

**DOCUMENTATION FOR THE  
TO-BE-BUILT OFFICE CONDOMINIUM**

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**CHAPTER 10**



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## DOCUMENTATION FOR THE TO-BE-BUILT OFFICE CONDOMINIUM

### I. INTRODUCTION.

#### A. The Project.

This article is the work product of the author from a recent condominium office development. The materials at Article II are subdivided into 6 parts or “packages” of documents, one for each phase of the project. First drafts of these materials were presented to the client, a first-time office condominium developer, at the inception of the planning process in a notebook of documents as a guide to the documents to be encountered through out the project. References to “Tabs” in the materials were to division tabs in the notebook. The Tab references still apply to the materials in this article and refer to the section and subsection headings. This project consists of 11 separate stand alone to-be-built buildings, each comprising a separate “unit.” Each unit is comprised of its building, which is separately owned by the condominium buyer, and an 1/11<sup>th</sup> undivided interest in the common elements. The common elements are the land, infrastructure (drives, parking, landscaping and utilities). The unit owner is responsible for maintenance and insurance of its building. The Association is responsible for maintenance and insurance of the common elements. The project developer retains flexibility under the documents to develop and sell each Unit in one of three methods: sale of a building “site” with the building to be built by the buyer, sale of a building to be built by the developer for the buyer, or a turnkey sale of a completed building with interior finish out. In the second and third method, developer may contract either to convey (close) title into the buyer before construction commences on the building or after the building is completed. In each of the three methods, upon determination of the building’s boundaries, the declaration of covenants, conditions and restrictions (the “**Condominium Declaration**”) is amended to substitute the description of the as-built or projected as-built boundaries of the building for the “building site” designated for the building prior to its construction.

#### B. The Law.

The Texas Uniform Condominium Act (“**TUCA**”), § 82.001 et seq. of the Texas Property Code applies to both residential condominiums and to non-residential condominiums. TUCA § 82.003(a)(21) defines “**residential purposes**” as “recreational or dwelling purposes, or both.” There is not a corresponding definition of “**nonresidential purposes**,” but presumptively non-residential purposes are all purposes but residential purposes. TUCA contains few references to nonresidential condominiums. The most significant is in TUCA § 82.151(a) is in Subchapter D Protection of Purchasers. Section 82.151(a) provides

(a) This subchapter applies to each unit subject to this chapter, except as provided by Subsection (b) or as modified or waived by the agreement of a purchaser of a unit in a condominium in which all units are restricted to nonresidential use.

Subsection (b) exempts from the protections provided in Subchapter D various transactions not deemed by the legislature as requiring consumer protections (*e.g.*, gifts, foreclosures, conveyances to governments and foreclosures). Section 82.151(a) similarly exempts from the protections of Subchapter D condominiums in projects comprised solely of nonresidential units.

Subchapter D affords the following protections, which may be waived by the purchaser of a condominium restricted to nonresidential use:

TUCA §	TUCA Section Title.
82.152	Liability for Condominium Statement
82.153	Condominium Information Statements in General
82.154	Condominiums With Conversion Buildings
82.155	Condominium Securities

82.156	Purchaser's Right to Cancel
82.157	Resale of Unit
82.158	Escrow of Deposits
82.159	Release of Liens
82.160	Conversion Buildings
82.161	Effect of Violations on Rights of Action and Attorney's Fees
82.162	Labeling of Promotional Material
82.163	Declarant's Obligation to Complete and Restore
82.164	Loans as Eligible Investments

As a result of § 82.151(a), each of the protections afforded residential condominium buyers, such as being furnished the condominium declaration, articles, bylaws, association rules and a condominium information statement or resale certificate setting out the budget and other important project information before signing the sales contract prior to contracting to buy a unit, rescission in the event the buyer does not receive the condominium information statement or resale certificate, and the required escrow until closing of earnest money deposits, may be waived in advance by the buyer. The protections afforded by § 82.105 Termination of Contracts and Leases of Declarant, permitting the association to terminate contracts or leases between the association and a declarant or an affiliate of the declarant before the first anniversary of the date a board is elected by unit owners takes office, is limited by its terms to "residential or recreational condominiums."

