

4952158

046-96-1617

H952158 \$27.00

Amend

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WESTBOURNE, SECTION ONE

120

THE STATE OF TEXAS § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF HARRIS §

WHEREAS, LANDAR CORPORATION and UNIT DEVELOPMENT COMPANY, both Texas corporations, hereinafter referred to collectively as "Declarant", by instrument filed for record under Harris County Clerk's File No. G-071434, reference to which is here made for all purposes, did impose that certain Declaration of Covenants, Conditions and Restrictions, hereinafter referred to as "Declaration", on that certain residential subdivision in the County of Harris, State of Texas, known as WESTBOURNE, SECTION ONE, which subdivision is more particularly described in the map or plat thereof recorded in Volume 287, Page 39 of the Map Records of Harris County, Texas; and,

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WHEREAS, Declarant has heretofore amended said Declaration by those certain instruments designated "Amendment to Declaration of Covenants, Conditions and Restrictions for Westbourne, Section One" filed for record under Harris County Clerk's File Nos. G-238945 and G-463400, respectively, reference to which instruments are herein made for all purposes, hereinafter referred to collectively as the "First and Second Amendments"; and,

WHEREAS, JAYESS & CO., a Texas corporation has heretofore acquired all of the right, title and interest of Declarant, LANDAR CORPORATION, a Texas corporation, in and to the land covered by said Declaration and, in accordance with the terms and provisions of Section 13, Article I of said Declaration, JAYESS & CO. has qualified as a Successor Declarant with UNIT DEVELOPMENT COMPANY, both being hereinafter collectively referred to as "Successor Declarants"; and,

WHEREAS, Successor Declarants, by that certain instrument designated as "Supplemental Declaration of Annexation to Westbourne, Section One" recorded under Harris County Clerk's File No. H952157, hereinafter referred to as the "Annexation", did annex the property described in Exhibit "A" attached thereto and did extend and include to such property, by such annexation, all the easements, covenants, conditions, restrictions, charges and all other applicable provisions of said Declaration; and,

WHEREAS, that certain residential subdivision in the County of Harris, State of Texas, known as Westbourne, Section One, which subdivision is more particularly described in the map or plat thereof recorded in Volume 287, Page 39 of the Map Records

of Harris County, Texas, together with the land described in Exhibit "A" attached to said Annexation, has heretofore been replatted as Westbourne, Section One which subdivision is more particularly described in the map or plat thereof recorded in Volume 316, Page 49 of the Map Records of Harris County, Texas; and,

WHEREAS, Section 3 of Article IX of the Declaration provides that the Declaration may be amended in whole or in part by an instrument executed by the President of Westbourne Homeowner's Association, Inc., a Texas non-profit corporation, hereinafter referred to as "Association", when approved by members entitled to cast not less than Ninety percent (90%) of the aggregate of the votes of both Classes of Membership in the Association as defined in said Declaration; and,

WHEREAS, Successor Declarants are the owners of Three Hundred Seventy (370) of the lots in the replat of Westbourne, Section One, which ownership represents in excess of Ninety-Nine percent (99%) of the aggregate of the votes of both Classes of Membership of the Association; and,

WHEREAS, Successor Declarants do hereby desire that the hereinafter described Amendments be carried out and effected in accordance with the provisions of Section 3 of Article IX of said Declaration and do hereby confirm that the prior approval of the Federal Housing Administration and the Veterans Administration to such Amendment has been obtained.

NOW, THEREFORE, Successor Declarants, herein joined by the Association, do hereby amend the instrument filed for record under Harris County Clerk's File No. G-071434, as heretofore amended by instruments filed for record under Harris County Clerk's File Nos. G-238945 and G-463400, respectively, in the following particulars:

(A) The Declaration is hereby amended such that any reference made in said Declaration or the First and Second Amendments to "Westbourne, Section One" or to "Subdivision Plat" shall be construed to include and reference the replat of Westbourne, Section One, a Subdivision in Harris County, Texas, according to the map or plat thereof recorded in Volume 316, Page 49, of the Map Records of Harris County, Texas.

