townhomes, Section Two, for a distance of 144.00 feet (144.00') to a point for corner;

THENCE North 02 degrees 34 minutes 26 seconds West (N 02 34' 26" W) for a distance of 19.00 feet (19.00') to a point for corner;

THENCE North 87 degrees 25 minutes 34 seconds East (N 87 25' 34" E) at a distance of 30.00 feet (30.00') pass the Southeast corner of said SECOND TRACT of Briar Creek Townhomes, Section Two, and the Southwest corner of Briar Creek Subdivision, plat which appears in Volume 14, Page 158 of the map records of Jefferson County, Texas, and continuing for a total distance of 150.03 feet (150.03') to a 1/2 inch iron rod found for corner in the West line of Briar Creek Subdivision II, as recorded in Volume 14, Page 208 of the Map Records of Jefferson County, Texas;

THENCE South 02 degrees 34 minutes 26 seconds East (S 02 34' 26" E) along the West line of Briar Creek Subdivision II, for a distance of 715.15 feet (715.15'), (plat call distance of 714.72'), to a 1/2 inch iron rod found for the southwest corner of said Briar Creek Subdivision II;

THENCE South 88 degrees 24 minutes 03 seconds West (S 88 24' 03" W) for a distance of 711.40 feet (711.40') to a 1/2 inch iron rod found for corner in the East line of said 6.24 tract;

THENCE along and with the East line of said 6.24 acre tract, the following courses and distances:

North 03 degrees 28 minutes 24 seconds East (N 03 28' 24" E) for a distance of 18.47 feet (18.47') to a point for corner;

North 13 degrees 34 minutes 21 seconds East (N 13 34' 21" E) for a distance of 153.97 feet (153.97') to a point for corner;

104 62 0487

North 03 degrees 53 minutes 21 seconds East (N 03 53' 21" E)  
for a distance of 175.67 feet (175.67') to a point for corner;

North 15 degrees 31 minutes 39 seconds West (N 15 31' 39" W)  
for distance of 349.81 feet (349.81') to a point for corner;

North 11 degrees 30 minutes 21 seconds East (N 11 30' 21" E) for  
a distance of 115.11 feet (115.11') to a point for corner;

North 21 degrees 40 minutes 21 seconds East (N. 21 40' 21" E) for  
a distance of 158.08 feet (158.08') to a point for corner;

North 06 degrees 10 minutes 39 seconds West (N. 06 10' 39" W) for  
a distance of 38.61 feet (38.61') to the PLACE OF BEGINNING.

CONTAINING IN AREA 13.411 acres of land.

FILED FOR RECORD

'93 JAN 15 P4:25

*John L. Jones*  
COUNTY CLERK  
JEFFERSON COUNTY, TEXAS

9308016

7B10327

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**SUPPLEMENTAL DEDICATION AND RESTRICTIONS  
FOR  
BRIAR CREEK III  
AN ADDITION TO THE CITY OF BEAUMONT  
JEFFERSON COUNTY, TEXAS**

THE STATE OF TEXAS §  
COUNTY OF JEFFERSON §

WHEREAS, by Final Plat (the "Plat") filed of record in the office of the County Clerk of Jefferson County, Texas in Volume 15, Page 63, Map Records, Jefferson County, Texas, (as amended pursuant to that certain Ratification and Correction for Briar Creek III, executed January 15, 1993 to be effective November 30, 1992 by duPerier Real Estate Corp., Inc.) and Dedication and Restrictions (the "Dedication") filed for record in the office of the County Clerk of Jefferson County, Texas, under County Clerk's Film Code Number 104-56-1991 in the Official Public Records of Real Property of Jefferson County, Texas **duPerier Real Estate Corp., Inc., a Texas corporation** (the "Developer") platted and subdivided a certain 13.411 acre tract of land into **BRIAR CREEK III, an Addition to the City of Beaumont, Jefferson County, Texas** (the "Addition"), granted or reserved certain easements for streets, utilities and drainage as set forth upon the Plat or in the Dedication, and imposed upon all of the Lots in the Addition certain restrictive covenants as set forth in the Dedication; and

WHEREAS, Sec. 29 of the Dedication contemplates the formation of a home owners association for the purposes set forth in said Dedication, and

WHEREAS, the undersigned Owners, which comprise all of the record Owners of the Lots in the Addition, now desire to supplement the Dedication to provide for a home owners association in the regard and respect set forth below herein.

NOW, THEREFORE, the undersigned, being the present record owners of all of the Lots in the Addition (collectively the "Owners"), do, by their respective signatures hereon, consent and agree to supplement the restrictive covenants imposed by the Dedication on the Lots in the Addition in the following respects and regards:

**ARTICLE I**

**DEFINITIONS**

**Sec. 1**

"Association" shall mean and refer to **BRIAR CREEK III HOMEOWNERS ASSOCIATION**, an unincorporated Texas non-profit association, its successors and assigns.

**Sec. 2**

"Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of a fee simple title to any Lot which is part of the Addition, including contract sellers, but shall not include (a) those holding title merely as security for the performance of an obligation, or (b) those holding title to, or an interest in, the mineral estate only, with no title to, or interest in, the surface estate.

**Sec. 3**

"Lot" shall mean and refer to each and every platted plot or building site shown and reflected upon the Plat of the Addition.

**Sec. 4**

"Member" shall mean and refer to each and every person or entity who holds membership in the Association, as provided herein.

Sec. 5

"Developer" shall mean and refer to duPerier Real Estate Corp., Inc., its successors and assigns. However, as used in this paragraph, the term "assigns" shall not be construed to mean, refer to or include any person or entity which shall acquire from duPerier Real Estate Corp., Inc., one (1) or more of the Lots in the Addition, whether improved or unimproved, for occupancy or resale, unless the said duPerier Real Estate Corp., Inc., or its successor, shall expressly assign unto such assignee all of its rights and privileges as "Developer" under this Dedication.

Sec. 6

"Mortgage", "deed of trust" or "trust deed" shall mean and refer to a pledge of a security interest in or the creation of a lien upon a Lot (or Lots), together with any improvements thereon, to secure repayment of a loan made to the owner(s) of such Lot or Lots (or made to another, but secured by such Lot or Lots).

Sec. 7

"Mortgagee" shall mean and refer to the beneficiary of, or secured party in, a mortgage on a Lot or Lots.