TUCA § 82.111(j) provides that the provision of § 82.111 Insurance may be varied or waived if all the units in the condominium are restricted to nonresidential use.

### C. The Forms.

**Tab A** consists of three **Memos to the Client**: (1) a Chart of Documents explaining each of the document packages to be prepared over the course of the project from the initial condominium declaration and attached forms including surveyor's and architect's certificates, articles of incorporation, bylaws, rules, architectural guidelines, mortgagee's consent, boundary designation, to be filed at the inception of the project and through sales, construction, sales and financing closings, association formation, management and operations; (2) a Checklist of Provisions and Questions for Preparation of the Declaration; and (3) a Checklist of Sales Contract Provisions. The condominium developer is referred to as "**Condominium Developer, Ltd.**" in the various forms as a limited partnership is the likely entity form to be employed by the developing entity.

**Tab B** is the **Condominium Documents Package**, including forms of Declaration of Covenants, Conditions and Restrictions, Articles of Incorporation, Bylaws; Management Certificate; Rules; Architectural Guidelines; Boundary Designation; and Notice of Dedicatory Instrument.

**Tab C** is the **Sales Package** consisting of the Sales Contract, Commercial Condominium Information Statement, various Addenda to the Sales Contract including "Check-the-Box" Addenda (Addendum for each of the three methods of sale: when only a building site is being sold with anticipation that the buyer will build the building and finish out; Addendum for use when the seller is building both the infrastructure and the building but not the finish out; and an Addendum for a turnkey project where the seller is constructing and selling to the buyer a completed and finished out commercial unit).

**Tab D** is a **Closing Document Package** consisting of the Condominium Deed Warranty Deed, Promissory Note evidencing the unpaid portion of the Sales Price owing the developer for the to-be-built building or the turnkey building (the "Construction Price"); Deed of Trust securing the Construction Price; and Release of Lien for execution by the project's infrastructure financier in connection with a pledge by the Seller to it of the Promissory Note as consideration for the Release of Lien.

**Tab E** is the **Condominium Association Formation Package** including name reservation; directors' minutes for the organizational meeting, the first annual meeting of elected directors; minutes of first meeting of members; and Management Agreement.

**Tab F** are **Association Operation Forms**, which includes forms for use during the operation of the Project including a Resale Certificate and Condominium Lien Affidavit.

## **II. FORM PACKAGES.**

The following are three Memos to the developer client: (A) a **Chart of Documents** explaining each of the document packages to be prepared over the course of the project from the initial condominium declaration and attached forms including surveyor's and architect's certificates, articles of incorporation, bylaws, rules, architectural guidelines, mortgagee's consent, boundary designation, to be filed at the inception of the project and through sales, construction, sales and financing closings, association formation, management and operations; (B) a **Checklist of Provisions and Questions for Preparation of the Declaration**; and (C) a **Checklist of Sales Contract Provisions**.

**A. Memos to the Client.****A1. Memo to Client Identifying Documents Involved in Project.**

The following Memo is like a table of contents in that it lists each of the document packages to be developed for the client. It also contains a description of the purpose and objectives to be addressed by the document. References to "you" are to the client.

**MEMORANDUM**

TO: [Client]  
 FROM: [Lawyer]  
 DATE: March 10, 2005  
 RE: Chart of Documents

The following is a chart of the documents which are enclosed with this Memorandum. Included are documents at the following Tabs: A. Checklists, B. a Condominium Document Package, C. a Sales Package, D. a Sales Closing Package, E. a Condominium Association Formation Package, and F) an Association Operation Forms Package.

