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CONDOMINIUM DECLARATION  
FOR  
WESTBURY SQUARE TOWNHOMES

(A Condominium)

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, ZAR PROPERTIES, LTD., hereinafter called "Declarant", is the owner of a certain tract of land and the improvements thereon situated in Harris County, Texas, which property is more particularly described on the attached Exhibit "A", which, by this reference, is made a part hereof; and

WHEREAS, Declarant desires to establish a condominium project under the Condominium Act of the State of Texas; and

WHEREAS, Buildings and other improvements have been constructed on the real property described in attached Exhibit "A", said buildings being divided into separate, designated condominium units; and

WHEREAS, Declarant does hereby establish a plan for the separate and individual ownership of the area or space contained in each of said condominium units existing in said buildings, and the co-ownership by said unit owners of (a) the real property described in attached Exhibit "A", and (b) the portion of the improvements not contained within said units, said co-owned property being hereinafter referred to and defined as general and limited common elements; and

NOW THEREFORE, Declarant does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, limitations and obligations shall be deemed to run with the land, shall be a burden and a benefit to Declarant and any person or entity acquiring or owning an interest in said real property and improvements, their heirs, personal representatives, devisees, successors and assigns.

1. DEFINITIONS. Unless the context shall expressly provide otherwise:

(a) "Unit" means an individual air space unit which is contained within the perimeter walls, floors, ceilings, windows and doors of such units (and the patios and balconies appurtenant to each unit where applicable) in one of the buildings as shown on the Condominium Map filed herewith, together with all fixtures and improvements therein contained but not including any of the structural components of the building in such unit.

(b) "Condominium unit" means the fee simple interest and title in and to a unit together with the undivided interest in the general and limited common elements appurtenant thereto.

(c) "Owner" means a person, firm, corporation, partnership, association or other legal entity, or any combination thereof, including Declarant, who owns one or more condominium units.

(d) "General common elements" means and includes the land described in Exhibit "A"; utility lines, including sewage, water, gas, electricity, and all components thereof; laundry room; maintenance room; storage rooms; hot water boiler; roads, yards, shrubs; trees; sidewalks; pavement; all parking area or areas; all common recreational facilities including without limitation the office, (excluding closing office) swimming pools, and all other areas of such land and the improvements thereon necessary or convenient to its existence, maintenance and safety which are normally and reasonably in common use, including the air above such land, all of which shall be owned by the owners of the separate units, each owner of a unit having an undivided percentage interest in such general common elements as set forth in the attached Exhibit "A-1", which, by this reference, is made a part hereof.

(e) "Limited common elements" means those parts of the general common elements which are either limited to and reserved for the exclusive use of an owner of a condominium unit or are limited to and reserved for the common use of more than one but fewer than all of the condominium unit owners. The only limited common elements shall be the carports, structural components of each building (including, without limitation, the roof, walls and foundation) which shall be limited to use by the owners of units in each particular building.

(f) "Condominium project or regime" means all of the land and improvements submitted by this Declaration.

(g) "Common expenses" means and includes expenses for the maintenance, repair, operation, management and administration of this condominium regime; expenses declared common expenses by the provisions of this Declaration and the By-Laws of WESTBURY SQUARE ASSOCIATION, INC.; and all sums lawfully assessed against the general common elements by the Board of Directors of the Association.

(h) "Association of unit owners" or "Association" means the WESTBURY SQUARE ASSOCIATION, INC., incorporated association, its successors and assigns, the By-Laws of which shall govern the administration of this condominium regime, the members of which shall be all of the owners of the condominium units. Said corporation shall be a non-profit corporation organized pursuant to the Texas Non-Profit Corporation Act.

(i) "Building" means one or more of the building improvements containing units as shown on the Map.

(j) "Map" means and includes the engineering survey of the land locating thereon all of the improvements and other drawing or diagrammatic plan depicting a part of or all of the improvements and land.

2. CONDOMINIUM MAP. Attached hereto and incorporated herein for all purposes as Exhibit "B" is the Map. The Map sets forth, among other things, the following:

(a) The legal description of the land and a survey thereof showing the location of each building designated by letter;

(b) A general description and plat of each unit showing its square footage, building location, floor and unit number;

(c) A general description and plat of the parking space appropriately numbered as set forth and depicted on Exhibit "B".

The Map shall contain the certificate of a registered professional engineer or licensed architect, or both, certifying that the Map substantially depicts the location of the buildings, the units, the unit numbers, the dimensions of the units, the building designation by letter and that such Map was prepared subsequent to the completion of the improvements. In interpreting the Map the existing physical boundaries of each separate unit shall be conclusively presumed to be its boundaries. Declarant reserves the right to amend the Map, from time to time, to conform the same according to the actual location of any of the improvements and to establish, vacate and relocate easements, access road easements and on-site parking areas.