## ARTICLE II

ELECTION TO FORM ASSOCIATION

As provided in Sec. 29 of the Dedication, the Electing Owners hereby elect to form an unincorporated Texas non-profit association to be known as Briar Creek III Homeowners Association (the "Association").

## ARTICLE III

ASSOCIATION MEMBERSHIP AND VOTING RIGHTSSec. 1 - Members

Every owner of a Lot shall be a member of the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of a Lot.

Sec. 2 - Classes of Members

The Association shall have two (2) classes of members, as follows:

Class A. Class "A" members shall be all owners, with the exception of Developer, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in a given Lot, all of such persons shall be members, and the vote for such Lot shall be exercised as they may determine among themselves; but in no event shall more than one (1) vote be cast with respect to any Lot owned by Class "A" members.

Class B. The Class "B" member shall be the Developer, which shall be entitled to three (3) votes for each Lot owned. The Class "B" membership shall cease and be converted to Class "A" membership upon the happening of either of the following events, whichever shall first occur:

(a) When the total votes outstanding in the Class "A" membership equal the total votes outstanding in the Class "B" membership; or

(b) June 30, 1994.



**Sec. 3 - Voting by Class**

Excepting those instances where voting (or agreement) by class is specifically required in the Dedication or in the Bylaws of the Association, voting shall be by the members as a whole, and not by class.

**ARTICLE IV****ASSESSMENTS****Sec. 1 - Lien and Personal Obligation of Assessments**

Developer and Owners, for each Lot owned by them in the Addition, hereby covenants, and each future owner of a Lot in the Addition is hereby deemed to covenant by acceptance of a deed to such Lot (whether or not is shall be so expressed in such deed), to pay to the Association (a) regular annual assessments, and (b) additional Lot assessments. Such assessments shall be established and collected in the manner hereinafter provided. The regular annual assessments and additional Lot assessments, together with interest, costs and reasonable attorney's fees thereon, shall be a charge upon the land and a continuing lien on each Lot against which an assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees thereon, shall also be the personal obligation of the person or persons who owned the Lot at the time the assessment fell due, but such personal obligation shall not pass to the successors in title unless expressly assumed by them.

**Sec. 2 - Purpose of Regular Annual Assessments**

The regular annual assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents of the Addition, and, to the extent provided herein, the maintenance of the Lots in the Subdivision. Regular annual assessments shall include, and the Association shall acquire and pay for out of the funds derived from the regular annual assessments, the following:

- (a) Costs of maintenance, repair and (if and when required) replacement of the fence (if any) constructed along the perimeter boundary lines of the Addition, together with any fence, gateway or sign constructed at the entrance to the addition.
- (b) Costs of mowing, trimming and care of any Common Area, street easements or rights-of-way in or abutting the Addition.
- (c) Any expenses which the Association is required to incur or pay pursuant to the terms of the Dedication or Bylaws, or which shall be necessary or proper in the opinion of the Board of Directors of the Association, for (i) the administration of the affairs of the Association, (ii) the performance of the duties of the Association, or (iii) the enforcement of the provisions of this Dedication or the Bylaws of the Association, together with any other expenses which shall be determined by a vote of the members, from time to time, to be common expenses of the Association.

**Sec. 3 - Power to Fix Regular Annual Assessments**

The power and authority to fix and levy the regular annual assessments shall rest exclusively with the Board of Directors of the Association, and when the same are determined and fixed by the Board of Directors, as herein provided, same shall be final, conclusive and binding upon each owner, his heirs, successors and assigns, including contract purchasers.

**Sec. 4 - Uniform Rate of Assessment**

Regular annual assessments (but not the additional lot assessments provided for later herein) must be fixed at a uniform rate for all Lots in the Addition.

**Sec. 5 - Collection of Regular Annual Assessments**

The regular annual assessment shall be collected by the Association on a monthly, quarter-annual or semi-annual basis, as determined by the Board of Directors from time to time.

**Sec. 6 - Establishment and Notice of Regular Annual Assessment**

At the organizational meeting of the initial Board of Directors of the Association, the regular annual assessment for the first calendar year shall be fixed and established by the Board of Directors, and written notice thereof (including the basis upon which such regular annual assessment is to be collected) shall be forthwith given to each owner subject thereto. The first such regular annual assessment shall be adjusted according to the number of months remaining in the annual (calendar year) assessment period. Thereafter, not less than thirty (30) days prior to the commencement of each calendar-year assessment period, the Board of Directors of the Association shall fix and establish the regular annual assessment for such ensuing assessment year and shall give written notice thereof (including the basis upon which such regular annual assessment is to be collected) to every owner subject to such regular annual assessment. Upon a person or entity becoming the owner of a Lot in the Addition (and upon notification of such fact given to the Board of Directors of the Association), it shall be the duty of the Board of Directors to notify such new owner of the regular annual assessment charged upon his Lot (in the same manner as notice is given to those owners owning Lots as of the commencement of any annual assessment period). The failure of the Board of Directors to give written notice to any owner, as herein required, shall not in any manner exempt or relieve such owner from his obligation to pay the regular annual assessment on his Lot or Lots, but such owner shall not be in default for failure to pay his regular annual assessment (on the due date or dates thereof) until notice of such regular annual assessment is given to such owner in the manner herein provided. Each owner (including Developer) covenants and agrees to give written notice to the Board of Directors of the Association upon the sale or transfer by such owner of his Lot, including the name and mailing address of the Lot purchaser(s) and the date upon which the sale or transfer was or will be effected.

**Sec. 7 - No Exemption from Regular Annual Assessments**

Notwithstanding anything herein to the contrary, Developer shall be liable for and obligated to pay regular annual assessments on any unimproved Lot, and any improved Lot it may own. Likewise, a "builder" (as that term is hereinafter defined) shall be liable for or obligated to pay regular annual assessments on any Lot owned by such builder. For the purposes of this paragraph, the term "builder" shall be construed to mean a person or entity who shall purchase or acquire from Developer one (1) or more unimproved Lots for the purpose of resale or construction of improvements thereon for sale to the public.

**Sec. 8 - Date of Commencement of Regular Annual Assessments**

The regular annual assessments provided for above in this Article shall commence as to each Lot on the first (1st) day of the calendar month next following the conveyance of a Lot by Developer to an owner.

