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Declaration filed  
on 10-17-78

CONDOMINIUM DECLARATION

FOR  
GREENWAY OAKS

Sept 74, 008

KNOW ALL MEN BY THESE PRESENTS:

THAT, WHEREAS, SOUTH BOULEVARD CORPORATION, a Texas corporation, hereinafter called "Declarant," is the owner of certain real property and the improvements thereon situated in the County of Harris, State of 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 regime under the Condominium Act of the State of Texas; and

WHEREAS, Declarant has acquired an apartment project on said property consisting of eleven (11) two-story buildings which contain an aggregate of eighty (80) individual apartment-type units, together with other improvements, structures and facilities and appurtenances, which apartment project is known as GREENWAY OAKS.

WHEREAS, Declarant does hereby establish a plan for the individual ownership in fee simple of estates consisting of the area or space contained in each of the apartment units in the said building improvements and the co-ownership by the individual and separate owners thereof, as tenants in common, of all the remaining property which is hereinafter defined and referred to as the general common elements;

NOW, THEREFORE, Declarant does hereby submit the real property described on the attached Exhibit "A" and all improvements thereon, to the provisions of the Condominium Act of the State of Texas and this Condominium Regime, and 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, its successors and assigns and any person acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees and assigns.

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

(a) "Apartment" or "apartment unit," hereinafter referred to as "townhouse" or "townhome," means an individual air space unit which is contained within the perimeter walls, floors and ceilings of a building as shown on the map.

(b) "Condominium unit" means one individual air space unit together with the interest in the general common elements appurtenant to such unit.

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

(d) "General Common Elements" means and includes:

- (1) The land on which the buildings are located;
- (2) The foundations, columns, girders, beams, supports, main walls and roofs;
- (3) The yards, gardens, unassigned parking areas, fences, streets, service drives, walks, service easements, recreation areas, laundry rooms, boiler rooms and mechanical rooms, if any;

(4) The installations consisting of the equipment and materials making up central services such as power, light, gas, water, swimming pools, and the like;

(5) All other structures, facilities and equipment located on the property necessary or convenient to its existence, maintenance and safety, or normally in common use;

(6) Parking spaces not yet designated with a townhome number and described on the condominium map attached hereto as unassigned parking spaces; provided, however, Declarant expressly reserves the right at any time and from time to time to assign, and to charge a fee for the use, pending assignment, of any unassigned parking space to any owner, and to retain all sums received therefor; and provided further, coincidental with the permanent assignment of any unassigned parking space, the condominium map attached hereto shall be amended without the consent of any other owner for the purpose of designating any such parking space with a number corresponding to the townhome number, and thereafter such parking space shall be a limited common element appurtenant to such townhome.

(e) "Limited Common Elements" means a part of the general common elements reserved for the exclusive use of owner of a condominium unit; parking areas, patio and balcony areas, if any, indicated on map as appurtenant limited elements to a specific unit only shall be deemed limited common elements.

(f) "Entire Premises" or "Property" means and includes the land, the buildings, all improvements and structures thereon, and all rights, easements and appurtenances belonging thereto.

(g) "Common Expenses" means and includes:

(1) All sums lawfully assessed against the general common elements by the Managing Agent or Board of Managers;

(2) Expenses of administration and management, maintenance, repair or replacement of the general common elements;

(3) Expenses agreed upon as common expenses by the owners; and

(4) Expenses declared common expenses by provisions of this Declaration and by the By-Laws.

(h) "Association of Unit Owners" or "Association" means a Texas non-profit corporation, which corporation shall govern the administration of this condominium property, the members of which shall be all of the owners of the condominium units.

(i) "Map," "Survey Map" or "Plans" means and includes the engineering survey of the land located thereon all of the improvements, the floor and elevation plans and any other drawing or diagrammatic plan depicting a part of or all of the improvements, same being herewith filed, consisting of sheets labelled Exhibits "A" and "B", and incorporated herein.

2. **CONDOMINIUM MAP.** The map shall be filed for record simultaneously with the recording of this Declaration as a part hereof, and prior to the first conveyance of any condominium unit. Such map shall consist of and set forth (1) the legal description of the surface of the land; (2) the linear measurements and location, with reference to the exterior boundaries of the land, of the buildings and all other improvements built or to be built on said land by Declarant; (3) floor plans and elevation plans of the building built or to be built thereon showing the location, the building

designation, the townhome designation and the linear dimensions of each townhome and the limited common elements; (4) the elevations of the unfinished interior surfaces of the floors and ceilings as established from a datum plane.

Declarant reserves the right, with the written approval of his mortgagee, 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, on-site parking areas and patios.

3. DIVISION OF PROPERTY INTO CONDOMINIUM UNITS. The real property is hereby divided into the following separate fee simple estates:

(a) Eighty (80) fee simple estates consisting of eighty (80) separately designated townhomes, each such townhome identified by number and by building symbol or designation on the map.