3. DIVISION OF PROPERTY INTO CONDOMINIUM UNITS. The tract of land described in Exhibit "A" hereto and the improvements thereon are hereby divided into fee simple estates, each such estate consisting of the separately designated condominium units and the undivided interest in and to the general common elements and the limited common elements appurtenant to each unit.

4. COMMON ELEMENTS. Common elements are composed of general and limited common elements as defined in paragraph 1 hereof. No reference thereto, whether such common elements are limited or general, need be made in any deed or other instrument, and reference is made to the provisions of paragraph 7 of this Declaration.

5. AUTOMOBILE PARKING. Parking areas intended for the use of the owner of a particular unit are appropriately designated on Exhibit "B".

6. INSEPARABILITY OF A CONDOMINIUM UNIT. Each unit, the appurtenant undivided interest in the general common elements and the appurtenant limited common elements shall together comprise one condominium unit, shall be inseparable and may be sold, assigned, leased, devised, or encumbered only as a condominium unit.

7. DESCRIPTION OF CONDOMINIUM UNIT. Every contract for the sale or lease of a condominium unit prior to the recording of the Declaration may legally describe a condominium unit by its identifying unit number, the building letter, followed by the words "WESTBURY SQUARE TOWNHOMES", with further reference to the Declaration to be filed for record. Subsequent to the recording of the Declaration, every deed, lease, mortgage, deed of trust, will or other instrument may legally describe a condominium unit by its identifying unit number, the building letter, followed by the words "WESTBURY SQUARE TOWNHOMES", with further reference to the volume and page wherein this Declaration is filed of record in the Condominium Records of Harris County, Texas. Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the unit but also the common elements appurtenant thereto. Each such description shall be construed to include a non-exclusive easement for ingress and egress to an owner's unit and use of all the general common elements, together with the right to the exclusive use of the limited common elements. The initial deeds conveying each condominium unit may contain reservations, exceptions and exclusions which the Declarant deems to be consistent with and in the best interests of all condominium unit owners and the Association.

8. SEPARATE ASSESSMENT AND TAXATION - NOTICE TO ASSESSOR. Declarant shall give written notice to the assessor of the County of Harris, State of Texas, of the creation of condominium ownership in this property, so that each unit and the undivided interest in the common elements appurtenant thereto shall be deemed a parcel and subject to separate assessment and taxation.

9. OWNERSHIP - TITLE. A condominium unit may be held and owned by more than one person in any real property relationship recognized under the laws of the State of Texas.

10. NON-PARTITIONABILITY OF COMMON ELEMENTS. The common elements shall be owned in common by all of the owners of the units and shall remain undivided, and no owner shall bring any action for partition or division of the common elements.

11. USE AND OCCUPANCY. All condominium units shall be used and occupied for single family residential purposes only.

12. EASEMENTS FOR ENCROACHMENTS. If any portion of the common elements encroaches upon a unit or units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. If any portion of a unit encroaches upon the common elements, or upon adjoining unit or units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the common elements or on the units.

13. TERMINATION OF MECHANIC'S OR MATERIALMEN'S LIEN RIGHTS AND INDEMNIFICATION. No labor performed or materials furnished and incorporated in a unit with the consent or at the request of a unit owner or his agent or his contractor or subcontractor shall be the basis for filing of a lien against the unit of any other unit owner not expressly consenting to or requesting the same, or against the common elements. Each owner shall indemnify and hold harmless each of the other owners from and against all liability arising from the claim of any lien against that of any owner or against the common elements for construction performed or for labor, materials, services or other products incorporated in the owner's unit at such owner's request. The provisions herein contained are subject to the rights of the Managing Agent or Board of Directors of the Association as is set forth in paragraph 17.

14. ADMINISTRATION AND MANAGEMENT; MANAGEMENT AGENT. The administration and management of this condominium property shall be governed by the By-Laws of WESTBURY SQUARE ASSOCIATION, INC., a copy of which is attached hereto as Exhibit "C", which, by this reference is incorporated herein. An owner of a condominium unit, upon becoming an owner, shall be a member of the Association and shall remain a member for the period of his ownership. The Association shall be governed by a Board of Directors as is provided in the By-Laws of the Association. The Association may delegate by written agreement such of its duties, powers and functions permitted to be delegated by the By-Laws of the Association to any person or firm to act as Managing Agent at an agreed compensation. Any agreement with a professional management company or any contract providing for services by the Declarant shall provide that said agreement may be terminated by the

Association without cause and without payment of a termination fee on ninety (90) days written notice to said management company; and further, the maximum term of any such management agreement shall be three (3) years.