**Sec. 9 - Certification of Payment of Assessments**

The Association shall, upon demand, furnish a certificate signed by an officer of the Association setting forth whether the assessments on any specified Lot have been paid. A properly executed certificate as to the status of assessments on a particular Lot shall be conclusive and binding upon the Association as of the date thereof as to any and all persons or entities relying thereon (other than the owner of such Lot). The Association may establish and collect a reasonable charge for the issuance of such certificates.

**Sec. 10 - Effect of Nonpayment of Assessments; Remedies of Association**

(a) Any assessment (of whatever kind or character, whether a regular annual assessment or additional lot assessment) not paid within ten (10) days of the due date thereof shall be delinquent. Any delinquent assessment shall bear interest from the due date thereof at the rate of eighteen percent (18%) per annum. All unpaid assessments, together with interest thereon as provided above, shall constitute a lien upon the Lot (together with all improvements thereon) against which the unpaid assessments were levied by the Association. To evidence such lien, the Association may, but shall not be required to, prepare and file for record in the office of the County Clerk of Jefferson County, Texas, a written notice, signed by an officer of the Association, setting forth the amount of the unpaid assessments, the name of the Lot owner, and a description of the Lot upon which such assessments are unpaid.

(b) The Association may bring an action at law against the Lot owner personally obligated to pay the same or foreclose the lien upon such Lot in the manner hereinafter provided. No owner may exempt himself or otherwise escape liability for the assessments herein provided by performing his own maintenance or in any other manner. Suit to recover a money judgment against a defaulting owner shall be maintainable without foreclosing or waiving the lien securing the assessments owing by such defaulting owner;

(c) The assessment lien may be enforced by foreclosure on the defaulting owner's Lot (together with all improvements thereon) in like manner to a deed of trust on real property. The recording of a notice (in accordance with subparagraph "a" above) shall be a prerequisite to the commencement of foreclosure proceedings against a Lot. Developer, and each owner by acceptance of a deed to a Lot, grants to the Association a contractual lien (with power of sale in the Board of Directors of the Association or in a trustee designated by an instrument in writing, signed by the President or Secretary of the Association, recorded in the office of the County Clerk of Jefferson County, Texas) and expressly vests in the Association or its agents the right and power to bring all actions against it (him) personally for collection of all charges herein provided as a debt and to enforce the assessment lien by all methods available for foreclosure or enforcement of liens, including nonjudicial foreclosure pursuant to § 51.002 of the Texas Property Code, as amended. In any foreclosure proceeding, the defaulting owner shall be required to pay all costs and expenses of such proceeding, including a trustee's fee equal to five percent (5%) of the gross sales proceeds realized from a nonjudicial foreclosure on such Lot.

#### **Sec. 11 - Subordination of Assessment Lien to Mortgages**

The assessment lien herein provided shall be and remain subordinate to the lien of any perfected first mortgage. A "first mortgage" is defined as a mortgage which has first and paramount priority under applicable law. A sale or transfer of a Lot shall not affect the assessment lien thereon. However, the sale of a Lot pursuant to the foreclosure of a first mortgage or any proceeding in lieu thereof shall extinguish the assessment lien as to unpaid charges which accrued prior to such foreclosure sale or transfer in lieu thereof. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due and payable or from the lien thereof. The holder of any first mortgage shall be entitled, upon written request made to the Association, to written notification from the Association of any default by such holder's mortgagor (or grantor under a deed of trust or trust deed) in any obligation under this Dedication or the Bylaws of the Association which is not cured within sixty (60) days from the date upon which such default occurred.

#### **Sec. 12 - Additional Lot Assessments**

Separately and apart from the regular annual assessments and special assessments provided for above in this Article, the Board of Directors shall have the right to make a special assessment against any Lot owner and his Lot for the costs incurred by the Association in making any repairs or replacements or performing any maintenance which an owner, although otherwise obligated to make or perform under this Dedication or the Bylaws, shall fail to make or perform within thirty (30) days after the Association shall have given such owner written notice specifying the repairs or replacements to be made or maintenance to be performed.

#### **Sec. 13 - Levy and Collection of Additional Lot Assessments**

Any additional Lot assessment shall be fixed and levied by the Board of Directors of the Association, and written notice thereof shall be given to the owner of the Lot against which assessment is made. Such notice shall specify the nature and amount of the additional Lot assessment and the date upon which the same shall be due and payable (which due date shall be not less than 15 days from the date of such notice). Collection of any such additional Lot assessment shall be made in the same manner as the regular annual assessments provided for herein, and a lien therefor shall exist in favor of the Association upon the Lot (together with the improvements thereon) of the owner against whom the assessment is made.

**Sec. 14 - Books and Records**

Proper books and records shall be kept by the Association with respect to all assessments made by the Association, and each owner shall at all reasonable times have access to such books and records. The books and records shall be kept in such a manner as to separately identify the assessments and payments thereof on each Lot in the Addition. No payment made on any individual assessment account shall be transferred or credited to another account without the express written consent of the party making such payment.

**ARTICLE V**

**OBLIGATION TO MAINTAIN, REPAIR AND REBUILD**

**Sec. 1 - Owner's Obligation to Maintain and Repair**

Each owner shall, at his sole cost and expense, perform such maintenance and make such repairs and replacements to his residence, together all other structures, installations and appurtenances located upon the Lot of such owner (except as otherwise specifically provided herein), as shall be required to keep his residence in substantially the same condition as at the completion of the original construction thereof, excepting only ordinary wear and tear. Additionally, each owner shall maintain his yard area, together with all sidewalks and driveways on his Lot. If any owner shall fail to perform the maintenance or make the repairs required of such owner hereunder or by the Dedication, the Association, after giving such owner written notice specifying the required maintenance or repairs, may perform such maintenance or make such repairs if such owner shall not, within thirty (30) days after such notice is given by the Association, perform the maintenance or make the repairs or replacements specified in such notice. The costs incurred by the Association in performing such maintenance or making such repairs or replacements shall, at the election of the Board of Directors of the Association, be the basis for levying an additional Lot assessment against such owner and his Lot pursuant to the provisions of ARTICLE IV above.

**Sec. 2 - Maintenance by Association**

It shall be the duty and obligation of the Association to:

(a) Maintain, repair and (if and when required) replace the fence (if any) constructed along the perimeter boundaries of the Addition, together with any fence, gateway or sign constructed at the entrance to the Addition and to maintain, repair and (if and when required) replace any improvements constructed on the Common Area.