(B) The first sentence of the second paragraph of Section 2, Approval of Plans of Article IV, Architectural Control Committee is hereby amended to read as follows:

"Where not otherwise specified herein, the Architectural Control Committee also shall have the right to specify requirements for each building site as follows: minimum set-backs; driveway access to adjacent streets; the location, height and extent of fences, walls or other screening devices (provided that no fence shall be less than six feet (6') nor exceed eight feet (8') in height); and the orientation of structures with respect to streets, walks, and structures on adjacent property."

(C) The second sentence of Section 1 of Article VIII, Restrictions of Use is hereby amended to read as follows:

"The exterior finish or construction of any Living Unit below eight feet (8') above the foundation shall be at least twenty-five percent (25%) brick, stone, or other masonry, or brick facade; in computing such percentage, roof areas shall be excluded, but attached garages, porches and other structures constituting part of the Living Unit shall be included."

(D) The second sentence of Section 18 of Article VIII, Restrictions of Use is hereby amended to read as follows:

"No Living Unit of one story shall contain less than 800 square feet of living area and no Living Unit of more than one story shall contain less than 1100 square feet of living area."

(E) Section 21 of Article III, Restrictions of Use is hereby amended to read as follows:

"The Owner of each Lot, as a minimum, shall plant grass between his Living Unit and the curb line(s) of the abutting street(s), and shall plant in the same area at least one (1) tree."

(F) Subsection (a) of Section 6 of Article IX, General Provisions is hereby amended to read as follows:

"With the consent of two-thirds (2/3) of each class of members provided, however, that upon submission to and approval by the FHA or the VA of the general plan, such additional stages of development may be annexed by the Declarant (whether or not Declarant owns title to the land constituting the additional stages of development at the time of annexation) without such approval by the membership."

(G) Section 20 of Article VIII, Restrictions of Use is hereby deleted in its entirety and the following Section 20 is hereby substituted therefor:

"Section 20. Unless the Architectural Control Committee agrees to the contrary in writing, placement of a Living Unit on any Lot in the Property shall be accomplished and based on one of three acceptable methods, such methods being hereinafter known and defined as:

(a) Standard Residence Option. The front building lines shall be as shown on the Subdivision Plat as hereinabove required. The Living Unit shall not be located on the Lot nearer than five feet (5') to an interior line of the Lot, except that the front of a garage or other permitted building located seventy feet (70') or more from the front line of the Lot may be located as near as three feet (3') to an interior side line of the Lot.

(b) Zero Lot Line Option.

1. Placement. The front building setback line shall be as hereinabove required. Each Living Unit shall be designed to have as a minimum, fifty percent (50%) of the linear distance of one (1)

wall, of the Living Unit, constructed adjacent to and abutting a side Lot line. This side Lot line shall be hereinafter referred to as the "Zero Lot Line"; and the wall herein described will be referred to as the "Zero Lot Line Wall". Alternatively, an open court or patio may be built adjacent to and abutting the Zero Lot Line but said open court or patio must be enclosed by a wall having a minimum height of eight feet (8'). This wall must, as in the case with the Living Unit wall, be constructed adjacent to and abutting the Zero Lot Line and shall enclose the court or patio in such a manner as to appear to be an extension of the Living Unit in both materials and style. The Zero Lot Line Walls shall have no exterior objects or appurtenances such as, for example, electric panels, vents, plumbing clean outs, windows or openings of any kind. There shall be established a minimum side yard distance between the Zero Lot Line and the Living Unit situated upon the adjoining Lot of not less than six feet (6') for a maximum length of three-quarters (3/4) of the entire length of the Living Unit. This six (6) foot distance shall be referred to as the "reduced side yard distance". Two-story walls shall not be placed side by side where reduced side yard distances are applied.