**A. Statute and Checklists.**

<b>Tab</b>	<b>Document Title</b>	<b>Comments</b>
A1	Texas Uniform Condominium Act (" <b>TUCA</b> ")	This Memo is found at <b>Tab A1</b> . Also, following this Memo is a copy of TUCA. I suggest that you furnish each Buyer with a copy of TUCA prior to its executing the Sales Contract.
A2	Checklist of Provisions and Questions for Preparation of the Declaration	This document is a Checklist of issues that need to be addressed for us to complete drafting the Condominium Declaration and its Attachments to be used by you to market the project. A draft of the Condominium Declaration and its attachments is found at <b>Tab B</b>
A3	Checklist of Sales Contract Provisions	This document is a Checklist of issues that need to be addressed for us to complete drafting the Sales Contract and its Attachments to be used by you to market the project. A draft of the Condominium Declaration and its attachments is found at <b>Tab C</b> . This Checklist is keyed to the ¶ numbers of the enclosed Sales Contract.

**B. Condominium Documents Package. See Pages 23 *et seq.***

Tab	Document Title		Comments
B1	<b>Declaration of Covenants, Conditions and Restrictions</b>		<p>The Declaration should be furnished to the Title Company handling the closing of the sales for its review and approval prior to initiating sales of units. Also, the Title Company should be requested to file the Condominium Declaration and issue a <i>pro forma</i> title commitment for your use in connection with marketing of units.</p> <p>The recording information will be used in the Commercial Condominium Information Statement delivered to buyers prior to their execution of a Sales Contract (see <b>Tab C2</b>).</p> <p>You will also need to have the Declaration reviewed and approved by the existing lender prior to filing. This lender will need to approve releasing its lien as to each unit on closing of a sale of such unit. See <b>Tab D4</b>.</p>
B2	<b>Exhibit A - Legal Description</b>		Platted description. The project is to be built on Lot __, Block __ of the subdivision. This exhibit identifies the lot, block and recording information for the recorded plat.
B3	3.1	<b>Exhibit B - Plat and Plan of the Property</b>	TUCA § 82.055(12) requires the Condominium Declaration to have attached to it a "plat or plan" or the recording data of a plat or plan that has been recorded in the real property or condominium plat records. TUCA § 82.059 specifies the information to be depicted on the plat or plan. TUCA § 82.059(a) lists the information to be included on the " <b>plat</b> " and § 82.059(b) lists the information to be included on the " <b>plan</b> ." § 82.059(g) specifies that an independent licensed "surveyor or engineer" is to certify the plat showing all perimeter boundaries of the condominium land and provides that an independent licensed "architect, surveyor or engineer" is to certify the plat or plans showing the other information required by TUCA.
	3.2	<b>Certificates</b>	Enclosed are separate Surveyor's and Architect's Certificates.
B4	<b>Exhibit C - Percentage of Ownership of Common Elements</b>		TUCA permits you to allocate different percentages to the units for different purposes (e.g., voting, common assessments and ownership). In Exhibit C we have allocated the 11 units comprising the project on an equal 1/11 <sup>th</sup> basis for all purposes even though the size of each building site and unit may vary based on the size of the building to be constructed for or by each buyer.