(b) Provide mowing, trimming and care of any common area and street easements or rights-of-way in or abutting the Addition.

**LOT(S) OWNED BY OWNER**

Lots 1 & 2, 5 through 17, and  
19 through 33, Block 1

Lot 18, Block 1

**OWNER'S SIGNATURE**

**duPerier Real Estate Corp., Inc.,  
a Texas corporation**

By: *Jack L. Koshkin*  
Jack L. Koshkin

**The Williford Group, Inc.  
a Texas corporation**

By: *Williford R. W. Williford Jr.*  
*Williford R. W. Williford Jr.*  
(Print name and title) **President**

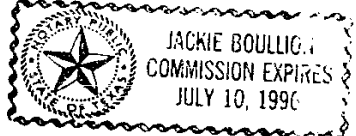
Lots 3 & 4, Block 1

Anderson Construction Company,  
a Texas corporation

By Rolland J. Anderson  
Rolland J. Anderson  
(Print name and title) President

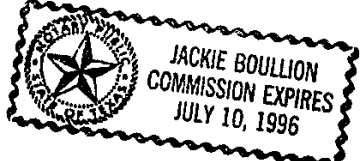
THE STATE OF TEXAS §  
COUNTY OF JEFFERSON §

This instrument was acknowledged before me on the 3 day of March, 1993, by Jack L. Koshkin, Executive Vice President of duPerier Real Estate Corp., Inc., a Texas corporation, on behalf of said corporation.

Jackie Boullion  
NOTARY PUBLIC, STATE OF TEXAS  


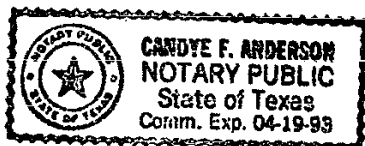
THE STATE OF TEXAS §  
COUNTY OF JEFFERSON §

This instrument was acknowledged before me on the 11 day of March, 1993, by Marlin R. Willford, Jr. President of The Willford Group, Inc., a Texas corporation, on behalf of said corporation.

Jackie Boullion  
NOTARY PUBLIC, STATE OF TEXAS  


THE STATE OF TEXAS §  
COUNTY OF JEFFERSON §

This instrument was acknowledged before me on the 5th day of March, 1993, by Rolland J. Anderson PRESIDENT of Anderson Construction Company, a Texas corporation, on behalf of said corporation.

  
CANDYE F. ANDERSON  
NOTARY PUBLIC  
State of Texas  
Comm. Exp. 04-19-93

Candye F. Anderson  
NOTARY PUBLIC, STATE OF TEXAS

After filing, please return to:

Briar Creek III  
c/o duPerier Real Estate Corp., Inc.  
P. O. Box 5696  
Beaumont, Texas 77726-5696

FILED FOR RECORD

1994 70 1647

'93 MAR 11 P2:58

*Laura L. ...*  
COUNTY CLERK  
JEFFERSON COUNTY, TEXAS

03/11/93 RCD 93 8816 \$ 17.00

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104 70 652

7B 10327

AMENDMENT TO DEDICATION AND RESTRICTIONS  
 FOR  
 BRIAR CREEK III  
 AN ADDITION TO THE CITY OF BEAUMONT,  
 JEFFERSON COUNTY, TEXAS

THE STATE OF TEXAS §  
 COUNTY OF JEFFERSON §

WHEREAS, by Final Plat (the "Plat") filed of record in the office of the County Clerk of Jefferson County, Texas, in Volume 15, Page 63 of the Map Records of Jefferson County, Texas, the Dedication and Restrictions (the "Dedication") filed for record in the office of the County Clerk of Jefferson County, Texas, under Film Code Number 104-56-1991 in the Official Public Records of Real Property of Jefferson County, Texas, and the Supplemental Dedication and Restrictions filed for record in the office of the County Clerk of Jefferson County, Texas under County Clerk's Film Code No. 104-70-1640 in the Official Public Records of Real Property of Jefferson County, Texas, **duPerier Real Estate Corp, Inc.** ("Developer") platted and subdivided a certain 13.411 acre tract of land into **BRIAR CREEK III, an Addition to the City of Beaumont, Jefferson County, Texas** (the "Addition"), granted or reserved certain easements for streets, utilities and drainage as set forth upon the Plat or in the Dedication, and imposed upon all of the Lots in the Addition certain restrictive covenants as set forth in the Dedication and the Supplemental Dedication; and

WHEREAS, as provided in Section 33 of the Dedication, more than eighty percent (80%) of the present record owners of all of the Lots in the Addition now desire to amend the restrictive covenants of the Addition in the regard and respect set forth below herein:

NOW, THEREFORE, the undersigned, being more than eighty percent (80%) of the present record owners of all of the Lots in the Addition (collectively "Owners"), do, by their respective signatures hereon, consent and agree to the amendment of the restrictive covenants imposed by the Dedication on the Lots in the Addition in the following respect and regard:

1.

Sec. 9 of the Dedication, entitled "**Minimum Interior Line Setback**", which presently reads as follows:

"No one-story dwelling shall be located nearer than five feet (5') to an interior or side Lot line, nor shall any story and one-half, two-story, or two and one-half story dwelling be located nearer than ten feet (10') to an interior or side Lot line, and no building permitted hereunder shall be located nearer than twenty-five feet (25') to the rear Lot line; except that a one-story unattached garage or other accessory building permitted hereunder may be located not nearer than two and one-half feet (2½') to an interior or side Lot line and not nearer than twenty feet (20') to the rear Lot line on an interior Lot or not nearer than ten feet (10') to the rear Lot line on a corner Lot, provided that such garage or accessory building (i) is located in the rear yard or as close to the rear yard as existing utility or drainage easements will permit, (ii) does not cover more than sixty percent (60%) of the rear yard, (iii) is less than twenty feet (20') in height, and (iv) does not extend into any existing utility or drainage easement(s) on the Lot."

is hereby amended to read as follows:

"No one-story dwelling shall be located nearer than five feet (5') to an interior or side Lot line, nor shall any story and one-half, two-story, or two and one-half story dwelling be located nearer than ten feet (10') to an interior or side Lot line, and no building permitted hereunder shall be located nearer than twenty-five feet (25') to the rear Lot line; except as provided below. A one-story unattached garage or other accessory building permitted hereunder not exceeding twenty feet (20') in height and

not covering more than sixty percent (60%) of the rear yard, may be located not nearer than two and one-half feet (2½') to an interior or side Lot line and not nearer than:

- (a) ten feet (10') from the rear Lot line on Lots 17, 18, 32 and 33 of Block 1; or
- (b) fifteen feet (15') from the rear Lot line on Lot 1 of Block 1; or
- (c) twenty feet (20') from the rear Lot line on Lots 14, 15, 16, 19, 20 and 21 of Block 1;

and provided that such unattached garage or other accessory building is located in the rear yard or as close to the rear yard as existing utility or drainage easements will permit and not extend into any existing utility or drainage easement(s) on such Lot.