(b) The remaining portion of the entire premises is referred to as the general common elements, which shall be held in common by the owners, each such interest being an undivided percentage interest in the general common elements equivalent to the number of square feet in each townhome divided by the total number of square feet within all townhomes located on the premises included within this Condominium Regime, and each such individual interest being appurtenant to one of the townhomes covered hereby. Each unit owner's percentage undivided interest in the common elements is set forth on Exhibit "C" attached hereto.

4. COMMON ELEMENTS. A portion of the general common elements is set aside and reserved for the exclusive use of individual owners, such areas being the limited common elements. The limited common elements reserved for the exclusive use of the individual owners are the automobile parking spaces, patio spaces, and balconies, if any, which are shown on the map. Such spaces are allocated and assigned by the Declarant to the respective condominium units as indicated on Exhibits "A" and "B", inclusive, hereto attached, the patio assigned to each townhome being designated by the townhome number preceded by the prefix "CP" and in like manner, the parking spaces assigned to each townhome being designated by the townhome number preceded by the prefix "PS", and the balcony assigned to each townhome being designated by the townhome number preceded by the prefix "B". At least one parking space shall be permanently assigned to each townhome. A portion of the common area is intended as a recreational area, and is improved with swimming pools and other recreational facilities. Reasonable regulations governing the use of said recreational facilities by owners and by their guests and invitees shall be promulgated by the Declarant, and by the Board of Managers after same has been elected and by Managing Agent. Such regulations shall be permanently posted in said recreational area and all owners shall be furnished with a copy thereof. Each owner shall be required strictly to comply with said Rules and Regulations, and shall be responsible to the Board of Managers for the compliance therewith by members of his or her family, relatives, guests or invitees, both minor and adult.

5. INSEPARABILITY OF A CONDOMINIUM UNIT. Each townhome and the undivided interest in and to the general common elements appurtenant thereto shall be inseparable and may be conveyed, leased or encumbered only as a condominium unit.

6. DESCRIPTION OF CONDOMINIUM UNIT. Every deed, lease, mortgage trust deed or other instrument may legally describe a condominium unit by its identifying townhome number and building symbol or designation as shown on the map, followed by the words "GREENWAY OAKS" and by a reference to this recorded Declaration and Map. Every such description shall be deemed good and sufficient for all purposes to convey, transfer, encumber or otherwise affect the general common elements.

7. SEPARATE ASSESSMENT AND TAXATION. Declarant shall give written notice to the assessor of the creation of condominium ownership of this property, as is provided by law, so that each townhome and its undivided interest in the general common elements shall be deemed a separate parcel and subject to separate assessment and taxation.

8. OWNERSHIP-TITLE. A condominium unit may be held and owned by more than one person as joint tenants or as tenants in common, or in any real property tenancy relationship recognized under the laws of the State of Texas.

9. NON-PARTITIONABILITY OF COMMON ELEMENTS. The general common elements shall be owned in common by all of the owners of the townhomes and shall remain undivided, and no owner shall bring any action for partition or division of the general common elements. Subject to the provisions of paragraph (M) of Article 29, nothing contained herein shall be construed as a limitation of the right of partition of a condominium unit between the owners thereof, but such partition shall not affect any other condominium unit.

10. OCCUPANCY. Each owner shall be entitled to exclusive ownership and possession of his townhome. Each owner may use the general common elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other owners. Nothing shall be altered or constructed on or removed from the Common Elements, except upon written consent of the Board of Managers.

11. USE. Each townhome shall be occupied and used by the owner only as and for a single family residential dwelling for the owner, his family, his social guests or his tenants.

12. EASEMENTS AND ENCROACHMENTS. If any portion of the general common elements encroaches upon a townhouse or townhouses, 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 an adjoining townhouse or townhouses encroaches upon the general common elements or upon any other townhouse, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. For title or other purposes, such encroachment(s) and easement(s) shall not be considered or determined to be encumbrances either on the general common elements or the townhouses.

13. TERMINATION OF MECHANIC'S OR MATERIALMEN'S LIENS AND INDEMNIFICATION. Subsequent to the completion of the improvements described on the map, no labor performed or materials furnished and incorporated in a townhouse with the consent or at the request of the owner thereof or his agent or his contractor or subcontractor shall be the basis for filing of a lien against the general common elements owned by such other owners. 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 the townhouse of any other owner or against the general common elements for construction performed or for labor, materials, services or other products incorporated in the owner's townhouse at such owner's request.