15. ADMINISTRATION AND MANAGEMENT DURING DEVELOPMENT AND SALE PERIOD. Notwithstanding the foregoing paragraph 14, Declarant shall remain in control of and be responsible for the administration and management of the regime until the termination of the development and sale period. The development and sale period shall be defined as a period of time two (2) years from the date of execution of this Declaration or the date upon which Declarant has sold all condominium units owned by it, whichever comes first. Further, notwithstanding anything herein contained to the contrary, Declarant hereby reserves the right, but shall not have the obligation, to turn over the administration and management of the regime to the Board of Directors and the Association after fifty percent (50%) of the condominium units have been sold. During such period, Declarant, or its designated representatives, shall provide the services, such as office supervision, record keeping, yard maintenance, exterior maintenance and others, which would normally be provided by or arranged for by the Board of Directors and shall have and exercise all the powers and functions, including assessment and collection of common expenses, delegated hereunder to the Board of Directors and other officers of the Association. Declarant and its employees, representatives and agents may maintain a business and sales office, model units and other sales facilities necessary or convenient during the development and sale period. Notwithstanding anything herein contained to the contrary, Declarant and Owners shall have the right to rent condominium units at any time during ownership of same.

16. RECORDS. The Board of Directors or the Managing Agent shall keep or cause to be kept records with detailed accounts of the receipts and expenditures affecting the condominium regime and its administration and specifying the maintenance and repair expenses of the common elements and any other expenses incurred by or on behalf of the Association. The records so kept shall be available for inspection by all owners and mortgagees at convenient hours on working days that shall be set and announced for general knowledge. All records shall be kept in accordance with good accounting procedures and shall be audited at least once a year by an auditor outside the Association.

17. RESERVATION FOR ACCESS - MAINTENANCE, REPAIR AND EMERGENCIES. The owners shall have the irrevocable right, to be exercised by the Managing Agent or Board of Directors of the Association, to have access to each unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the common elements thereon or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common elements or to another unit or units. Damage to the interior or any part of a unit or units resulting from the maintenance, repair, emergency repair or replacement of any of the common elements or as a result of emergency repairs within another unit at the instance of the Association, shall be a common expense of all of the owners; provided, however, that if such damage is the result of the misuse or negligence of a unit owner, then such unit owner shall be responsible and liable for all such damage. All damaged improvements shall be restored to substantially the same condition of such improvements prior to such damage. All maintenance, repairs and replacements as to the common

elements (unless necessitated by the negligence or misuse of a unit owner, in which case such expense shall be charged to such unit owner), shall be the common expense of all the owners. Notwithstanding anything herein contained to the contrary, the Association shall be responsible for the cleaning (not repairs) on a semi-annual basis, of all exterior windows including the second floor exterior windows on the front and rear of all buildings.

18. OWNER'S MAINTENANCE RESPONSIBILITY OF UNIT. An owner shall be deemed to own, shall have the responsibility of repair, maintenance and replacement (except as otherwise provided hereinbelow) and shall have the right to alter and remodel: the interior non-supporting walls of his unit; the materials (such as, but not limited to, plaster, gypsum, paneling, wallpaper, paint, tile, carpet and flooring, but not including the sub-flooring) making up the finished surfaces of the interior walls, ceilings and floors of his unit, including the doors and windows and all related hardware; patio or balconies appurtenant to his unit, if any; air handling units, draperies, appliances and all other fixtures, equipment or personal property contained or installed within his unit commencing at a point where the utilities enter the interior unit wall; and the air conditioning unit servicing his respective unit. The owner shall be responsible for his own branch water, sewer, or other utility lines, that branch off a main line. The right and responsibility of an owner to repair, maintain, replace, alter and remodel is coupled with the obligation to perform such functions in a good and workmanlike manner and to replace any materials removed with similar or other types or kinds of materials of equal quality. An owner shall not be responsible for the maintenance and repair nor shall an owner have the right to alter or remodel the fence surrounding his patio, if any, said fence being hereby specifically declared a common element and further any remodeling or changes to the interior of a patio or balcony which would effect the exterior appearance of same by an owner must be approved by the Association. The owner and not the Association shall be responsible for the maintenance and repair of the interior of the patio. An owner shall not be deemed to own lines, pipes, wires, conduits or systems (which for brevity are herein and hereafter referred to as utilities) running through his unit which serve one or more other units except in common with the other owners. Such utilities shall not be disturbed or relocated by an owner without the written consent and approval of the Association.

19. COMPLIANCE WITH PROVISIONS OF DECLARATION AND THE BY-LAWS OF THE ASSOCIATION. Each owner shall comply with the provisions of this Declaration and the By-Laws of the Association, and the decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief or both, and for reimbursement of all attorney's fees incurred in connection therewith, which action shall be maintainable by the Managing Agent or Board of Directors in the name of the Association on behalf of the owners or, in a proper case, by an aggrieved Owner.