"Lots 7 through and including 13 and Lots 22 through and including 26 of Block 1 of the Addition shall have no rear Lot line building restriction, other than any existing utility and drainage easement(s) on such Lots."

2.

This Amendment to Dedication and Restrictions may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one (1) and the same instrument.

IN WITNESS WHEREOF, the undersigned Owners have caused to be executed by their respective duly authorized officers this Amendment to Dedication and Restrictions, effective as of the 3 day of ~~February~~ March, 1993.

LOT(S) OWNED BY OWNER

OWNER'S SIGNATURE

Lots 1-2, 5-17, 19-33,  
Block 1

**duPERIER REAL ESTATE CORP, INC.**

By: Jack L. Koshkin  
Jack L. Koshkin, Executive  
Vice President

Lot 18, Block 1

**The Williford Group, Inc.**  
a Texas corporation

By: Marion R. Williford  
Marion R. Williford, President  
(Print name and title)

Lots 3 & 4, Block 1

**Anderson Construction Company,**  
a Texas corporation

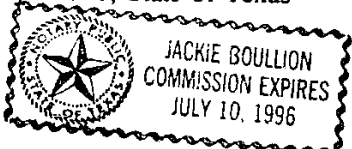
By: Roland J. Anderson  
Roland J. Anderson  
(Print name and title) President



**ACKNOWLEDGMENTS**


THE STATE OF TEXAS §  
COUNTY OF JEFFERSON §

This instrument was acknowledged before me on March 3, 1993, by JACK L. KOSHKIN, Executive Vice-President of duPERIER REAL ESTATE CORP, INC., a Texas corporation, on behalf of said corporation.

*Jackie Boullion*  
Notary Public, State of Texas  


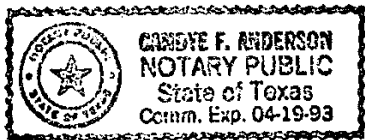
THE STATE OF TEXAS §  
COUNTY OF JEFFERSON §

This instrument was acknowledged before me on the 11 day of March, 1993, by Martin H. Williford, President of The Williford Group, Inc., a Texas corporation, on behalf of said corporation.

*Jackie Boullion*  
Notary Public, State of Texas  


THE STATE OF TEXAS §  
COUNTY OF JEFFERSON §

This instrument was acknowledged before me on the 5th day of March, 1993, by Rolan O. J. Anderson Pres of Anderson Construction Company, a Texas corporation, on behalf of said corporation.

  
CANDYE F. ANDERSON  
NOTARY PUBLIC  
State of Texas  
Comm. Exp. 04-19-93

*Candye Anderson*  
Notary Public, State of Texas

Return To: *Brian Creek III*  
*% duPerier Real Estate Corp, Inc.*  
*P.O. Box 5696*  
*Baumont, TX 77726-5696*

104 70 055

FILED FOR RECORD

'93 MAR 11 P2.58

*L. H. ...*  
COUNTY CLERK  
JEFFERSON COUNTY, TEXAS

03/11/93 RCD 93 8018 \$ 11.00

**SUPPLEMENTARY DEDICATION  
FOR  
BRIAR CREEK III  
AN ADDITION TO THE CITY OF BEAUMONT  
JEFFERSON COUNTY, TEXAS**

March 1999

**THE STATE OF TEXAS  
COUNTY OF JEFFERSON**

Having been duly elected by the Briarcreek III Homeowners Association during its initial meeting March 12, 1998, the following individuals were elected to serve twelve month positions

President	Mike Brown
Vice President	Barry Bennett
Secretary	Susan Smiley
Treasurer	Stella Meza

Architectural Committee	Tom O Bailey, Chairman
	Mike Brown
	Gene Barnett

*Attached BYLAWS as amended at the March 12, 1998 meeting.*  
*MB*

*Mike Brown*  
\_\_\_\_\_  
Briarcreek III Homeowners Association  
President

THE STATE OF TEXAS COUNTY OF JEFFERSON  
This instrument was acknowledged before me on March 2, 1999 by Mike Brown,  
President of Briarcreek III Homeowners Association on behalf of said Association

*Shirley Cravey*  
\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires June 22, 2001



# BYLAWS OF BRIAR CREEK III HOMEOWNERS ASSOCIATION

## ARTICLE I NAME AND LOCATION

### Section 1 - Name of Association

The name of the Association is **BRIAR CREEK III HOMEOWNERS ASSOCIATION**. The Association is an unincorporated Texas nonprofit association

### Section 2 - Principal Office

The principal office of the Association shall be the address of the currently elected secretary of the **BRIAR CREEK III HOMEOWNERS ASSOCIATION**.