14. ADMINISTRATION AND MANAGEMENT - MANAGING AGENT. The administration of this condominium property shall be governed by By-Laws of GREENWAY OAKS OWNERS ASSOCIATION, INC., a non-profit corporation, hereinafter referred to as the "Association." A copy of "By-Laws" is hereto attached marked Exhibit "D" and incorporated herein; and same shall be deemed adopted by Declarant as sole owner of the property herein described, and all owners shall be bound thereby. "Association" as here used shall refer to the member owners as a group. 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 Managing Agent shall be SOUTH BOULEVARD CORPORATION, whose address is 1770 St. James Place, Suite 404, Houston, Texas 77056, and the Managing Agent shall perform all of the duties of the Board of Managers and shall have and exercise all of the powers and functions, including assessment and collection of common expenses, delegated hereunder to the Board of Managers and other officers of the Association, until the expiration of two (2) years from the date this Declaration is filed for record, or until 90% of the townhouses shall be sold to owner/occupants, whichever first occurs, which period is hereafter referred to as the sale and development period. Nothing contained in this Article 14 shall be construed to prevent the Managing Agent from relinquishing the control and responsibility for the administration and management of the regime to the Board of Managers prior to the end of such sale and development period.

15. ACCESS FOR MAINTENANCE AND REPAIR. The owners shall have the irrevocable right, to be exercised by the Managing Agent or Board of Managers of the Association, to have access to each townhouse from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the general common

elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the general or limited common elements or to another townhouse or townhouses.

16. OWNER'S RESPONSIBILITY FOR MAINTENANCE OF TOWNHOUSE. An owner shall maintain and keep in repair the interior of his own townhouse, including the fixtures thereof. All fixtures and equipment, including the heating and air conditioning system, installed within the townhouse, commencing at a point where the utility lines, pipes, wires, conduits or systems (which for brevity are hereafter referred to as "utilities") enter the townhouse shall be maintained and kept in repair by the owner thereof. Without limitation on the generality of the foregoing, an owner shall maintain and keep in good repair (and replace, if so required) the air conditioning compressor, fans, ductwork, heating unit and cooling coils, utilized in and for his townhouse, as well as all other fixtures situated within or installed into the limited common elements appurtenant to such townhouse; and an owner shall be obliged to promptly repair and replace any broken or cracked windows, doors or glass therein that might be so broken or cracked. Notwithstanding anything to the contrary contained in this Article 16, an owner when exercising his right and responsibility of repair, maintenance, replacement or remodeling, as herein defined, shall never alter in any manner whatsoever, the exterior appearance of his townhouse.

An owner shall not be deemed to own the undecorated and/or unfinished surfaces of the perimeter walls, floors and ceilings surrounding his townhouse, nor shall such owner be deemed to own the utilities running through his townhouse which are utilized for, or serve more than one townhouse, except as a tenant in common with the other owners. An owner, however, shall be deemed to own and shall maintain the inner decorated and/or finished surfaces of the perimeter and interior walls, floors and ceilings, doors, windows and other such elements consisting of paint, wallpaper, floor covering and other such finishing materials.

17. INTERFERENCE WITH STRUCTURAL SOUNDNESS OF BUILDING. An owner shall do no act nor any work that will impair the structural soundness or integrity of the building or impair any easement or hereditament. No owner shall in any way alter, modify, add to, or otherwise perform any work whatever upon any of the common elements, save with written consent of the Board of Managers first obtained.

18. DIMENSIONS. It is expressly agreed, and each and every purchaser of a townhouse, his heirs, executors, administrators, assigns, successors, and grantees hereby agree, that the square footage, size, and dimensions of each townhouse as set out and shown in this Declaration or in said survey plats attached as Exhibits hereto, are approximate and are shown for descriptive purposes only, and that the Declarant does not warrant, represent, or guarantee that any townhouse actually contains the area, square footage, or dimensions shown by the plat thereof. Each purchaser of a townhouse hereby expressly waives any claim or demand which he may have against the Declarant or any other person whomsoever, on account of any difference, shortage, or discrepancy between the townhouse as actually and physically existing and as it is shown on the respective plat thereof, which is attached as an Exhibit hereto. It is specifically agreed that in interpreting deeds, mortgages, deeds of trust, and other instruments for any purpose whatsoever or in connection with any matter, the existing physical boundaries of the townhouse or of any townhouse reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be the boundaries, regardless of settling, rising, or lateral movement of the building and regardless of variances between the boundaries shown on the plat and those of the building.

19. COMPLIANCE WITH PROVISIONS OF DECLARATION AND BY-LAWS. Each owner shall comply strictly with the provisions of this Declaration, the By-Laws 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, maintainable by the Managing Agent or Board of Managers on behalf of the owners or, in proper case, by an aggrieved owner.