2. Zero Lot Line Access Easement. Upon the election by Declarant, its successors or assigns, of the Zero Lot Line Option, as evidenced by completion on a Lot of construction of a Living Unit complying therewith, each such Lot shall have an access easement five feet (5') in width along and across the Lot adjacent to said Zero Lot Line extending the entire depth of the Lot from front to back abutting and parallel to the Zero Lot Line Wall for the construction, repair and maintenance of improvements located upon said Zero Lot Line Lot. The conditions for use of the Zero Lot Line Access Easement are hereby declared and established by the owner of the Zero Lot Line Lot and the owner of the adjacent Lot, which shall be covenants running with the land and shall bind both of the above mentioned owners and all of their respective heirs and assigns forever: (i) The Zero Lot Line Lot owner must replace any fencing, landscaping or other items on the adjacent Lot that he may disturb during construction, repair or maintenance. (ii) The Zero Lot Line Access Easement, when used by the Zero Lot Line Lot owner for such

construction, repair or maintenance, must, on completion of the use, be left clean and unobstructed and any items removed therefrom must be replaced. (iii) The Zero Lot Line Lot owner must notify the owner of the adjacent Lot of his intent to utilize the Zero Lot Line Access Easement for any construction, repair or maintenance upon the Zero Lot Line Wall or other improvements at least twenty-four (24) hours prior to starting any work, with the hours that such access easement may be utilized being between 8:00 a.m. to 5:00 p.m., Monday through Friday, and 9:00 a.m. through 6:00 p.m. on Saturday. (iv) Both the Zero Lot Line Lot owner and the adjacent Lot owner shall have the right of surface drainage over, along and upon the Zero Lot Line Access Easement area, and neither owner shall use the Zero Lot Line Access Easement area in such a manner as will interfere with such drainage. (v) Neither owner shall attach any object to the Zero Lot Line Wall, facing onto the Zero Lot Line Access Easement and the owner of the adjacent Lot shall not use the Zero Lot Line Wall as a playing surface for any sport. In addition, no structure shall be constructed or placed upon or in the Zero Lot Line Access Easement area by either owner; provided however, that the owner of the adjacent Lot may construct a fence from his Living Unit across the easement to the Zero Lot Line Wall so long as such fence(s) does not interfere with proper drainage and access to the easement is preserved for the owner of the Zero Lot Line Lot.

(c) Side Yard Concept Option.

1. The front building setback line shall be as hereinabove required. The Living Unit shall not be located on the Lot nearer than five feet (5') to an interior line of the Lot. Each Living Unit shall be designed to have as a minimum fifty percent (50%) of the linear distance of one (1) wall, of the Living Unit constructed adjacent to and five feet (5') from an interior Lot line. The wall herein described shall be referred to as the "Side Yard Wall", and the interior Lot line shall be referred to as the "Side Lot Line". The five (5) foot area bounded by the Side Lot Line and the Side Yard Wall and running the entire depth of the Lot shall hereinafter be referred to as the "Side Yard Land Maintenance Easement". Alternatively, an open court or patio may be built

adjacent to and five feet (5') from the Side Lot Line and abutting the aforementioned Side Yard Land Maintenance Easement, but said open court or patio must be enclosed by a wall having a minimum height of eight feet (8'). This wall must, as in the case with the Side Yard Wall, be constructed adjacent to and abutting in such a manner as to compliment the Living Unit. The Side Yard Walls shall have no exterior objects or appurtenances such as, for example, electric panels, vents, plumbing clean outs, windows or openings of any kind. There shall be established a minimum side yard distance between the Side Yard Wall and the Living Unit situated upon the adjoining Lot of not less than six feet (6') for a maximum length of three-quarters (3/4) the entire length of the Living Unit. This six (6) foot distance shall be referred to as the "reduced side yard distance". Two-story walls shall not be placed side by side where reduced side yard distances are applied.