## ARTICLE II DEFINITIONS

### Section 1

“Association,” as used in the hereinafter referenced Dedication and in these Bylaws, shall mean and refer to **BRIAR CREEK III HOMEOWNERS ASSOCIATION**, its successors and assigns

### Section 2

“Owner” shall mean and refer to the record owner, whether one (1) or more persons or entities, of a fee simple title to any Lot which is part of the Addition, including contract sellers, but shall not include (a) those holding title merely as security for the performance of an obligation, or (b) those holding title to, or an interest in, the mineral estate only, with no title to, or interest in, the surface estate

### Section 3

“Addition” shall mean and refer to **BRIAR CREEK III**, an Addition to the City of Beaumont, Jefferson County, Texas, as shown, reflected and described upon the Final Plat (the “Plat”) of said Addition filed of record in Vol 15, Page 63, Map Records, Jefferson County, Texas, contemporaneously with the Dedication referred to below herein

### Section 4

“Lot” shall mean and refer to each and every platted plot or building site shown and reflected upon the Final Plat of said Addition

### Section 5

“Developer” shall mean and refer to duPerier Real Estate Corp , Inc , its successors and assigns However, as used in this paragraph, the term “assigns” shall not be construed to acquire from duPerier Real Estate Corp , Inc , one (1) or more of the Lots in the Addition, whether improved or unimproved, for occupancy or resale, unless the said duPerier Real Estate Corp , Inc , or its successor, shall expressly assign unto such assignee all of its rights and privileges as “Developer” under the Dedication

### Section 6

“Dedication” shall mean and refer to both the **DEDICATION AND RESTRICTIONS FOR BRIAR CREEK III**, an addition to the City of Beaumont, Jefferson County, Texas, as filed by the **BRIAR CREEK III HOMEOWNERS ASSOCIATION** under Film Code No 104-56-1991 in the Official Public Records of Real Property of Jefferson County, Texas and the Supplemental Dedication and Restriction for Briar Creek III, an addition to the City of Beaumont, Jefferson County, Texas, as filed under County Clerk’s Film Code No in the Official Public Records of Real Property of Jefferson County, Texas

**Section 7**

"Member" shall mean and refer to those persons or entities holding membership in the Association, as provided in the Dedication

**Section 8**

"Mortgage," "deed of trust" or "trust deed" shall mean and refer to a pledge of a security interest in or the creation of a lien upon a Lot (or Lots), together with any improvements thereon, to secure the payment of a loan made to the owner(s) of such Lot or Lots (or made to another, but secured by such Lot or Lots)

**Section 9**

"Mortgagee" shall mean and refer to the beneficiary of, or secured party in, a mortgage on a Lot or Lots

## **ARTICLE II MEETINGS OF MEMBERS**

**Section 1 - Annual Meetings**

Annual meetings shall be held at 7 00 o'clock PM during the month of February as called by the President

**Section 2 - Special Meetings**

Special meetings of the members may be called at any time by the President or by the Board of Directors of the Association. Special meetings shall be called by the President or Board of Directors upon the written request of 9 current dues paying members

**Section 3 - Notice of Meetings**

Written notice of each meeting of the members shall be given by, or at the direction of, the Secretary or other person authorized to call such meeting, by mailing a copy of such notice, postage prepaid, to each member of the Association, addressed to the member's mailing address last appearing upon the records of the Association or supplied by such member to the Association for the purpose of receiving notice. Such written notice shall be given not less than five (5) nor more than twenty (20) days prior to the date of such meeting. The notice shall specify the day, hour and place of the meeting, and, in the case of a special meeting, the notice shall state the purpose of the meeting. Notice properly addressed and with postage prepaid thereon shall be deemed given when deposited with the United States Postal Service

**Section 4 - Quorum**

Except where otherwise specifically provided to the contrary in the Dedication or these Bylaws, the presence at a meeting, in person or by proxy, of members entitled to cast at least 9 votes by current dues paying members shall constitute a quorum for the business which may be taken or conducted at such meeting. Except where transaction of any otherwise specifically provided to the contrary in the Declaration or these Bylaws, if a quorum is not present at a meeting, the members present at the meeting, in person or by proxy, may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present

**Section 5 - Proxies**

At all meetings, whether annual or special, current dues paying members may be present and vote in person or by written proxy. Proxies, in order to be effective, must be filed with the Secretary of the Association at or prior to the meeting. Proxies shall be revocable, and the proxy of an owner shall automatically terminate on the conveyance by such owner of his Lot

**Section 6 - Voting**

Voting shall be in accordance with the provisions of the Dedication by only current dues paying members

**Section 7 - Method of Voting**

All voting shall be via voice or by show of hands, unless by majority vote of the members present and entitled to vote at the meeting a determination is made to vote by secret written ballot

**Section 8 - Majority Vote Controls**

Except where a greater vote than a simple majority is specifically required by the Dedication or these Bylaws, all elections and other decisions of the members shall be determined by a simple majority of the votes cast at a meeting which is duly called and held and at which the required quorum is present

**Section 9 - Record Date**

The Board of Directors shall have the power to close the membership list (as to the persons entitled to notice of a meeting or to vote thereat) as of a date determined by the Board of Directors, which shall in no event be more than thirty (30) days prior to the date of the meeting

**Section 10 - Membership, Voting List**

It shall be the duty of the Secretary or the Treasurer to have available at each membership meeting a list of all members entitled to vote at such meeting. Such list shall be made available for inspection at the meeting by any member upon request

## **ARTICLE IV BOARD OF DIRECTORS**

**Section 1 - General Powers**

The affairs of the Association shall be managed by the Board of Directors

**Section 2 - Number and Qualification**

The number of Directors shall be five (5), provided, however, that the number of Directors may be increased and decreased by amendment of these Bylaws, but the number of Directors shall never be less than three (3). Directors may or may not be current dues paying members of the Association. The Board of Directors shall be composed of the President, Vice President, Secretary, and two current dues paying members who serve as street representatives for homeowners living on Briar Creek Drive and Briar Way Drive respectively.

**Section 3 - Election of Directors**

At the annual meeting, members shall elect as many Directors as there are seats on the Board. Nomination for election to the Board of Directors shall be made by nominating committee appointed by the Board of Directors or by nominations made from the floor at the annual membership meeting. At the election, every member entitled to vote shall have the right to vote, in person or by proxy, for as many persons as there are Directors to be elected. Cumulative voting shall not be permitted. The nominees receiving the largest number of votes shall be elected.

**Section 4 - Tenure**

Except for the initial Board of Directors (who shall hold serve for the period set forth above herein), each Director shall serve for a term of one (1) year or until his successor is elected. Directors shall be entitled to serve successive terms without limitation.

**Section 5 - Removal**

Any Director may be removed from the Board, with or without cause, by a majority of the votes cast at any regular meeting of the members, or at a special meeting of the members called for that purpose, which meeting is duly called and held and at which meeting a quorum is present. If a Director shall be removed by vote of the members, then the vacancy resulting from such removal shall be filled by vote of the members at the same meeting at which such Director was removed, otherwise, such resulting vacancy shall be filled in the manner provided in Section 7 below.