20. REVOCATION OR AMENDMENT TO DECLARATION. This Declaration shall not be revoked nor shall any of the provisions herein be amended unless the owners representing an aggregate ownership interest of 90% of the condominium units then subject hereto, or more, and all of the holders of any recorded mortgage or deed of trust covering or affecting any or all condominium units unanimously consent and agree to such revocation or amendment by instrument(s) duly recorded; except as provided in subparagraphs (c) and (e) of Article 27 hereof. The making of physical changes in the interior of a townhouse or townhouses coming into the possession of a mortgagee by virtue of foreclosure of any first mortgage, and physical changes to and alterations of the townhouse or townhouses owned by virtue of foreclosure of any first mortgage may be made without the consent of the other owners or mortgagees, and this Declaration may be amended without other owners' or mortgagees' consent, by the owner acquiring same by foreclosure, to correspond with such physical changes; provided, however, that the undivided interest of each townhouse owner in the general common elements as expressed in this Declaration shall have a permanent character and shall not be altered without the consent of all of the unit owners expressed in an amended Declaration duly recorded.

21. ASSESSMENTS FOR COMMON EXPENSES - UTILITIES - INSURANCE. The assessments made shall be based upon the cash requirements deemed to be such aggregate sum as the Managing Agent or Board of Managers of the Association shall from time to time determine is to be paid by all of the owners, including Declarant, to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the general common elements, which sum may include, among other things, cost of management, assessments, 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, garbage collections, wages, water charges, electricity charges, gas charges, legal and accounting fees, management fees, expenses and liabilities incurred by the Managing Agent or Board of Managers under or by reason of this Declaration, the payment of any deficit remaining from a previous period, the creation of a reasonable contingency or other reserve or surplus funds as well as other costs and expenses relating to the general common elements. 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. The omission or failure of the Board to fix the assessment for any month shall not be deemed a waiver, modification, or a release of the owners from the obligation to pay.

Taxes are not part of the common expenses except as otherwise provided in Article 31 hereof.

Each owner shall pay for his own utilities which are separately metered and billed to each unit by the respective utility companies or by the Association. Utility expenses which are not separately billed or metered shall be part of the common expenses and each unit owner shall pay his pro-rata share thereof as in the case of other common expenses.

The Managing Agent or Board of Managers shall obtain and maintain at all times insurance of the type and kind provided hereinabove, and including for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other townhouse or condominium buildings, fixtures, equipment and personal property, similar in construction, design and use, issued by responsible insurance companies authorized to do business in the State of Texas. The insurance shall be carried in blanket policy form naming the Association the insured, which policy or policies shall identify the interest of each condominium unit owner and which shall provide for a standard non-contributory mortgagee clause in favor of each first mortgagee. It shall also provide that it cannot be cancelled by either the insured or the insurance company until after ten days prior written notice to each first mortgagee. Said Managing Agent or Board of Managers shall, upon request of any first mortgagee, furnish a certified copy of such blanket policy and the separate certificate identifying the interest of the mortgagor. All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only

in respect to the interest of any particular owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to that owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under such policy, as to the interests of all other insured owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

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 the owner, and casualty and public liability insurance coverage within each individual unit, are specifically made the responsibility of the owner thereof.

**22. OWNER'S OBLIGATION FOR PAYMENT OF ASSESSMENTS.** All owners shall be personally obligated to pay the estimated assessments imposed by the Board of Managers or Managing Agent of the Association to meet the common expenses. The assessments shall be made pro-rata according to each owner's percentage interest in and to the general common elements, except as may otherwise be provided for herein. Assessments for the estimated common expenses, shall be due monthly in advance on or before the fifth (5th) day of each month. Failure to pay by the tenth (10th) day of each month shall require the imposition and assessment of a late charge of \$10.00.

Contribution for monthly assessments shall be prorated if the ownership of a condominium unit commences on a day other than on the first day of a month.

In addition to the regular monthly assessments authorized by this Declaration or by the By-Laws, the Managing Agent or the Board of Managers may levy in any fiscal year a special assessment or assessments applicable to that fiscal year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction or unexpected major repair or replacement of a described capital improvement constituting or to constitute part of the common elements, including the necessary fixtures and personal property related thereto, or for the purchase of any movable or personal property for the common use of all the owners, or for such other purpose or purposes as the Managing Agent or the Board of Managers may consider appropriate and for the common benefit of all of the owners in proportion to their ownership interest in the common elements as set out in this Declaration; provided, however, that no such special assessment shall become effective until the same has received the affirmative vote of at least two-thirds (2/3) of the total votes cast, in person or by proxy, at a special meeting of the members of the Association to be called for the purpose of such vote, notice of which special meeting shall be given to each member in accordance with the provisions of the By-Laws regarding notices of special meetings. At any such meeting the members may, by the required affirmative vote aforesaid, amend or modify any such assessment prepared by the Managing Agent or the Board of Managers. The pro-rata part and share of each owner of any such special assessment shall be due and payable as provided in the resolution adopting or approving any such special assessment.