2. Side Yard Land Maintenance Easement. The following terms, conditions and uses of the Side Yard Land Maintenance Easement are hereby declared and established by the owner of the said Side Yard Wall Lot and the owner of the adjacent Lot, which terms shall be covenants running with the land and shall bind both of the above mentioned owners and all of their respective heirs and assigns forever: (i) The Side Yard Land Maintenance Easement may be used by either owner for the purpose of changing, correcting or otherwise modifying the grade or drainage channels of a Lot so as to improve the drainage of water from the respective Lots or the Side Yard Land Maintenance Easement area. It shall be the responsibility of each owner to take appropriate measures, whether by landscaping or otherwise, to protect an adjoining owner's Lot or the Side Yard Land Maintenance Easement from water running off of such owner's roof onto an adjoining owner's Lot or onto the Side Yard Land Maintenance Easement area, provided however, that no owner shall incur liability or otherwise be responsible to any other owner for any loss, expense or damage resulting from such roof run-off. (ii) The owner of the adjacent Lot, except as otherwise provided in this Section, shall have the exclusive use of the surface of the Side Yard Land Maintenance Easement area for the purposes of maintaining the lawn

and/or other landscaping located within such Side Yard Land Maintenance Easement area which maintenance shall be the obligation of the adjacent Lot owner, for all uses and enjoyments except as expressly limited or prohibited by the rules in this Section 20 and other applicable provisions of this Declaration. (iii) The owner of the Side Yard Wall Lot, upon twenty-four (24) hours notice to the adjacent Lot owner shall have the right of entry between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, and 9:00 a.m. and 6:00 p.m. Saturday for the sole purposes of construction, maintenance, painting, repairing and rebuilding of the Side Yard Wall or the foundation and fencing which is situated adjacent to and abutting the Side Yard Land Maintenance Easement area. (iv) The owner of the Side Yard Wall Lot must replace any fencing, landscaping or other items on the Side Yard Land Maintenance Easement or the adjacent Lot that he may disturb during construction, maintenance or repair. (v) Neither owner shall attach any object to the side of the wall abutting the Side Yard Land Maintenance Easement and the adjacent Lot owner will not use the Side Yard Wall as a playing surface for any sport. In addition, no structure shall be constructed or placed upon the Side Yard Land Maintenance Easement area by either owner; provided however that the owner of the adjacent Lot may construct a fence from his Living Unit across the Easement to the Side Yard Wall so long as such fence does not interfere with proper drainage and access to the easement is preserved for the owner of the Side Yard Wall Lot. (vi) The owner of the adjacent Lot shall indemnify and hold harmless the owner of the Side Yard Wall Lot against any and all claims, demands, actions and causes of action of any nature arising out of the general use of the Side Yard Land Maintenance Easement by the owner of the adjacent Lot, his licensees or invitees. (vii) The Declarant, its successors and/or assigns, reserve the right to distribute the Side Yard Land Maintenance Easement, in the event of irregular shaped Lots, such as cul-de-sacs, or street curve lots, in the manner, which in their option, is most equitable to the owners of both Lots. Both owners shall indemnify and hold harmless the Declarant, its successors and/or assigns, against any and all claims, demands, actions and

courses of actions of any nature arising out of the distribution by the Declarant, its successors and/or assigns, or general use of the Side Yard Land Maintenance Easement, or portions thereof by the owner of either Lot, their licensees or invitees.

At no place within the Property shall more than one (1) of the three (3) above mentioned placement methods be used on one side of a street between two (2) corner lots or within a cul-de-sac without the prior written consent of the Architectural Control Committee.

HENCEFORTH, the said Declaration as amended by the First and Second Amendments heretofore described, shall be construed as though the effected provisions of the Declaration, as heretofore amended, had been written as herein provided.

The original Declaration of Covenants, Conditions and Restrictions for Westbourne, Section One, except as herein and as heretofore previously, specifically amended by the First and Second Amendments shall remain effective and unchanged.

WESTBOURNE HOMEOWNER'S ASSOCIATION, INC., a Texas non-profit corporation, and the FEDERAL HOUSING ADMINISTRATION and VETERANS ADMINISTRATION, join in the execution of this instrument for the purpose of evidencing their consent and agreement to the amendments herein made.

IN WITNESS WHEREOF, the parties hereto have executed this instrument this 25th day of March, A.D., 1983.

ATTEST:

Diane N. Lassita
Secretary

ATTEST:

Stella Cremonesi
Secretary



ATTEST:

Diane N. Lassita
Secretary

JAYESS & CO.