20. REVOCATION OR AMENDMENT TO DECLARATION. This Declaration shall not be revoked unless all of the owners and all of the holders of recorded first lien deeds of trust covering or affecting any or all of the condominium units unanimously consent and agree to such revocation by instrument(s) duly recorded. This Declaration shall not be amended

unless the owners representing an aggregate ownership interest of seventy-five percent (75%), or more, of the general common elements and unless at least seventy-five percent (75%) of the first mortgagees (based upon one vote for each first mortgage owned), or owners (other than the sponsor, developer, or builder) of the individual Condominium Units have given their prior written approval, the condominium home owners association shall not be entitled to:

- (1) by act or omission, seek to abandon or terminate the condominium project;
- (2) change the pro rata interest or obligations of any individual Condominium Unit for the purpose of: (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Condominium Unit in the common elements;
- (3) partition or subdivide any Condominium Unit;
- (4) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the condominium project shall not be deemed a transfer within the meaning of this clause);
- (5) use hazard insurance proceeds for losses to any condominium property (whether to units or to common elements) for other than the repair, replacement or reconstruction of such condominium property, except as provided by statute in case of substantial loss to the units and/or common elements of the condominium project.

Notwithstanding the foregoing, during the development and sale period, as defined in paragraph 15 hereof, Declarant may, with the written consent of any institutional mortgagee of any condominium unit (but without the consent of any owner) amend this Declaration, Map, By-Laws, and the other Exhibits attached hereto in order to correct errors and omissions.

**21. ADDITIONS, ALTERATIONS AND IMPROVEMENTS TO THE COMMON ELEMENTS.** There shall be no additions, alterations or improvements of or to the common elements requiring an expenditure in excess of Five Thousand Dollars (\$5,000.00) in any one (1) calendar year without the prior approval of owners representing an aggregate ownership interest of more than sixty-six and two-thirds percent (66-2/3%) of the general common elements; provided, however, that if such additions, alterations or improvements of or to the common elements would require an expenditure in excess of Thirty Thousand Dollars (\$30,000.00) in any one (1) calendar year, the Association must proceed in accordance with subparagraph (e) of paragraph 28 hereof.

The limitations set forth herein shall not be applicable to the replacement, repair and maintenance of any common element or common property.

**22. ASSESSMENT FOR COMMON EXPENSES.** All owners shall be obligated to pay the assessments, either estimated or actual, imposed by the Board of Directors of the Association to meet the common expenses. The assessments shall be made according to each owner's percentage interest in and to the general common elements as provided in Exhibit "A-1" hereof

The limited common elements shall be maintained as general common elements, and owners having exclusive use thereof shall not be subject to any special charges or assessments for the repair or maintenance thereof. Assessments for the estimated common expenses shall be due monthly in advance on the first day of each month. The Managing Agent or Board of Directors shall prepare and deliver or mail to each owner an annual statement of actual common expenses.

Upon the purchase of a condominium unit the entire assessment shall become due, however, same may be paid monthly in advance.

The assessment made for common expenses shall be based upon the cash requirements deemed to be such aggregate sum as the Managing Agent, or if there is no Managing Agent, then the Board of Directors of the Association, shall from time to time determine is to be paid by all of the condominium unit owners, including Declarant, to provide for the payment of all estimated expenses growing out of or connected with the maintenance, repair, operation, additions, alterations and improvements of and to the common elements, which sum may include, but shall not be limited to, expenses of management; taxes and special assessments until separately assessed; premiums for fire insurance with extended coverage and vandalism and malicious mischief with endorsements attached issued in the amount of the maximum replacement value of all of the condominium units; casualty and public liability and other insurance premiums; landscaping and care of grounds; common lighting, repairs and renovations; trash collections; wages; common utility charges; legal and accounting fees; management fees, expenses and liabilities incurred by the Managing Agent or Board of Directors on behalf of the unit owners under or by reason of this Declaration and the By-Laws of the Association; deficits arising or any deficits remaining from a previous period; the creation of reasonable contingency, reserve, working capital, and sinking funds as well as other costs and expenses relating to the common elements. The omission or failure of the Board of Directors to fix the assessment for any period shall not be deemed a waiver, modification or a release of the owners from their obligation to pay the same.

Special assessments, assessments other than those described in this Section 22 above, may be made by the Board of Directors of the Association at any time, and from time to time, to meet other needs or requirements of the Association and the Condominium Project. However, any such special assessment shall not be levied without the prior approval of at least seventy-five percent (75%) of the percentage of ownership interests of all of the Owners.

Notwithstanding anything herein contained to the contrary, Declarant, prior to the sale of any condominium units to owners, shall be responsible for his pro-rata share of current expenses applicable to the unsold units, exclusive of utility costs as defined in Section 29 herein.