**23. WAIVER OF USE OF GENERAL COMMON ELEMENTS OR ABANDONMENT OF TOWNHOUSE BY OWNER.** 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 general common elements, or by abandonment of his townhouse.

**24. ASSESSMENT LIEN.** All sums assessed by either regular or special assessments but unpaid for the share of common expenses chargeable to any condominium unit, including interest thereof at ten (10%) per cent per annum, shall constitute a lien on such unit superior (prior) to all other liens and encumbrances, except only for:

- (a) Tax and special assessment liens in favor of any assessing unit,
- and

(b) All sums unpaid on a first mortgage or first deed of trust of record, including all unpaid obligatory sums as may be provided by such encumbrance, and including additional advances made thereon prior to the arising of such a lien.

To evidence such lien the Board of Managers or Managing Agent may, but shall not be required to, prepare a written notice 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 a notice shall be signed by one of the Board of Managers or by the Managing Agent and may be recorded in the Office of the Clerk Recorder of Harris County, Texas. Such lien for the common expenses shall attach from the date of the failure of payment of the assessment. Such lien may be enforced by foreclosure of the defaulting owner's condominium unit by the Association in like manner as a mortgage on real property upon the recording of a notice or claim thereof. In any such foreclosure, the owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorney's fees. The owner shall also be required to pay to the Association a reasonable rental 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 on the condominium unit at foreclosure sale and to acquire and hold, lease, mortgage and convey same.

The amount of the common expenses assessed against each condominium unit shall also be a debt of the owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing same.

Any encumbrancer holding a lien on a condominium unit may pay any unpaid common expense payable with respect to such unit, and upon such payment such encumbrancer shall have a lien on such unit for the amounts paid of the same rank as the lien of his encumbrance.

Each owner, by acceptance of a deed to a condominium unit, hereby expressly vests in the Association or its agents the right and power to bring all actions against such owner personally for the collection of such charges as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including non-judicial foreclosure pursuant to Article 3810 of the Texas Revised Civil Statutes, and such owner hereby expressly grants to the Association a power of sale in connection with said lien.

25. STATEMENT OF INDEBTEDNESS - JOINT LIABILITY FOR COMMON EXPENSE UPON TRANSFER OF CONDOMINIUM UNIT. Upon payment to the Association of a reasonable fee not to exceed Twenty-Five and No/100 (\$25.00) Dollars, and upon the written request of any owner or any encumbrancer or prospective encumbrancer of a condominium unit, the Association, by its Managing Agent or Board of Managers, shall issue a written statement setting forth the unpaid common expenses, if any, with respect to the subject unit, the amount of the current monthly assessment and the date that such assessment becomes due, credit for advanced payments or for the prepaid items, including but not limited to insurance premiums, which shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness shall be complied with within ten (10) days, all unpaid common expenses which become due prior to the date of making of such request shall be subordinate to the lien of the person requesting such statement.

The grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor; provided, however, that upon payment to the Association of a reasonable fee not to exceed Twenty-Five and No/100 (\$25.00) Dollars, and upon written request, any such prospective grantee shall be entitled to a statement from the Managing Agent or Board of Managers, setting forth the amount of the unpaid assessment, if any, with respect to the subject unit, the amount of the current monthly assessment and the date that such assessment becomes due, credit for advanced payments or for prepaid items,



including but not limited to insurance premiums, which shall be conclusive upon the Association. Unless such request for a statement of indebtedness shall be complied with within ten (10) days of such request, then such grantee shall not be liable for, nor shall the unit conveyed be subject to a lien for, any unpaid assessments against the subject unit. The provisions set forth in this Article 25 shall not apply to initial sales of the units by Declarant.

26. MORTGAGING A CONDOMINIUM UNIT - PRIORITY. Any owner shall have the right from time to time to mortgage or encumber his interest by deed of trust, mortgage or other security instrument. A first mortgage shall be one which has first and paramount priority under applicable law. The owner of a condominium unit may create a second mortgage on the following conditions: (1) That any such second mortgage shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, lien for common expenses, and other payments created by this Declaration and by the By-Laws; (2) That the mortgagee under any second mortgage shall release, for the purpose of restoration of any improvements upon the mortgaged premises, all of his right, title and interest in and to the proceeds under all insurance policies upon said premises, which insurance policies were effected and placed upon the mortgaged premises by the Association. Such release shall be furnished forthwith by a second mortgagee upon written request by the Association.