BY: [Signature]
President

UNIT DEVELOPMENT COMPANY

BY: [Signature]
President

WESTBOURNE HOMEOWNER'S ASSOCIATION, INC.

BY: [Signature]
President

VETERANS ADMINISTRATION

BY: [Signature]

FEDERAL HOUSING ADMINISTRATION

BY: [Signature]

THE STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Richard L. Harned, President, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said JAYESS & CO., a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 28th day of March, A.D., 1983.

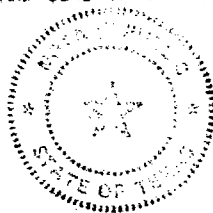
Daria Lawrence
Notary Public - State of Texas.
My Commission Expires 10-27-85

THE STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Paul Yates, President, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said UNIT DEVELOPMENT COMPANY, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 25th day of March, A.D., 1983.



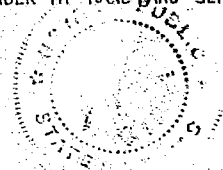
Sue Ann Smith
Notary Public - State of Texas.
Sue Ann Smith
Commission Expires

THE STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Richard L. Harned, President, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said WESTBOURNE HOMEOWNER'S ASSOCIATION, INC., a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 28th day of March, A.D., 1983.



Daria J. Lawrence
Notary Public - State of Texas.
DARIA T. LAWRENCE
Notary Public in and for the State of Texas
My Commission Expires 10-27-85

THE STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Amil C. Stafford, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said VETERANS ADMINISTRATION, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 20th day of April 1983, A.D., 1983.



G. M. Ference
Notary Public - State of Texas.
G. M. FERENCE
Notary Public State of Texas
My Commission Expires March 12, 1984

THE STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Rogelio R. Santos, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said FEDERAL HOUSING ADMINISTRATION, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 18th day of April, A.D., 1983.



Glynnda L. Powell
Notary Public - State of Texas.
GLYNDA L. POWELL
My commission expires 8-11-85

JOINDER OF MORTGAGEE

The undersigned, TEXAS COMMERCE BANK NATIONAL ASSOCIATION, being the owner and holder of an existing mortgage and liens upon and against certain portions of the real property described in the foregoing Amendment to Declaration of Covenants, Conditions and Restrictions for WESTBOURNE, SECTION ONE, as such mortgagee and lienholder does hereby consent to and join in said Amendment to said Declaration.

This consent and joinder shall not be construed or operate as a release of said mortgage or liens owned or held by the undersigned, or any part thereof, but the undersigned agrees that its said mortgage and liens shall hereafter be upon and against said real property, subject to the foregoing Amendment to said Declaration (except that no provision hereof shall be construed to subordinate the mortgage and liens of the undersigned to any liens reserved or referred to in said Declaration or Amendment).

EXECUTED this 8th day of April, A. D., 1983.

ATTEST:

TEXAS COMMERCE BANK NATIONAL ASSOCIATION / *12*

Sally E. Dunning
Vice President

BY: Richard L. Edson
Senior Vice President

THE STATE OF TEXAS §
COUNTY OF HARRIS §

FILED
MAY 18 3 56 PM 1983
Doris Holloman
COUNTY CLERK
HARRIS COUNTY, TEXAS

BEFORE ME, the undersigned authority, on this day personally appeared Richard L. Edson, Senior Vice President, known to me to be the person and office whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said TEXAS COMMERCE BANK NATIONAL ASSOCIATION, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 8th day of April A.D., 1983.

Return to: Michael C. Ainbinder
WALSH, SQUIRES & TOMPKINS
4200 Westheimer, Suite 130
Houston, Texas 77027



Heather Lee Agerle
Notary Public - State of Texas
HEATHER LEE AGERLE
Notary Public, State of Texas
My Commission Expires 7/15/86

046-96-1628

STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in
File Number Sequence on the date and at the time stamped
hereon by me, and was duly REGISTERED, in the Official
Public Records of Real Property of Harris County, Texas on

MAY 18 1983



Paula Beckman
COUNTY CLERK,
HARRIS COUNTY, TEXAS