**23. OWNER'S PERSONAL OBLIGATION FOR PAYMENT OF ASSESSMENTS.**

The amount of common expenses assessed against each condominium unit shall be the personal and individual debt of the owner thereof. No owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his unit. The Board of Directors or Managing Agent shall have the responsibility to take prompt action to collect any unpaid assessment. In the event of default in the payment of he assessment, the unit owner shall be obligated to pay interest at the rate of one percent (1%) per annum below the



then highest legal rate of interest for individuals on the amount of the assessment from the due date thereof until paid, together with all expenses incurred, including attorney's fees and such late charges as are provided in the By-Laws of the Association. Any default not cured as provided for herein may accelerate the entire assessment for the current twelve (12) month owed and not paid. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing same.

24. ASSESSMENT LIEN. Declarant does hereby grant and reserve and title to a condominium unit is hereby expressly made subject to a lien for the non-payment of common expenses, and a grantee by acceptance of a deed or other instrument of conveyance from the Declarant or from an owner or grantor, whether or not it shall be so expressed in such deed or other instrument of conveyance, shall be deemed to accept and agree to such lien, which lien shall be established and enforced in the manner hereinafter set forth. All sums assessed but unpaid for the share of common expenses chargeable to any condominium unit shall constitute a lien on such unit superior to all other liens and encumbrances, except only for tax and special assessment liens on the unit in favor of any assessing unit, and all sums unpaid on a first mortgage or first deed of trust of record. To evidence such lien, the Board of Directors or the Managing Agent shall prepare a written notice of lien assessment setting forth the amount of such unpaid indebtedness, the name of the owner of the condominium unit and a description of the Condominium unit. Such notice shall be signed by one of the Board of Directors or by one of the officers of the Association or by the Managing Agent and shall be recorded in the office of the County Clerk of Harris County, Texas. Such lien for the common expenses shall attach from the date of failure of payment of the assessment. Such lien may be enforced by the foreclosure of the defaulting owner's condominium unit by the Association in like manner as a mortgage on real property subsequent to the recording of a notice or claim thereof. In any such proceedings the owner shall be required to pay the costs, expenses and attorney's fees incurred for filing the lien, and in the event of foreclosure proceedings, the additional costs, all expenses and reasonable attorney's fees incurred but not less than the amount recommended by the Texas Bar Association according to the then current published and recommended fee schedule for foreclosure proceedings through Court. The owner of the condominium unit being foreclosed shall be required to pay to the Association the monthly assessment for the condominium unit during the period of foreclosure, and the Association shall be entitled to a receiver to collect the same. The Association shall have the power to bid in the condominium unit at foreclosure or other legal sale and to acquire and hold, lease, mortgage, vote the votes appurtenant to, convey or otherwise deal with the same. Any mortgagee or his assigns who obtains title to the Condominium unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage will not be liable for such unit's unpaid dues or charges which accrue prior to the acquisition of title to such unit by the mortgagee. Upon request of a mortgagee, the Association shall report to the mortgagee of a condominium unit any unpaid assessments remaining unpaid for longer than twenty-five (25) days after the same are due; provided, however, that such mortgagee shall have furnished to the Managing Agent or to the Board of Directors notice of such lien.

25. LIABILITY FOR COMMON EXPENSE UPON TRANSFER OF CONDOMINIUM UNIT. The Board of Directors or the Managing Agent shall furnish to any prospective purchaser or Mortgagee

of any Condominium Unit, at the request of the Owner, a written certificate as to the amount of the regular and/or special assessments which have become due and are unpaid up to a given date in respect to the Condominium Unit to be sold or mortgaged; and in the case of a sale the purchaser shall not be liable nor shall the Condominium Unit purchased be liable or subject to any lien for any unpaid assessment which has become due and is not shown on such certificate for the period of time covered thereby, however, the Selling Owner shall be liable for same and in case of his failure or refusal to pay then the same shall be collectible from all other Owners on a prorata basis in proportion to their Percentage Ownership Interest in the general common elements, and they shall have recourse against the Selling Owner; but in the case of a mortgage the unpaid assessments not shown on said certificate for the period of time covered thereby shall remain the obligation of the Owner mortgaging his Condominium Unit, but the assessment lien securing same as provided for in this Declaration shall be and remain inferior and secondary to the mortgage and liens held by the Mortgagee to whom or for whose information said certificate was furnished. A charge not to exceed Twenty-five and No/100 (\$25.00) Dollars may be levied in advance by the Board of Directors or the Managing Agent for each certificate so delivered.

26. MORTGAGING A CONDOMINIUM UNIT - PRIORITY. An owner shall have the right from time to time to mortgage or encumber his unit and the interests appurtenant thereto by deed of trust, mortgage or other instrument, but the lien created thereby shall be subject to the terms and provisions of this Declaration, and any mortgagee or other lienholder who acquires a unit through judicial foreclosure, public sale or other means shall be subject to the terms and provisions of this Declaration.