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

Title to any condominium unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Declarant or from any owner shall constitute appointment of the attorney-in-fact herein provided. All of the owners irrevocably constitute and appoint the GREENWAY OAKS OWNERS ASSOCIATION, INC., their true and lawful attorney in their name, place and stead, for the purpose of dealing with the property upon its destruction or obsolescence as is hereafter provided. As attorney-in-fact, the Association, by its president and secretary, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of a condominium unit owner which are necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvement(s) as used in the succeeding subparagraphs means restoring the improvement(s) to substantially the same condition in which it existed prior to the damage, with each unit and the general and limited common elements having the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be made available to the Association for the purpose of repair, restoration or replacements unless the owners and all first mortgagees 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.

(b) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is not more than two-thirds of all of the general common elements, not including 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 an assessment to be made against all of the owners and their condominium units. Such deficiency assessment shall be a common expense made pro-rata according to each owner's percentage interest in and to the general common elements and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have the authority to cause the repair or reconstruction of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an owner to pay the assessment. The assessment provided for herein shall be a debt of each owner and a lien on his condominium unit and may be enforced and collected as is provided in Article 24. 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. 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 the balance of the lien of any first mortgage;
- (2) For payment of taxes and special assessment liens in favor of any assessing entity;
- (3) For payment of unpaid common expenses;
- (4) For payment of junior liens and encumbrances in order of and to the extent of their priority; and
- (5) The balance remaining, if any, shall be paid to the condominium unit owner.

(c) If more than two-thirds of all of the general common elements, not including land, are destroyed or damaged and if the owners representing an aggregate ownership interest of one hundred (100%) of the condominium units do not voluntarily, within one hundred (100) days thereafter, make provisions for reconstruction, which plan must have the unanimous approval or consent of every first mortgagee, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's president and secretary, the entire remaining premises shall be sold by the Association, as attorney-in-fact for all of the owners, free and clear of the provisions contained in this Declaration, the Map and the By-Laws. The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each unit owner's interest (as such interests appear on the policy or policies), and such divided proceeds shall be paid into individual 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 number of the townhouse and the name of the owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount (of each) of such accounts, without contribution from any account to another, toward the full payment of the lien of any first mortgage against the condominium unit represented by such separate account. There shall be added to each such account, the apportioned amount of the proceeds derived from the sale of the entire property. Such apportionment shall be based upon each condominium unit owner's interest in the general common elements. 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 sub-paragraph (b) (1) through (5) of this Article 27.

If the owners representing an aggregate ownership interest of one hundred (100%) per cent of the condominium units, or more, adopt a plan for reconstruction, which plan has the unanimous approval of all first mortgagees, then all of the owners shall be bound by the terms and other provisions of such plan. Any assessment made in connection with such plan shall be a common expense and made pro rata according to each owner's interest in the general common elements and 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 the authority 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 assessment. The assessment provided

for herein shall be a debt of each owner and a lien on his condominium unit and may be enforced and collected as is provided in Article 24. 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 proceeds derived from 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 sub-paragraph (b) (1) through (5) of this Article 27. .

(d) The owners representing an aggregate ownership interest of ninety (90%) per cent of the condominium units, or more, may agree that the general common elements of the property are obsolete and that the same should be renewed or reconstructed. In such instance, then the expense thereof shall be payable by all of the owners as common expenses; provided, however, that any owner not agreeing to such renewal or reconstruction may give written notice to the Association that such unit shall be purchased by the Association for the fair market value thereof. If such owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within thirty (30) days thereafter. If the parties are unable to agree, the date when either party notifies the other that he or it is unable to agree with the other shall be the "commencing date" from which all periods of time mentioned herein shall be measured. Within ten (10) days following the commencement date, each party shall nominate in writing (and give notice of such nomination to the other party), an appraiser who shall be a member of the Houston Board of Realtors. If either party fails to make such a nomination, the appraiser nominated shall within five (5) days after default by the other party appoint and associate with him another appraiser (to be selected from the Houston Board of Realtors). If the two appraisers designated by the parties, or selected pursuant hereto in the event of the default of one party, are unable to agree, they shall appoint another appraiser (to be selected from the Houston Board of Realtors) to be umpire between them, if they can agree on such person. If they are unable to agree upon such umpire, then each appraiser previously appointed shall nominate two (2) persons (each of whom shall be a member of the Houston Board of Realtors) and from the names of the four persons so nominated, shall be drawn by lot by any judge of any court of record in Texas, and the name so drawn shall be such umpire. The nominations from whom the umpire is to be drawn by lot shall be submitted within ten (10) days after the failure of the two appraisers to agree, which in any event shall not be later than twenty (20) days following the appointment of the second appraiser. The decision of the appraisers as to the fair market value or in the case of their disagreement, the decision of the umpire, shall be final and binding. The expenses and fees of such appraisers shall be borne equally by the Association and the owners. The sale shall be consummated within fifteen (15) days thereafter, and the Association, as attorney-in-fact, shall disburse such proceeds as is provided in sub-paragraph (b) (1) through (5) of this Article 27.