**Section 6 - Vacancies**

Any vacancy on the Board of Directors resulting from the death or resignation of a Director, or any vacancies created by an increase in the number of Directors, shall be filled by the remaining Directors (even though less than a quorum). Any Director elected to fill a vacancy shall serve until the next annual meeting of the members or until his successor is elected.

**Section 7 - Compensation**

No Director shall receive any compensation for services rendered in such capacity, but a Director may be reimbursed for expenses actually incurred by him in the performance of his duties in such capacity. Additionally, nothing herein contained shall preclude or prohibit the payment of compensation to a Director, in his capacity other than as a Director, for services rendered to the Association, such as for repair or maintenance services.

**Section 8 - Regular Meetings**

Regular meetings of the Board of Directors shall be held at such intervals, on such dates and at such times and places as shall be fixed, from time to time, by resolution of the Board of Directors. When fixed by resolution, no notice of regular meetings shall be required.

### **Section 9 - Special Meetings**

Special meetings of the Board of Directors shall be held when called by the President or by any two (2) members of the Board. Notice of a special meeting of the Board shall be given at least three (3) days prior to the date of the meeting by written notice personally delivered or transmitted by mail, postage prepaid, addressed to each Director at his address shown on the records of the Association. If such notice is personally delivered, it shall be effective upon delivery. If notice is mailed, properly addressed and with postage prepaid, such notice shall be deemed given when deposited with the United States Postal Service. Any Director may waive notice of any meeting. The attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened, which objection shall be made known to and noted by the Secretary in the minutes of the meeting. A Director attending for the purpose of objecting to the transaction of business, as set forth above, shall not be considered in determining the existence of a quorum. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting.

### **Section 10- Quorum**

A majority of the Directors shall constitute a quorum for the transaction of business at any meeting of the Board. If less than a majority of the Directors are present at such meeting, a majority of the Directors in attendance may adjourn the meeting from time to time without further notice. Every act taken or decision made by a majority of the Directors in attendance at a meeting which is duly called and convened, and at which a quorum is present, shall constitute the act or decision of the Board of Directors.

### **Section 11 - Action Without Meeting**

Any action which may be taken by a vote of the Directors at any regular or special meeting of the Board may be taken by unanimous written consent of all the Directors without the necessity of a meeting.

## **ARTICLE IV POWERS AND DUTIES OF BOARD OF DIRECTORS**

### **Section 1 - Enumeration of Powers**

Without limitation, the Board of Directors shall have the power and authority to

- (a) Employ independent contractors, accountants, attorneys and such other agents, employees or representatives as the Board shall deem necessary for carrying out the duties and obligations of the Association, and prescribing their duties and fixing their compensation
- (b) Prosecute any action or legal proceeding which, pursuant to the Dedication, the Association is authorized to bring for the purpose of (i) collecting any assessment due and owing by any owner, (ii) enforcing, by foreclosure proceedings, the assessment lien securing the payment of any assessment which is due and owing to the Association, (iii) enforcing the use restrictions contained in the Dedication, and (iv) enforcing compliance with any and all other terms, covenants and provisions of the Dedication
- (c) Exercise all rights, powers and discretions conferred upon the Board of Directors by these Bylaws and the Dedication, except those which are specifically reserved to the members of the Association by the provisions of these Bylaws or the Dedication

### **Section 2 - Enumeration of Duties**

Without limitation, the Board of Directors shall have the duty to

- (a) Cause to be kept a complete and accurate record of all financial affairs of the Association, including assessments, collections and disbursements. A written financial report shall be furnished to the members at each annual membership meeting or at any special meeting at which such financial report is requested in writing, at least five (5) days prior to the date of such special meeting, by owners holding at least fifty percent (50%) of the votes of the current dues paying members
- (b) Cause to be kept complete and accurate minutes of all meetings of the members and Board of Directors
- (c) Supervise all officers, agents and employees of the Association and see that their respective duties are properly performed

- (d) As more fully provided in the Dedication (i) fix the amount of the regular annual assessment against each Lot and give notice thereof to each and every owner subject thereto, (ii) fix the amount of any additional Lot assessment and give notice thereof to each and every owner subject thereto, (iii) issue or cause to be issued, upon request by any mortgagee or other person, a certificate setting forth whether or not any assessments on a specified Lot have been paid, and (iv) collect the assessments when due and payable in any manner provided in the Dedication, including, without limitation, suit for collection or action for foreclosure of the assessment lien
- (e) Perform all maintenance, repairs and replacements required of the Association under the Dedication, and, at the election of the Board of Directors, perform any maintenance, repairs and replacements which the Association, under the Dedication, has the option to perform for the account of any Lot owner who fails or refuses to perform his own maintenance, repair and replacement obligations under the Dedication
- (f) Perform or cause to be performed all other duties and obligations of the Association under the Dedication

## **ARTICLE VI OFFICERS AND THEIR DUTIES**

### **Section 1 - Enumeration of Officers**

The officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer. The President, Vice President, and Secretary shall at all times be members of the Board of Directors. The Treasurer may not be a member of the Board of Directors. Any two (2) or more of such offices may be held by the same person, except that the President may not also be the Secretary or Treasurer.

### **Section 2 - Election of Officers**

The officers shall be elected annually by the Board of Directors at the annual meeting. Each officer shall hold office for a term of one (1) year or until his successor is elected. Any office may be held by the same person for only two (2) successive terms.

### **Section 3 - Assistant Officers**

The Board of Directors may elect such assistant officers as the Board shall determine necessary for the conduct of the affairs of the Association. The authority, duties and terms of such assistant officers shall be fixed by the Board of Directors by resolutions from time to time adopted by the Board. The President shall preside over all meetings of the members and the Board of Directors, shall see that all orders and resolutions of the board are carried out, shall sign all documents of the Association, except where another officer is specifically authorized to execute same by the Dedication, and shall perform such other duties as are normally performed by the president of a corporation.

### **Section 6 - Duties of President**

The President shall preside over all meetings of the members and the Board of Directors, shall see that all orders and resolutions of the board are carried out, shall sign all documents of the Association, except where another officer is specifically authorized to execute same by the Dedication, and shall perform such other duties as are normally performed by the president of a corporation.

### **Section 7 - Duties of Vice President**

The Vice President shall act in the place of the President in the event his absence, disability or refusal to act, shall exercise and discharge such other duties as may be assigned to him by the Board of Directors, and shall perform such other duties as are normally performed by the vice president of a corporation.