27. INSURANCE. The Managing Agent, or if there is no Managing Agent, then the Board of Directors shall obtain and maintain at all times insurance (issued by responsible insurance companies authorized to do business in the State of Texas) covering such risks as are or shall hereafter customarily be covered with respect to other condominium buildings, fixtures, equipment and personal property, similar in construction, design and use in an amount not less than the full insurable replacement cost thereof. The "full insurable replacement cost" of the buildings, including the residence units and the Common Elements, shall be determined from time to time but not less often than once in a twelve month period by the Managing Agent or if there is no Managing Agent then the Board of Directors, and the Board of Directors shall have the authority to obtain and pay for an appraisal by a person or organization selected by the Board of Directors in making such determination. The costs of any and all such appraisals shall be borne by the Common Expense Fund. The insurance shall be carried in blanket policy form naming the Association the insured, as attorney-in-fact (for all of the condominium unit owners), and showing mortgagees as loss payees as their interest appears, which policy or policies shall provide that they cannot be cancelled or substantially modified until after ten (10) days prior written notice is first given to the Association and each first mortgagee. The Managing Agent, or if there is no Managing Agent, then the Board of Directors, shall also obtain and maintain, to the extent obtainable, public liability insurance in such limits as may from time to time be determined, covering the Association, each member of the Board of Directors, the Managing Agent, and the resident manager. Notwithstanding anything herein contained to the contrary, no Condominium Unit owner, or any other party, shall have a priority over any

rights of first mortgagees in the case of a distribution to Condominium Unit owners pursuant to their mortgages in the case of a distribution to Condominium Unit owners of insurance proceeds or condemnation awards for losses to or a taking of Condominium Units and/or common elements.

Each owner may obtain additional insurance at his own expense for his own benefit. Insurance coverage on the furnishings and other items of personal property belonging to an owner and casualty and public liability insurance coverage within each individual unit are specifically made the responsibility of the owner thereof.

28. ASSOCIATION AS ATTORNEY-IN-FACT. This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the property upon its damage, destruction or obsolescence.

Title to a condominium unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declaration or from any owner or grantor shall constitute appointment of the attorney-in-fact herein provided. All of the owners irrevocably constitute and appoint WESTBURY SQUARE ASSOCIATION, INC. their true and lawful attorney in their name, place and stead for the purpose of dealing with the property upon its damage, destruction or obsolescence as is hereinafter provided. As attorney-in-fact, the Association, by its President and Secretary, or Assistant Secretary, shall have full and complete authorization, right and power to deal with insurance companies and receive insurance proceeds and to make, execute and deliver any contract, deed or any other instrument with respect to the interest of a condominium unit owner which is necessary and appropriate to exercise the powers herein granted. Any repair, reconstruction or replacement of the improvement(s) shall be improved to substantially the same condition in which it existed prior to the damage, destruction or obsolescence, with each unit and the general and limited common elements having substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance collected by the Association shall be available for the purpose of repair, restoration or replacement unless the owners and all holders of recorded first lien deeds of trust agree not to rebuild in accordance with the provisions set forth hereinafter.

(a) In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvement(s), shall be applied by the Association, as attorney-in-fact, to such reconstruction, and the improvement(s) shall be promptly repaired and reconstructed. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair and restoration of the improvement(s).

(b) If the insurance proceeds are insufficient to repair and reconstruct the damaged improvement(s), and if, as determined by the Board of Directors, the cost of reconstruction is not in excess of sixty-six and two-thirds percent (66-2/3%) of the value of all the condominium units (the whole property excluding land), such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of a deficiency assessment to be made against all of the owners directly affected by the damage and their condominium units. A qualified contractor selected by

the Association shall determine (i) the total cost of reconstruction of all of the units damaged by the casualty, and (ii) the cost of reconstructing each separate unit damaged by the casualty. The cost of reconstructing a separate unit shall be the numerator of a fraction, the denominator of which shall be the total cost of reconstructing all of the units. The difference between the available insurance proceeds and the total cost of reconstructing all of the units shall be multiplied by the fractions representing each of the separate units damaged by the casualty and the figures thereby obtained shall be the deficiency assessments for the separate units. Such deficiency assessments shall be due and payable within thirty (30) days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an owner to pay the deficiency assessment for his unit. The assessment provided for herein shall be a personal debt of the owner and a lien on his condominium unit and may be enforced and collected as is provided in paragraph 24 hereof. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the condominium unit of any owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the condominium unit of the delinquent owner shall be sold by the Association, as attorney-in-fact, pursuant to the provisions of this paragraph. The delinquent owner shall be required to pay to the Association the costs and expenses for filing the notices, interest at the rate of ten per cent (10%) per annum on the amount of the assessment and all reasonable attorney's fees. The proceeds derived from the sale of such condominium unit shall be used and disbursed by the Association, as attorney-in-fact, in the following order:

- (1) For payment of taxes and special assessments liens in favor of any governmental entity and customary expenses of sale;
- (2) For payment of the balance of the lien of any first lien deed of trust, if said lien is not assumed;
- (3) For payment of unpaid common expenses and all costs, expenses and fees incurred by the Association with respect to the respective unit;
- (4) For payment of junior liens and encumbrances in the order of and to the extent of their priority with respect to the respective unit; and
- (5) The balance remaining, if any, shall be paid to the condominium unit owner.