B5	<b>Exhibit D - Articles of Incorporation of the Association</b>	Enclosed is a copy of Articles of Incorporation for the Association which we have previously filed with the Secretary of State.
B6	<b>Exhibit E - Bylaws</b>	This Exhibit is the form of Bylaws to be adopted by the initial Board of Directors of the Association. The initial Board of Directors is named in the Articles of Incorporation. See <b>Tab E</b> below.
B7	<b>Exhibit F - Management Certificate</b>	This Exhibit is a document required by §82.116 of TUCA to be completed and filed of record by the Declarant prior to the closing of sales of units in the Project.
B8	<b>Exhibit G - Consent of Declarant's Mortgagee</b>	<p>Several completed executed originals of the Declaration will need to be provided to the Project's construction lender for its review and approval prior to filing of the Declaration. This Exhibit is the form of Consent that your lender will need to execute prior to filing of the Declaration. You should also provide the lender with a copy of the proposed form of Partial Release of Lien (<b>Tab D4</b>) to be executed by lender in connection with each conveyance by Condominium Developer, Ltd. of a Unit and the proposed form of Sales Contract with Addendums (<b>Tabs C</b>) and Note and Deed of Trust (<b>Tabs D5 and D6</b>) evidencing and securing the Construction Price payable by a Buyer to Condominium Developer, Ltd. The Note and Deed of Trust completed as to Construction Price per the Sales Contract are to be executed by Buyer and delivered to Condominium Developer, Ltd. at closing of the conveyance of a Building Site to a Buyer. The lender providing the Buyer with financing for the Construction being undertaken by Condominium Developer, Ltd. of the Shell or the Turnkey will likely require an assignment of the Note and Deed of Trust from Condominium Developer, Ltd. to the lender, and in such connection will enter into a separate agreement with Condominium Developer, Ltd. by which the lender funds directly to Condominium Developer, Ltd. the Progress Payments required to be made by the Buyer to Condominium Developer, Ltd. for the Construction.</p> <p>I would be glad to furnish a form of Transfer of Lien and Construction Price Funding Agreement for execution between the lender and Condominium Developer, Ltd. if the lender requests.</p>
B9	<b>Exhibit H - Rules and Regulations</b>	This Exhibit is a form of Rules and Regulations to be adopted by the initial Board of Directors of the Association at its Organizational Meeting. See <b>Tab E</b> below.

B10	<b>Exhibit I - Architectural Guidelines</b>	This document are general building guidelines with an attached form for the Owner and the ACC to use in processing the plans and specifications.
B11	<b>Exhibit J - Boundary Designation</b>	This document is to be executed by the Board at the time that an Owner's obtains approval from the Architectural Control Committee (" <b>ACC</b> ") of the Owner's plans and specifications for its Unit. At that time the location of the Unit's perimeter walls can be forecast and the Unit's boundary inside the building envelope can be known.
B12	<b>Notice of Dedicatory Instrument</b>	This document with attachments is filed with the County Clerk each time the Bylaws, the Architectural Guidelines, etc. are amended.

**C. Sales Package.** See Pages 103 *et seq.*

Tab	Document Title	Comments	
C1	<b>Sales Contract</b>	It is possible that Condominium Developer, Ltd.'s construction lender will want for the Seller's rights under the Sales Contract to be collaterally assigned to the lender in connection with its construction loan.  You will need to give consideration to whether you will make arrangements with a conventional lender to commit to make financing available on the Project. If so, you will need for the take-out/finish-out lender to review and approve the condominium documentation and issue a loan commitment for you to provide to your buyers.	
	<b>Attachments to Sales Contract</b>	To be attached to the Sales Contract are the following documents (the " <b>Attachments</b> ").	
C2	<b>CCIS</b>	This document is a "commercial" condominium information statement (" <b>CCIS</b> ") patterned after the TREC form of condominium information statement provided in connection with residential projects.	
	C2.1	<b>Site Plan</b>	Item (3) to CCIS. This Attachment is to be prepared by you and depicts/describes the Unit being sold.
	C2.2	<b>Allocations</b>	Item 9 to CCIS. This attachment is the % allocation for unit owners and any special user fees.
	C2.3	<b>Budget</b>	Item (10)(f) to CCIS