(e) The owners representing an aggregate ownership interest of ninety-five (95%) per cent of the condominium units, or more, with the unanimous consent of all first mortgagees, may agree that the general common elements of the property are obsolete and that the same should be sold. In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's president and secretary, the entire premises shall be sold by the Association, as attorney-in-fact, for all of the owners, free and clear of the provisions contained in this Declaration, the Map and the By-Laws. The sales proceeds shall be apportioned between the owners on the basis of each owner's

Interest in the general common elements, and such apportioned proceeds shall be paid into individual separate accounts, each such account representing one condominium unit. Each such account shall be in the name of the Association, and shall be further identified by the number of the townhouse and the name of the owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount (of each) of such funds, without contribution from one fund to another, for the same purposes and in the same order as is provided in sub-paragraph (b) (1) through (5) of this Article 27.

28. PERSONAL PROPERTY FOR COMMON USE. Upon date defined in Article 14 herein, Declarant shall execute and deliver a bill of sale to the Association transferring all items of personal property located on the entire premises and furnished by Declarant, which property is intended for the common use and enjoyment of the condominium unit owners and occupants. The Association shall hold title to such property for the use and enjoyment of the condominium unit owners and occupants. No owner shall have any other interest and right thereto, and all such right and interest shall absolutely terminate upon the owner's termination of possession of his condominium unit.

29. PROTECTION OF MORTGAGEE.

(a) Notice to Association. An owner who mortgages his apartment shall notify the Board of Managers giving the name and address of his mortgagee. The Board shall maintain such information in a book entitled "Mortgagees of Townhouses".

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

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

(e) 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.

(f) 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.

(g) Approval for Amendments to Declaration, etc. The prior written approval of each first mortgagee shall be required for the following: (i) abandonment or termination of GREENWAY OAKS as a Condominium Regime, except for abandonment or termination provided by law, in case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any material amendment to the Declaration or By-Laws of the Association, including, but not limited to any amendment which would change the percentage interest of unit owners in the common elements, and which would change the prorata interest or obligations of any unit owner for the purpose of levying assessments or charges or allocating distribution of hazard insurance proceeds or condemnation awards; and (iii) the termination of any professional management contract for the Condominium Project.

(h) Leases. With the exception of a lender in possession of a condominium unit following foreclosure, or any deed or other arrangement in lieu of foreclosure, no owner shall be permitted to lease his unit for transient or hotel purposes. No owner may lease less than the entire unit. The Association shall require that all leases of any apartment units must: (i) be in writing, and (ii) provide that such leases are specifically subject in all respects to the provisions of the Declaration and By-Laws of the Association, and that any failure by the lessee to comply with the terms and conditions of such documents shall be a default under such leases. Other than the foregoing, there shall be no restriction on the right of any apartment owner to lease his unit.

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

(j) Notice of Condemnation or Eminent Domain. The Association shall furnish the first mortgagees timely written notice of any condemnation, or eminent domain proceeding regarding all or any portion of a townhouse 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.

(k) Management Agreements. Any management agreement entered into by the Association will be terminable by the Association for cause upon not more than thirty (30) days' written notice, and the term of such management agreement will not exceed the period of one (1) year, renewable by agreement of the parties to such agreement for successive one (1) year periods.

(l) Exemption From Right of First Refusal. When any first mortgagee obtains title to a townhouse 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".

(m) Right to Partition. No unit may be partitioned or subdivided by the owner thereof without the prior written approval of at least the holder of the first mortgage lien on such property and the Board of Managers of the Association.

(n) 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 or pursuant to a deed in lieu of foreclosure, 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.

(o) 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 project as a whole.

(p) Other Acts by Association Requiring Approval of First Mortgagees or Owners. Unless at least 75% of the first mortgagees (based upon one vote for each first mortgage owned), or owners (other than the Declarant) of the individual condominium units have given their prior written approval, the Association shall not be entitled to: (i) partition or subdivide any condominium unit, (ii) 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; (iii) 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 improvements, except as provided by statute in case of substantial loss to the units and/or common elements of the condominium project, or except as otherwise provided in this Declaration.

(q) No provision contained in this Declaration shall be construed as giving a condominium unit owner, or any other party, priority over any rights of first mortgagees in the case of a distribution to condominium unit owners of insurance proceeds or condemnation awards for losses to or taking of condominium unit and/or common elements.

(r) Notwithstanding anything in this Declaration to the contrary, Declarant may amend this Declaration to conform with the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or any similar duly constituted governmental authority, by written instrument executed by Declarant only and duly recorded in the Condominium Records of Harris County, Texas.

