

THE STATE OF TEXAS |  
COUNTY OF HARRIS |

Recorded in Volume 85  
Pages 112-131, Condo-  
minium Records of  
Harris County, Texas

ANNEXATION DECLARATION

FOR

THE ELM GROVE CONDOMINIUM

PHASE TWO

This Declaration is made MARCH 22, 1979, pursuant to Article 1301a of the Revised Civil Statutes of the State of Texas by F. THOMAS DUNN AND WILLIAM L. BROWN DEVELOPMENT, INC., a corporation organized and existing under the laws of Texas, having its principal offices at 3463 W. Alabama, Houston, Texas, and hereinafter referred to as Declarant.

1. Authority. By virtue the provisions of that certain Condominium Declaration for The Elm Grove Condominium filed in Volume 85 at Page 41 of the Condominium Records of Harris County, Texas, to which recorded instrument reference is hereby made for all purposes, Declarant reserved the right and authority, to annex certain property known as Phase Two of The Elm Grove Condominium, which property is described in Exhibit "A" attached hereto, being the same property described in the corrected Exhibit "E" attached to the Amendment and Correction to the Condominium Declaration for the Elm Grove Condominium filed in Volume 92 at Page 126 of the Condominium Records of Harris County, Texas, which Condominium Declaration specifically set forth in Article 22 thereof, the method of annexation to be as follows:

"22. Annexation.

Declarant hereby declares that it contemplates that at a future time or times, the condominium project may (but shall not be required to) be expanded by adding thereto additional real property comprising the above mentioned Phase Two of The Elm Grove Condominium. Said real property may contain a contemplated additional 80 condominium units, although the exact number may vary due to design or planning changes which may hereafter occur. Such additional property, being 3.4303 acres out of Westchase Subdivision, Harris County, Texas, described by metes and bounds in Exhibit "E" attached hereto and incorporated herein for all purposes by reference, and designated Phase Two, on Exhibit "B" attached hereto, may be annexed in whole or in part, from time to time, and at more than one time, in order that such additional property becomes a part of the condominium project described and defined in this Declaration, which annexation and addition may be

accomplished within five (5) years from the date of recordation of this Declaration, without the assent of the Association or its members. The provisions of this Article 22 shall become effective only in the event that Declarant, or other owner or owners of the real property comprising Phase Two, shall file for record in the office of the County Clerk of Harris County, Texas, on or before five (5) years from the date of this Declaration, an Annexation Declaration, which Annexation Declaration shall describe the real property annexed as Phase Two or part thereof, refer to this Declaration and specifically to this Article 22, and adopt the terms of this Declaration by reference. The Annexation Declaration so recorded shall also specify the number of condominium units which are being added and annexed to the project by reason of recordation of the Annexation Declaration. Declarant may cause to be recorded as many separate Annexation Declarations, consistent with the provisions of this Article 22, as may be desired by Declarant, from time to time. Declarant further reserves the right, at any time and from time to time, without requesting or receiving the assent or consent of the then owners of any portion of the real property with which this Declaration is concerned, to resubdivide, amend the subdivision map, modify, alter or otherwise change the legal or other status or configuration of the property to be annexed, to grant easements, and otherwise to take such actions as may be deemed necessary to Declarant to satisfactorily expand the condominium project. Each owner of a condominium in the project appoints Declarant as his attorney-in-fact for the purpose of effecting the foregoing; and the power herein granted to Declarant shall be and is a power coupled with an interest. Upon the recordation of such Annexation Declaration in compliance with the provisions of this Article 22, this Declaration shall further apply to and affect all of the real property described above and all of the property described in any such Annexation Declaration and the condominium project, all of the condominium units in the project (as so expanded and annexed), and their then future owners, with the same effect as if the property described in the Annexation Declaration were originally subject to the provisions of this Declaration. Thereupon the powers and responsibilities of the Association shall be co-extensive with regard to all property included within the condominium (as expanded), and the Association shall, pursuant to the provisions of this Declaration, constitute the Association for the entire condominium (as expanded), and the rights and obligations of condominium unit owners prior to the recordation of the Annexation Declaration. The Association shall thereupon continue to maintain one maintenance fund for the collection and disbursement of monies as required and permitted hereby for the condominium project, and in all respects and meanings, the condominium (as expanded) shall be deemed to be a single condominium for the purposes and in accordance with the provisions of this Declaration. Upon the annexation of additional property by the recordation of one or more such Annexation Declarations, within the time and in accordance with the provisions of this Article 22, the ownership of the common areas and facilities shall automatically become, as to each condominium unit, a percentage interest equivalent to the number of square feet within each condominium unit divided by the total number of square feet within all condominium units in the condominium after the annexation(s) is completed, provided, however, no annexation shall cause any percentage interest to be less than minimum