	C2.4	<b>Title Exceptions</b>	Item (6) to CCIS. This Attachment is a listing of all title exceptions (a copy of a <i>pro forma</i> title commitment issued by the Title Company should be substituted by you for this exhibit). I recommend that a <i>pro forma</i> Title Commitment be issued now for delivery to interested persons prior to filing of the Declaration and again after the recording of the Declaration so that its recording is reflected in the Title Commitment.
	C2.5	<b>Condo Doc.s</b>	Item (10)(a) -(d) to CCIS. This Attachment is copy of the Declaration, including the Articles of Incorporation of the Association, the Bylaws, Rules and Regulations, Architectural Guidelines. See <b>Tab B6, 7, 10 &amp; 13</b> . You may wish to package this Attachment along with the attachments <b>C2.1 - C2.4</b> into a separate booklet to be delivered along with the Sales Contract and receipted for by the Buyer.
	C2.6	<b>Special Declarant Rights</b>	Item (5) to CCIS. This Attachment is quoted from the Condominium Declaration and is a statement of the rights reserved to you as the Declarant under the Condominium Declaration. TUCA §§ 82.003(a)(12), (22), 82.060, 82.067(b)(1), 82.103(c) and (d), 82.104, 82.112(c) address development and special declarant rights.
	C2.7	<b>Insurance</b>	Item (8) to CCIS. This is a schedule of the types and coverages of insurance to be maintained by the Association.
	C2.8	<b>Warranties</b>	Item (10)(g) to CCIS. This attachment will be the form of limited warranty you will provide each buyer of a turnkey building or a shell building against construction defects.
C3	<b>Buyer's Receipt</b>		This is a part of the form at <b>Tab C2</b> .
C4	<b>"Check-the-Box" Addenda</b>		The Sales Contract provides for 3 alternate forms of sale and each alternative is to be documented by one of the following 3 Addenda:
	C4.1	<b>Bldg. Site Only</b>	<b>Building Site Only Addendum.</b> This Addendum is for use in cases where the Seller is selling only a Building Site to the Buyer and the Buyer is constructing the Building Shell and Finish-Out with its own contractor other than the Seller.
	C4.2	<b>Shell</b>	<b>Unfinished-Out Shell Space Addendum.</b> This Addendum is for use in cases where the Seller is selling an unfinished out Building Shell to the Buyer and the Buyer is completing the Building Shell with its own contractor other than the Seller.

	<b>C4.3</b>	<b>Turnkey</b>	<b>Sale of a Finished-Out Unit.</b> This Addendum is for use in cases where the Seller is selling a Unit on a turnkey basis (completed Building Shell with Finish-Out).	
<b>C5</b>	<b>Addenda and Schedules to Accompany C4 Addenda</b>		<p>For Use With:</p> <p><b>C5.1</b>–Use <b>C5.1.1-C5.1.5</b> with <b>C4.1</b> and <b>C4.2/3</b> where Buyer is undertaking construction of Shell or Shell and Finish-Out.</p> <p><b>C5.2</b>–Use with <b>C4.3</b> if Seller is constructing Unit on a Cost Plus Basis as opposed to a Fixed Fee Basis.</p>	
	<b>C5.1</b>	<b>Buyer Construction</b>	<b>C5.1.1</b>	<b>Insurance Schedule and Construction Contract Addendum.</b> This Addendum permits Seller to require the Buyer to meet certain minimum standards for insurance, including requiring that the Buyer and/or its contractor designate the Association and the Seller/Declarant as additional insureds on the Buyer's and/or its contractor's CGL policy and requiring them to provide Certificates of Insurance proving coverage. Additionally, this Addendum permits the Seller to require Buyer and its contractor to waive and indemnify as to claims against the Association and the Seller/Declarant for construction related accidents.
			<b>C5.1.2</b>	<b>Insurance Schedule.</b> This schedule needs to be reviewed by the Seller's insurance agent and limits and coverages approved or revised.
			<b>C5.1.3</b>	<b>Certificate of Liability Insurance.</b> This certificate needs to be reviewed by the Seller's insurance agent and limits and coverages approved or revised.
			<b>C5.1.4</b>	<b>Certificate of Property Insurance.</b> This certificate needs to be reviewed by the Seller's insurance agent and limits and coverages approved or revised.