### **Section 8 - Duties of Secretary**

The Secretary shall record the votes and minutes of all meetings of the Board of Directors and of the membership, shall serve notice of meetings of the Board and of the members, shall keep appropriate current records showing all members of the Association and their current mailing addresses, shall maintain a current record of the holders of all first mortgages on the Lots in the Addition (from information furnished to him by the Lot owners), shall perform such other duties as may be assigned to him by the Board of Directors, and shall perform such other duties as are normally performed by the secretary of a corporation.

### **Section 9 - Duties of Treasurer**

The Treasurer shall be primarily responsible for the collection of assessments due the Association, shall receive and deposit, in appropriate accounts established by the Board of Directors, all funds of the Association and disburse such funds as directed by resolution of the Board of Directors, shall sign all checks or other orders for payment of funds of the Association,



either alone or jointly with another officer, as determined from time to time by resolution of the Board of Directors, shall keep proper books and records of all financial matters of the Association and present financial reports to the members as required in these Bylaws, shall, with the assistance of the other officers, fix the annual budget and regular annual assessment on the Lots in the Addition and shall give notice thereof to the owners of all Lots subject to such assessment, as required in the Dedication, shall cause any required tax returns and reports to be prepared and filed, shall perform such other duties as shall be assigned to him by the Board of Directors, and shall generally perform the duties of the office of treasurer of a corporation. In the event there shall be no acting Treasurer, the duties of the office of Treasurer shall be performed by the Secretary.

## **ARTICLE VII INDEMNIFICATION OF OFFICERS AND DIRECTORS**

### **Section 1 - Obligation to Indemnify**

The Association shall indemnify any Director or officer, or former Director or officer, for expenses and costs (including attorney's fees) actually and necessarily incurred by him in connection with any claim asserted against him, by action in court or otherwise, by reason of his being or having been such Director or officer. The indemnity will only apply to conduct approved or ratified by the Board of Directors and/or of the dues paying members of the Homeowners Association. The indemnity will not apply to matters in which he shall have been guilty of gross negligence, concurrent negligence or any intentional or negligent or misconduct in respect of the matter in which indemnity is sought. Any such indemnification shall not affect such indemnified party's obligation to pay his prorata share of such indemnification as a member of the Association.

### **Section 2 - Court to Assess Indemnity**

If the Association has not fully indemnified such Director or officer, or former Director or officer, the court in the proceeding in which any claim against such Director or officer has been asserted, or any court having the requisite jurisdiction of an action instituted by such Director or officer on his claim for indemnification, may assess indemnity against the Association, or its successors, for the amount paid by such Director or officer in satisfaction of any judgment or in compromise of any such claim (exclusive in either case of any amount paid to the Association), and any expenses and costs (including attorney's fees) actually and necessarily incurred by him in connection therewith to the extent that the court may deem reasonable and equitable, provided, nevertheless, that indemnity may be assessed under this Section only if the court finds that the person indemnified was not guilty of gross negligence or misconduct in respect of the matter in which indemnity is sought.

## **ARTICLE VIII ASSESSMENTS**

### **Section 1 - General Provisions**

As more fully provided in the Dedication, each member is obligated to pay to the Association the regular annual assessments and, in certain special cases, additional Lot assessments, which assessments, together with interest, costs and reasonable attorney's fees, are secured by a continuing assessment lien (with power of sale) upon the Lots (and the improvements thereon) against which the assessments are made. Any assessments which are not paid when due are considered delinquent.

If an assessment is not paid within ten (10) days from the date upon which it became due, such assessments shall bear interest from the date upon which it became due at the rate of eighteen percent (18%) per annum, and the Association may bring an action at law against the owner and any other person(s) personally obligated to pay the same or may foreclose the lien upon the property against which the assessment was made. Interest, costs and reasonable attorney's fees shall be added to the amount of any delinquent assessment.

## **ARTICLE IX BOOKS AND RECORDS**

### **Section 1 - Inspection by Members**

The books, records and papers of the Association shall be subject to inspection by any member during normal business hours. The Dedication and Bylaws shall be available for inspection at the ~~principal office~~ **President or Secretary** of the Association, and copies thereof shall be made available to members of the Association for a reasonable charge.

### **Section 2 - Current Mortgage Register**

It shall be the duty of each owner to furnish to the Secretary of the Association, within ten (10) days after the acquisition of a Lot or Lots in the Addition, with the name and mailing address of any mortgagee holding a first mortgage upon such

owner's Lot or Lots. Upon any substitution or change in any such mortgagee, it shall be the duty of each owner to notify the Secretary, within ten (10) days thereafter, of the name and mailing address of such substituted first mortgagee

**Section 3 - Current Register of Owners**

Among the duties of the Secretary is the maintenance of a current list of all members and their current mailing addresses. It shall be the duty of each owner to give written notice to the Secretary of any transfer or change of ownership of any Lot in the Addition, within ten (10) days after same is made, including the correct name and mailing address of the new owner thereof. Further, it shall be the duty of each member to advise the Secretary in writing of any change in such member's mailing address for receipt of notice from the Association

**ARTICLE X  
AMENDMENT OF BYLAWS**

**Section 1 - Procedure for Amendment**

These Bylaws may be amended at any regular or special meeting of the members by a majority vote of the members present, in person or by proxy, and entitled to vote at any such meeting at which a quorum is present. Any proposed amendment shall be incorporated in the notice of such amendment shall be given to each of the members (whether in attendance at or absent from such meeting) within fifteen (15) days after the adoption thereof. No such amendment shall be enforceable against any member until such written notice shall have been given to such member in the manner provided above

**ARTICLE XI  
CONFLICTS**


**Section 1 - Conflict With Dedication**

In the event of any conflict between the Dedication and these Bylaws, the Dedication shall control over any conflicting provision of these Bylaws

Revised and adopted by current dues paying members of the Briar Creek III Homeowners Association on the 15th day of February, 1999

**BOARD OF DIRECTORS:**

  
Barbara Knight, President

  
Mike Brown, Vice President

Return to:  
Mike Brown  
5515 Briar Way  
Beaumont, TX 77706

FILED AND RECORDED

*Sandy Walker*

1999 MAR 16 10:33 AM 1999009375  
SANDY WALKER  
COUNTY CLERK  
JEFFERSON COUNTY, TEXAS