30. LIMITATION OF RESTRICTIONS ON DECLARANT. Declarant is undertaking the conversion of an apartment complex into individual condominium units. The completion of that work and the sale, rental and other disposal of condominium units is essential to the establishment and welfare of the property as a residential community. In order that said work may be completed and said property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its contractors, or sub-contractors from doing on the property or any condominium unit, whatever is reasonably necessary or advisable in connection with the completion of said work; or

(b) Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the property such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said property as a residential community and disposing of the same in condominium units by sale, lease or otherwise; or

(c) Prevent Declarant from conducting on any part of the property its business of completing said work and of establishing a plan of residential ownership and of disposing of said property in condominium units by sale, lease or otherwise; or

(d) Prevent Declarant from maintaining such sign or signs on the property as may be necessary for the sale, lease or disposition thereof.

So long as Declarant, its successors and assigns, owns one or more of the condominium units described herein, Declarant, its successors and assigns shall be subject to the provisions of this Declaration.

31. TAXES. Ad valorem taxes, assessments and other charges of the City, County, State or other political entities, or any special district thereof, shall be separately assessed, and each condominium unit owner shall pay, at his own personal expense, all tax assessments against his townhome. Such taxes are not part of the common expenses. However, taxes on personal property owned by the Association as part of the common elements shall be paid by the Association as a common expense.

32. NOTICES. All notices, demands or other notices intended to be served upon an owner shall be sent by ordinary or certified mail, postage prepaid, addressed in the name of such owner in care of the townhouse number and building address of such owner. All notices, demands or other notices intended to be served upon Managing Agent, or the Board of Managers of the Association, or the Association, shall be sent by ordinary or certified mail postage prepaid, to 1770 St. James Place, Suite 404, Houston, Texas 77056, until such address is changed by a notice of address change duly recorded.

33. ALTERATION OF BOUNDARIES OF TOWNHOMES. If one person, firm or entity (including Declarant) is the owner of all or part of two (2) Townhomes which are adjoining, whether adjoining vertically (above and below each other) or horizontally (on the same floor of the Building) or if two (2) Owners of adjoining Townhomes so agree, then such Owner or Owners, along with their respective mortgagees, if any, and with the consent of the Board of Managers, shall have the right to remove all or any part of any intervening partition or floor or to create doorways or other openings in such partition or floor, notwithstanding the fact that such partition or floor may in whole or in part be a Common Element, so long as no portion of any bearing wall or bearing column is weakened or removed and no portion of any Common Element other than that partition is damaged

or destroyed or endangered. In any of such events, the Owner or Owners involved may relocate the boundaries between adjoining Townhomes by causing an appropriate instrument of amendment to this Condominium Declaration to be prepared and executed by such Owners, which instrument shall be joined in by the President of the Association and by the mortgagees of such Owners, if any, and recorded. The instrument of amendment (i) shall show the boundaries between those Townhomes which are being relocated, (ii) shall recite the occurrence of any conveyancing between the Owners of such adjacent Townhomes and (iii) shall specify any reasonable reallocation as agreed upon between the Townhomes involved of the aggregate Ownership interests in the Common Elements pertaining to those Townhomes. Such plats and floor plans as may be necessary to show the altered boundaries between the Townhomes involved shall be certified as to their accuracy by a registered architect or engineer.

34. GENERAL.

(a) If any of the provisions of this Declaration or any Article 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 provision, 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 and supplemental to the Condominium Ownership 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.

35. EMINENT DOMAIN. In the event of a taking by eminent domain (or condemnation or a conveyance in lieu of condemnation) of part or all of the Common Elements, the award for such taking shall be payable to the Association, which shall represent the Owners named in the proceedings. Said award shall be utilized to the extent possible for the repair, restoration, replacement or improvement of the remaining Common Elements, if only part are taken. If all or more than two-thirds (2/3) of the Common Elements are taken, it shall be deemed a destruction of more than two-thirds (2/3) of all of the General Common Elements and the condominium regime shall be terminated as hereinbefore provided. Any funds not utilized (in the case of a partial taking) shall be applied in payment of common expenses otherwise assessable. In the event of a taking of all or part of a townhouse, the award made shall be payable to the Owner of such townhouse and his mortgagee, if any, as their interests may appear.

IN WITNESS WHEREOF, Declarant, has hereunder set its hand and seal this the 17<sup>th</sup> day of OCTOBER, A.D., 1978.

ATTEST:

SOUTH BOULEVARD CORPORATION

William J. ...  
Secretary

BY: Leo V. McConnell  
President

THE STATE OF TEXAS }  
COUNTY OF HARRIS }

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Leo V. McConnell, 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 SOUTH BOULEVARD CORPORATION, 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 17<sup>th</sup> day of October, A.D., 1978.

Betty L. Keller  
Notary Public in and for Harris County,  
T E X A S .

BETTY L. KELLER

Notary Public in and for Harris County, Texas

My Commission Expires 11-30-78