			<p><b>C5.1.4</b> <b>Attachment to Contractor's Certificate of Insurance.</b> This is an attachment to accompany <b>C5.1.3</b> and <b>C5.1.4</b>. It may need to be split into separate attachments depending on whether the same agent issues on behalf of each of the carriers providing the respective Liability and Property Insurance. The Attachment and the Certificates call for the agent to provide a copy of the Additional Insured and other forms of requested endorsements. These endorsements must be reviewed as part of the Association's approval of the proffered insurance to assure that insurance specifications are being met.</p>
			<p><b>C5.1.5</b> <b>Schedule of Provisions for Construction Contracts.</b></p>
			<p><b>C5.1.6</b> <b>Payment Bond and Dual Obligee Rider.</b> This is a statutory form Texas Hardeman Act Bond. The common AIA form does not comply with the Texas statute. The contractor constructing each respective Building Shell/Turnkey should be asked to furnish a Payment Bond in this form and a Performance Bond (there is no statutory form of Performance Bond). The Payment Bond should be filed for record prior to the contractor's commencing Construction of the Building. The lender providing financing for the Building's construction will want to be listed as a Dual Obligee. Attached is a form of Dual Obligee Rider. For illustration purposes, I have filled it out showing the Bank as the construction lender. I can provide you a blank copy if needed.</p>
	<b>C5.2</b>	<b>Seller Construction</b>	<p><b>Sale of a Finished-Out Unit – Cost Plus Addendum.</b> This Addendum is for use with <b>C4.3</b> if Seller is providing a completed Unit on a Turnkey Basis and if the Finish-Out is on a Cost Plus Basis.</p>
	<b>C5.3</b>	<b>Pre-Closing Walk-Through Inspection</b>	<p>This form is for use at the time of Final Completion of a Building Shell and/or Turnkey job and to trigger payment of the remaining balance on the Promissory Note (<b>Tab D5</b>)executed by buyer and payable to you.</p>
<b>C6</b>	<b>TREC Form</b>		<p><b>Agreement for Mediation; Information About Brokerage Services.</b> This form is required by the Texas Real Estate Commission (TREC) to be signed by the parties in transactions involving real estate agents.</p>

C7	<b>Special Provisions Addendum</b>	This is a form of Addendum to add special provisions to the contract.
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**D. Closing Package.** See Pages 147 *et seq.*

Tab	Document Title	Comments
D1	<b>Deed</b>	The deed will be completed at the time of sale based on an updated Title Commitment and after recording of the Declaration.
D2	<b>Management Certificate</b>	Management Company, LLC, as manager of the Project, will need to execute and deliver to each buyer at closing a <i>Management's Certificate</i> as required by § 82.116 of TUCA.
D3	<b>Seller's Assignment of Manufacturer's Limited Warranties</b>	The Sales Contract contemplates an assignment by the Seller to Buyer of any manufacturer's warranties incorporated into the units.
D4	<b>Partial Release of Liens</b>	<p>Condominium Developer's Bank will need to execute a partial release of lien in connection with each Deed to a Buyer. Releases will occur in connection with the closing of the sale of a Building Site to each Buyer, subject to thereafter to completion of Construction of the Shell or Turnkey as provided in the Sales Contract. You need to review this procedure with Condominium Developer's Bank and with the lender providing each Buyer with construction financing (which I presume should and will be Condominium Developer's Bank).</p> <p>You should provide the lender with a copy of the proposed form of Partial Release of Lien (<b>Tab D4</b>) to be executed by lender in connection with each conveyance by Condominium Developer, Ltd. of a Unit and the proposed form of Sales Contract with Addendums (<b>Tabs C</b>) and Note and Deed of Trust (<b>Tabs D5 and D6</b>) evidencing and securing the Construction Price payable by a Buyer to Condominium Developer, Ltd. The Note and Deed of Trust completed as to Construction Price per the Sales Contract are to be executed by Buyer and delivered to Condominium Developer, Ltd. at closing of the conveyance of a Building Site to a Buyer. The lender providing the Buyer with financing for the Construction being undertaken by Condominium Developer, Ltd. of the Shell or the Turnkey will likely require an assignment of the Note and Deed of Trust from Condominium Developer, Ltd. to the lender, and</p>