(c) If the insurance proceeds are insufficient to repair and reconstruct the damaged improvement(s), and if, as determined by the Board of Directors, the cost of reconstruction is in excess of sixty-six and two-thirds (66-2/3%) percent of the value of all the condominium units (the whole property excluding land), and if the owners do not unanimously, within one hundred (100) days thereafter, make provisions for reconstruction, which plan must have the approval of all holders of recorded first lien deeds of trust, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the

Association, the entire remaining premises shall be sold by the Association, pursuant to the provisions contained in this Declaration, the Map and the By-Laws. The insurance settlement proceeds shall be collected by the Association, and such insurance settlement proceeds and the proceeds from the sale of the remaining premises shall be divided by the Association, according to each owner's percentage interest in the general common elements, and such divided proceeds shall be paid into separate accounts, each such account representing one of the condominium units. Each such account shall be in the name of the Association, and shall be further identified by the condominium unit designation and the name of the owner. The total funds of each account shall be used and disbursed, without contribution from one account to another, by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraphs (b) (1) through (5) of this paragraph.

(d) If the owners unanimously adopt a plan for reconstruction, which plan has the approval of all holders of recorded first lien deeds of trust, any assessments made in connection with such plan shall be due and payable as provided by the terms of such plan, but not sooner than thirty (30) days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an owner to pay his assessment. The assessments provided for herein shall be a personal debt of each owner and a lien on his condominium unit and may be enforced and collected as is provided in paragraph 24 hereof. In addition thereto, the Association as attorney-in-fact, shall have the absolute right and power to sell the condominium unit of any owner refusing or failing to pay such assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the condominium unit of the delinquent owner shall be sold by the Association. The delinquent owner shall be required to pay to the Association the costs and expenses for filing the notices, interest at the rate of ten per cent (10%) per annum on the amount of the assessment and all reasonable attorney's fees. The proceeds derived from the sale of such condominium unit shall be used and disbursed by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraphs (b) (1) through (5) of this paragraph.

(e) The owners representing an aggregate ownership interest of eighty per cent (80%), or more, of the general common elements may agree that there should be additions, alterations or improvements to the common elements requiring expenditures in excess of Thirty Thousand Dollars (\$30,000.00) in any one (1) calendar year and adopt a plan for such additions, alterations or improvements. Any assessments made in connection with such plan shall be due and payable as provided by the terms of such plan, but not sooner than thirty (30) days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause such additions, alterations or improvements to be made to the common elements notwithstanding the failure of an owner to pay his assessment. The assessments provided for herein shall be a personal

debt of each owner and a lien on his condominium unit and may be enforced and collected as is provided in paragraph 24 hereof. In addition thereto, the Association as attorney-in-fact, shall have the absolute right and power to sell the condominium unit of any owner refusing or failing to pay such assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the condominium unit of the delinquent owner shall be sold by the Association. The delinquent owner shall be required to pay to the Association the costs and expenses for filing the notices, interest at the rate of ten per cent (10%) per annum on the amount of the assessment and all reasonable attorney's fees. The proceeds derived from the sale of such condominium unit shall be used and disbursed by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraphs (b)(1) through (5) of this paragraph.

(f) Notwithstanding anything herein contained to the contrary pursuant to the Texas Condominium Act, if at any time more than 66-2/3% of the value of the condominium units is destroyed, then in that event, regardless of the amount of insurance available for the repair and reconstruction of same, no repairs or reconstruction shall be initiated by the Association unless there is an unanimous vote by all condominium owners to repair and reconstruct same.

(g) The Association hereby agrees to give Federal Home Loan Mortgage Corporation (FHLMC) notice (in care of servicing agent at servicing agent's address) in writing of any loss to, or taking of, the common elements of the condominium project if such loss or taking exceeds \$10,000.00 or damages to a Condominium unit covered by a mortgage purchased in whole or part by FHLMC exceeds \$1,000.00.

29. UTILITIES. All expenses incurred for the service of electricity, and water and sewage disposal for this regime shall be assessed in accordance with paragraph 22 hereof.

(a) The water and sewer used by the condominium regime shall be common metered and billed to the Association which shall collect each owner's prorata portion thereof as a common expense.

(b) The electricity used by the condominium regime for the common area shall be common metered and billed to the Association which shall collect each owner's prorata portion thereof as a common expense. All electricity used by each condominium unit shall be separately metered by each condominium unit by a monitoring system and each condominium unit owner shall pay same individually. Declarant hereby specifically reserves the right to grant an easement to the utility company for the benefit of Declarant and the Association for the installation of an electricity meter and related facilities and for the maintenance, repair, replacement and reading of same.