nor greater than the maximum percentage value set forth in Exhibit "D" attached hereto. In reserving the right to annex the said Phase Two into this condominium, Declarant represents that Phase Two will be compatible with the first phase in style, floor plan, quality, size and cost, as determined by Declarant. Declarant's exercise of the right to annex the said Phase Two shall be subject to the written consent of the holders of a majority of the then existing mortgage on the first phase."

2. Adoption. Declarant, who is owner in fee simple absolute of the lands, the building, and all other improvements constructed or to be constructed thereon, together with all easements, rights, and appurtenances belonging thereto, hereby adopts the terms of the aforesaid Condominium Declaration by reference, specifically pursuant to the terms of Article 22 thereof, and does submit the property hereby annexed, as described in Exhibit "A", to the provisions of Article 1301a of the Revised Civil Statutes of the State of Texas, and to the covenants, restrictions, limitations, conditions and uses set forth in said Condominium Declaration.

3. Number of Units. The number of condominium units which are being added and annexed by reason of the recordation of this Annexation Declaration is eighty (80); hereafter the total number of condominium units in The Elm Grove Condominium shall be one hundred thirty-six (136) and the property subject to this Condominium Regime is hereby so divided into one hundred thirty-six (136) fee simple estates.

4. Mortgagees. In order to fully protect all rights, remedies, titles and interests of the holder of each mortgage or Deed of Trust on a condominium unit on the property annexed by this Annexation Declaration, Declarant hereby specifically adopts by reference and by incorporation herein the provisions of Article 23 of the Condominium Declaration, being as follows:

"Protection of Mortgagee

(a) Notice to Association. An owner who mortgages his condominium unit shall notify the Association giving the name and address of his mortgagee. Each mortgagee shall be permitted to notify the Association of the fact that such mortgagee holds a Deed of Trust or mortgage on a condominium unit. The Association shall maintain such information in a book entitled "Mortgagees of Condominiums".

(b) Notice of Default. The Association shall notify a first mortgagee in writing, upon request of such mortgagee, of any default by the mortgagor in the performance of such mortgagor's obligations as set forth in the Declaration which is not cured within thirty (30) days.

(c) Exemption from Right of First Refusal. When any first mortgagee obtains title to a condominium unit pursuant to the remedies provided in the mortgage, such as foreclosure of the mortgage or deed of trust, or deed in lieu of foreclosure such mortgagee shall be exempt from any "right of first refusal".

(d) Claims for Unpaid Assessments. Any first mortgagee who obtains title to the unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage shall not be liable for such unit's unpaid dues or charges which accrued prior to the acquisition of title to such unit by the mortgagee.

(e) Approval for Amendments to Declaration, Etc.. The prior written approval of not less than one hundred percent (100%) in number of the holders of the first mortgages on condominium units shall be required for each of the following:

(1) abandonment or termination, by act or omission, of The Elm Grove Condominium as a Condominium Regime, except for abandonment or termination provided by law, in the case of substantial destruction by fire or other casualty or in the taking by condemnation or eminent domain;

(2) any change of the pro-rata interest or obligations of any individual Condominium Unit for any purposes whatsoever, except as provided in Article 22 of this Declaration;

(3) any partition or subdivision of any Condominium Unit;

(4) any act or omission which seeks or attempts to abandon, partition, subdivide, encumber, sell or transfer all or any part of the common elements, other than the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Elements.

(5) use any hazard insurance proceeds from losses to any part of the condominium property for other than the repair, replacement or reconstruction of such property, except as provided by law in the event of substantial destruction.

It is intended that the provisions of this Article 23(e) shall refer only to minimum requirements and, to the extent greater requirements are imposed by any other provision hereof, such greater requirements shall govern.

(f) Examination of Books. The Association shall permit first mortgagees to examine the books and records of the Association during normal business hours.

(g) Reserve Fund. The Association shall establish an adequate reserve fund for replacement of common elements components and fund the same by regular monthly payments rather than by extraordinary special assessments.

(h) Taxes, Assessments and Charges. All taxes, assessments and charges which may become liens prior to the first mortgage under local law shall relate only to the individual condominium units and not to the condominium as a whole.