(c) The gas used by the condominium regime shall be common metered and billed to the Association which shall collect each owner's prorata portion thereof as a common expense. Declarant hereby specifically reserves the right to grant an easement to the utility company

for the benefit of Declarant and the Association for the installation of a gas meter and related facilities and for the maintenance, repair, replacement and reading of same.

30. MAILBOXES. The maintenance of the mailboxes shall be the responsibility of the Association, however, after the initial keys are issued to the Owners thereafter all lost keys and broken locks will be replaced and/or repaired by the individual owner at the individual owner's expense.

31. PERSONAL PROPERTY FOR COMMON USE. The Association, as attorney-in-fact for all of the owners, may acquire and hold for the use and benefit of all of the condominium unit owners, real, tangible and intangible personal property and may dispose of the same by sale or otherwise. The beneficial interest in any such property shall be owned by all of the condominium unit owners in the same proportion as their respective interests in the general common elements, and such interest therein shall not be transferable except with a transfer of a condominium unit. A transfer of a condominium unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each owner may use such property in accordance with the purpose of which it is intended without hindering or encroaching upon the lawful rights of the other owners. The transfer of title to a condominium unit under foreclosure shall entitle the purchaser to the beneficial interest in such personal property associated with the foreclosed condominium unit.

32. REGISTRATION OF MAILING ADDRESS. Each owner shall register his mailing address with the Association, and notices or demands intended to be served upon an owner shall be sent by mail, postage prepaid, addressed in the name of the owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent certified mail, postage prepaid, to 11530 Chimney Rock, Houston, Texas 77035.

33. PERIOD OF CONDOMINIUM OWNERSHIP. The separate and condominium estates created by this Declaration and the Map shall continue until this Declaration is revoked in the manner and as is provided in paragraph 20 of this Declaration or until terminated in the manner and as is provided in subparagraph (c) of paragraph 28 of this Declaration.

34. GENERAL RESERVATIONS. Declarant reserves the right to establish easements, reservations, exceptions and exclusions consistent with the condominium ownership of the condominium project and for the best interests of the condominium unit owners and the Association in order to serve the entire condominium project.

35. GENERAL.

(a) If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase or word, or the application thereof in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration, and the application of any such provisions, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

(b) The provisions of this Declaration shall be in addition to and supplemental to the Condominium Act of the State of Texas, and to all other provisions of law.

(c) That whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

(d) The interest of an owner in his condominium unit shall at all times be subject to all the terms and provisions of the following: the Texas Condominium Act, this Declaration and Exhibits, and all amendments to same; and all easements, right-of-way agreements, covenants, restrictions and like encumbrances of record.

IN WITNESS WHEREOF, Declarant has duly executed this Declaration this 24 day of March, 1978.

ZAR PROPERTIES, LTD.

By: W. Lockwood Haight  
General Partner

By: Gene Voorhees  
General Partner

THE STATE OF CALIFORNIA S  
COUNTY OF LOS ANGELES S

BEFORE ME, the undersigned authority, on this day personally appeared W. LOCKWOOD HAIGHT and GENE VOORHEES General Partners of ZAR PROPERTIES, LTD., a California limited partnership authorized to do business in the State of Texas, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said limited partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 24 day of March, 1978.



Rita M. Freels  
Notary Public in and for  
Los Angeles County, California



JOINDER OF MORTGAGEE

The undersigned, UNITED SAVINGS ASSOCIATION OF TEXAS, being the sole owner and holder of an existing mortgage and liens upon and against the real property described in Exhibit "A" attached to the foregoing Declaration, as such mortgagee and lienholder does hereby consent to and join in the Declaration.

This consent and joinder shall not be construed or operate as a release of said mortgage or liens owned and held by the undersigned, or any part hereof, but the undersigned agrees that its said mortgage and liens shall hereafter be upon and against each and all of the Lots and all appurtenances thereto, and all of the undivided, equitable shares and interests in the Common Area, subject to the Declaration and the Trust Agreement.

SIGNED AND ATTESTED by the undersigned officers of said UNITED SAVINGS ASSOCIATION OF TEXAS, hereunto authorized, this the 16<sup>th</sup> day of MARCH, 1978.

UNITED SAVINGS ASSOCIATION OF TEXAS

By: *Robert M. Dawson*

ATTEST:

*Jenny Cunningham*  
ASSISTANT Secretary

THE STATE OF TEXAS    s  
COUNTY OF HARRIS   s

BEFORE ME, the undersigned authority, on this day personally appeared ROBERT M. DAWSON of UNITED SAVINGS ASSOCIATION OF TEXAS, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said UNITED SAVINGS ASSOCIATION OF TEXAS.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, on this the 16<sup>th</sup> day of MARCH, 1978.

*Pat Butler*  
Notary Public in and for  
Harris County, T e x a s