(i) Mortgagees' Priority. No provision of this Condominium Declaration or the By-laws of the Association shall be construed to give any Condominium Unit owner or any other party priority over any rights of the holders of first mortgage liens on Condominium Units pursuant to or by virtue of their mortgages, in case of a distribution to or for the benefit of Condominium Unit owners, of insurance proceeds or condemnation awards for losses to or a taking of any Condominium Unit and/or common elements.

(j) Management Agreements. Any management agreement entered into by the Association will be terminable by the Association without cause upon not more than ninety (90) days' written notice, and the term of such management agreement will not exceed the period of three (3) years, renewable by agreement of the parties to such agreement for successive periods of not more than three (3) years each.

(k) Notice of Damage or Destruction. The Association shall furnish the first mortgagees timely written notice of any damage or destruction of condominium units and of any part of the common elements and facilities if such loss exceeds \$10,000.00, to the common elements, or \$1,000.00 to a condominium unit.

(l) Notice of Condemnation or Eminent Domain. The Association shall furnish the first mortgagees timely written notice of any condemnation, or eminent domain proceedings regarding all or any portion of a condominium unit or of the common elements and facilities and of any proposed acquisition of all or any part of such properties through condemnation or eminent domain proceedings if such taking exceeds \$10,000.00.

(m) Annual Audits. The Association shall furnish each first mortgagee an annual audited financial statement of the Association within ninety (90) days following the end of each fiscal year of the Association.

(n) Notice of Meetings. The Association shall furnish each first mortgagee upon request of such mortgagee, prior written notice of all meetings of the Association and permit the designation of a representative of such mortgagee to attend such meetings, one such request to be deemed to be a request for prior written notice of all subsequent meetings of the Association.

(o) Maintain Improvements Against Encroachment. The Association shall have the right to maintain existing improvements regardless of any present or future encroachments of the common elements upon another unit."

5. Percentage Interest. The Percentage Interest of the owner of each condominium unit in The Elm Grove Condominium, including the first phase and the property and units hereby annexed, are set forth in Exhibit "D" attached hereto and incorporated herein by reference, being the same percentage interests set forth in Exhibit "D" to the said Condominium Declaration and the percentage interest of the owners of each condominium unit in the first phase shall hereafter be the Minimum Percentage Interest set forth on the said Exhibit "D".

6. Maps and Plats. The "Map", "Survey Map", "Site Plan", "Plans" and "Plats" for The Elm Grove Condominium Phase Two are attached hereto as Exhibits "B" and "C" and incorporated herein for all purposes by reference, and any provision of the said Condominium Declaration which makes reference to such Exhibits "B", "C" or any part thereof shall also refer to the Exhibits attached hereto.

7. Lienholders Consent. In compliance with the requirement, set forth in Article 22 of the said Condominium Declaration, that a majority of the holders of the presently existing mortgages on the first phase consent to this Annexation Declaration, all present lienholders of record do hereby consent, as evidenced by their execution hereof for that limited purpose.

EXECUTED at Houston, Texas, on the date first written above.

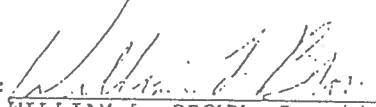
ATTEST:

F. THOMAS DUNN AND WILLIAM L. BROWN DEVELOPMENT, INC.

By:

  
F. THOMAS DUNN, SECRETARY

By:


  
WILLIAM L. BROWN, President

THE STATE OF TEXAS       |

COUNTY OF HARRIS       |

BEFORE ME, the undersigned authority, on this day personally appeared WILLIAM L. BROWN, President of F. THOMAS DUNN AND WILLIAM L. BROWN DEVELOPMENT, INC., 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 considerations therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, on this the 5<sup>th</sup> day of March, 1979.

  
NOTARY PUBLIC IN AND FOR  
HARRIS COUNTY, TEXAS

DIXIE M. J. ...  
Notary Public in and for Harris County, Texas

EXHIBIT "A"

All that certain lot, tract or parcel of land containing 3.5697 acres out of the C. Ennis Survey, Abstract No. 253 and being part of Block 12, Reserve "L", of Westchase Subdivision, Section Five, according to the plat thereof recorded in Volume 229, Page 88, of the Map Records of Harris County, Texas, said 3.5697 acres being more particularly described by metes and bounds as follows:

COMMENCING at the intersection of the extended East right-of-way line of Woodchase Drive (60.00 feet in width) with the extended South right-of-way line of Richmond Avenue (100.00 feet in width), plat of which is recorded in Volume 204, Page 35, of the Map Records of Harris County, Texas;

THENCE, S 09° 03' 54" W, along the extended East right-of-way line of Woodchase Drive, a distance of 10.00 feet to a point;

THENCE, N E4° 17' 18" E, a distance of 14.08 feet to a point in the South right-of-way line of Richmond Avenue, said point being in a curve to the right;

THENCE, along the South right-of-way line of Richmond Avenue and said curve to the right subtending a central angle of 04° 42' 40" having a radius of 4102.01 feet for a distance of 337.29 feet to a 5/8-inch iron rod set for corner and the POINT OF BEGINNING of the herein described 3.5697-acre tract;

THENCE, continuing along the South right-of-way line of Richmond Avenue and said curve to the right subtending a central angle of 03° 35' 25" having a radius of 4102.01 feet for a distance of 260.22 feet to a 5/8-inch iron rod found for corner and the point of tangency of said curve;

THENCE, S 72° 01' 50" E, continuing along the South right-of-way line of Richmond Avenue, a distance of 20.52 feet to a 5/8-inch iron rod set for corner;

THENCE, S 04° 06' 47" W, leaving the South right-of-way line of Richmond Avenue, a distance of 497.53 feet to a 5/8-inch iron rod set for corner;

THENCE, N 35° 53' 13" W, a distance of 468.44 feet to a 5/8-inch iron rod found for corner in the East right-of-way line of Woodchase Drive, said point being in a curve to the left;

THENCE, along the East right-of-way line of Woodchase Drive and said curve to the left subtending a central angle of 03° 43' 05" having a radius of 821.96 feet, for a distance of 53.34 feet to a 5/8-inch iron rod set for corner and the point of terminus of said curve;

THENCE, S 35° 53' 13" E, leaving the East right-of-way line of Woodchase Drive a distance of 200.00 feet to a 5/8-inch iron rod set for corner;

THENCE, N 04° 06' 47" E, a distance of 503.71 feet to the POINT OF BEGINNING and containing within these metes and bounds 3.5697 acres (155,496 square feet) of land area.

EXHIBIT A

Page 1 of 1

County, Texas, according to said Replat recorded in Vol. 207, Page 1, Harris County Map Records, said 3.8962 acres of land being described as follows (with respect to the Texas Plane Coordinate System, South Central Zone):

COMMENCING FOR REFERENCE at the southwest corner of said Elm Grove Replat on a curve in the east right-of-way line of Woodchase Drive, 60 feet wide, having coordinates:  $x = 3,096,515.36$  and  $y = 704,551.57$ ; from which the City of Houston Survey Marker No. 4955-1412 bears South  $16^{\circ} 29' 52''$  East 2801.87 feet;

THENCE in a northerly direction with the west line of said Elm Grove Replat and said east right-of-way line with said curve to the left having a radius of 821.96 feet, a central angle of  $3^{\circ} 43' 05''$  and an arc length of 53.34 feet, (the chord of said arc bears North  $2^{\circ} 16' 31''$  West 53.33 feet) to a point for the southwest corner and BEGINNING POINT of the 3.8962 acres of land herein described:

THENCE continuing in a northerly direction with said west line and said east right-of-way line with the following five (5) courses and distances:

1. with said curve to the left having a radius of 821.96 feet, a central angle of  $19^{\circ} 48' 03''$  and an arc length of 284.06 (the chord of said arc bears North  $14^{\circ} 02' 05''$  West 282.65 feet) to its point of tangency;
2. North  $23^{\circ} 56' 06''$  West 7.84 feet to a point of curve;
3. with said curve to the right having a radius of 470.00 feet, a central angle of  $33^{\circ} 00'$  and an arc length of 270.70 feet (the chord of said arc bears North  $7^{\circ} 26' 06''$  West 266.97 feet) to its point of tangency.
4. North  $9^{\circ} 03' 54''$  East 3.78 feet to an angle point, and
5. North  $54^{\circ} 17' 18''$  East 14.08 feet to the most northerly northwest corner of said Elm Grove Replat at the intersection of said east right-of-way line with a curve in the south right-of-way line of Richmond Avenue, 100 feet wide;

THENCE in an easterly direction with said south right-of-way line and the north line of said Elm Grove Replat with said curve to the right having a radius of 4402.01 feet, a central angle of  $50^{\circ} 38' 07''$  and an arc length of 403.45 feet, (the chord of said arc bears South  $77^{\circ} 33' 32''$  East 403.29 feet) to a point for corner;

THENCE in a southerly and westerly direction within said Elm Grove Replat with the following sixteen (16) courses and distances:

1. South  $4^{\circ} 06' 47''$  West 113.24 feet,
2. South  $43^{\circ} 46' 40''$  West 18.80 feet,
3. South  $4^{\circ} 06' 47''$  West 15.75 feet,
4. South  $20^{\circ} 30' 40''$  East 12.00 feet,
5. South  $4^{\circ} 06' 47''$  West 53.00 feet,
6. North  $84^{\circ} 38' 00''$  West 79.80 feet,
7. South  $5^{\circ} 22' 00''$  West 128.75 feet,
8. South  $85^{\circ} 35' 00''$  East 57.70 feet,
9. North  $67^{\circ} 20' 00''$  East 31.00 feet,
10. South  $22^{\circ} 40' 00''$  East 14.90 feet,
11. South  $4^{\circ} 06' 47''$  West 81.00 feet,
12. South  $50^{\circ} 34' 20''$  East 22.60 feet,
13. South  $4^{\circ} 06' 47''$  West 39.40 feet,
14. North  $85^{\circ} 53' 13''$  West 81.00 feet,
15. South  $4^{\circ} 06' 47''$  West 24.00 feet, and
16. North  $85^{\circ} 53' 13''$  West 204.95 feet to the PLACE OF BEGINNING.

EXHIBIT A

Page 1 of 1



STATE OF TEXAS §  
COUNTY OF HARRIS §

CONSENT OF MORTGAGEE

The undersigned, First Federal Savings Association of Austin being the owner and holder of thirty-six (36) existing mortgages, more or less, and liens upon and against the fifty-six (56) condominium units described in the Condominium Declaration for The Elm Grove Condominium, Phase I, being a majority of the existing mortgages, in its capacity as such mortgagee and lienholder, does hereby consent to and join in the Annexation Declaration for The Elm Grove Condominium, Phase II, in accordance with the Provisions of Article 22 of the said Condominium Declaration.

SIGNED AND ATTESTED by the duly authorized officers of the undersigned, this the 24th day of March, 1979.

FIRST FEDERAL SAVINGS ASSOCIATION OF AUSTIN

ATTEST:

[Signature]  
Assistant Secretary

By: [Signature]  
Hollis D. Chatham, Senior Vice President

THE STATE OF TEXAS §  
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared HOLLIS D. CHATHAM, known to me to be the person whose name is subscribed to the foregoing instrument, as Senior Vice President of FIRST FEDERAL SAVINGS ASSOCIATION OF AUSTIN, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 24th day of March, 1979.

[Signature]  
Notary Public in and for Harris County, Texas

JOINDER OF MORTGAGEE

The undersigned, Bank of the Southwest National Association, Houston, being the owner and holder of an existing mortgage and lien upon and against the real property described in Exhibit "A" attached to the foregoing Annexation Declaration for the Elm Grove Condominium Phase Two in its capacity as such mortgagee and lienholder, does hereby consent to and join in said Annexation 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 thereof, but the undersigned agrees that its said mortgage and liens shall hereafter be upon and against each and all of the Units and all appurtenances thereto, and all of the undivided interests in the Common Area, subject to the provisions of the said Annexation Declaration and the Condominium Declaration referenced therein.

SIGNED AND ATTESTED by the undersigned officers of said Bank of the Southwest National Association, Houston, herunto authorized, this the 3 day of April, 1979.

BANK OF THE SOUTHWEST NATIONAL ASSOCIATION, HOUSTON

By: H. H. Kuhlmann, III  
H. H. KUHLMANN, III  
Vice President

ATTEST:

[Signature]  
Assistant Secretary

THE STATE OF TEXAS §  
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared H. H. KUHLMANN, III, known to me to be the person whose name is subscribed to the foregoing instrument, as Vice President of BANK OF THE SOUTHWEST NATIONAL ASSOCIATION, HOUSTON, a national banking association, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity stated, and as the act and deed of said association.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 3 day of April, 1979.

[Signature]  
NOTARY PUBLIC IN AND FOR  
HARRIS COUNTY, TEXAS  
My Commission Expires \_\_\_\_\_