		in such connection will enter into a separate agreement with Condominium Developer, Ltd. by which the lender funds directly to Condominium Developer, Ltd. the Progress Payments required to be made by the Buyer to Condominium Developer, Ltd. for the Construction.
D5	<b>Promissory Note</b>	Each Buyer is to execute at the closing of the sale of a Building Site to the Buyer a Promissory Note payable to Seller in the amount of the Construction Price. The Maturity Date and amount will vary based on each deal.
D6	<b>Deed of Trust</b>	Also, at closing the Buyer is to execute and Seller is to record a Deed of Trust securing the payment to Seller of the Construction Price.

**E. Condominium Association Formation Package. See Pages 162 *et seq.***

<b>Tab</b>	<b>Document Title</b>	<b>Comments</b>
E1	<b>Reservation of Corporate Name for Association</b> <b>Articles of Incorporation</b>	This letter is to be filed by us with the Secretary of State of the State of Texas in order to reserve the corporate name for the Association and reserves this name for 90 days. This name will be incorporated into the Articles of Incorporation to be filed with the Secretary of State. We suggest that the Articles be filed prior to marketing of the property.
E2	<b>Directors' Meetings</b>	Attached are sample documents for Directors meetings. The Articles of Incorporation will name initial directors appointed by you to organize the Association. Thereafter following the First Meeting of the Members, the Directors elected at the First Meeting of Members will conduct the First Annual Meeting of Elected Directors.
E2.1	<b>Organizational Meeting</b>	An organizational meeting of the directors needs to occur after the Articles of Incorporation are filed with the Secretary of State and before the First Meeting of the Members. The Directors appointed by the Declarant serve until the First Annual Meeting of the Members.
	<b>E2.1.1 Waiver</b>	This form is to be signed by the Directors and waives written notice of the Directors' meeting otherwise required by the Texas Non-Profit Corporation Act.

	<b>E2.1.2 Agenda</b>	<p>Enclosed is the Agenda for the Organizational Meeting of the Directors. At this meeting of the Directors, the following business could be undertaken:</p> <ol style="list-style-type: none"> <li>(1) <b>Management Agreement.</b> Item 12 - Approval of the management agreement with the management service.</li> <li>(2) <b>Budget.</b> Item 14 - Approval of the Budget and assessments of the Members.</li> <li>(3) <b>Third Party Services.</b> Item 13 - Approval of other third party service contracts (e.g., cable system, security system).</li> <li>(4) <b>Bank Account.</b> Item 9 - Establishment of bank account.</li> <li>(5) <b>Insurance.</b> Approval of insurance program.</li> <li>(6) <b>Rules.</b> Item - 15 - Adoption of Rules and Regulations.</li> </ol>
	<b>E2.1.3 Minutes</b>	Enclosed is a draft of the Minutes of the Organizational Meeting of the Board of Directors
E2.2	<b>First Annual Meeting of Elected Directors</b>	The First Annual Meeting of the Board of Directors occurs after the First Annual Meeting of the Members, as new Directors are to be elected at the First Annual Meeting of the Members to succeed to the Board of Directors appointed by the Declarant in the Articles of Incorporation. Until the expiration of the Declarant Control Period, as long as the Declarant controls a majority of the votes, it can control the election of the Directors.
	<b>E2.2.1 Agenda</b>	Enclosed is an Agenda for the First Annual Meeting of the Board of Directors. The Agenda will include such items as election of officers and approval of the Budget and Assessments.
	<b>E2.2.2 Minutes</b>	Enclosed is a draft of the Minutes of the First Annual Meeting of the Board of Directors.

E3	<b>Members' Meetings</b>	
	<b>First Annual Meeting</b>	
E3.1	<b>Agenda</b>	Enclosed is an Agenda for First Annual Meeting of Members.
E3.2	<b>Affidavit of Notice</b>	Enclosed is an Affidavit to be executed in connection with the giving of notice of Annual Meetings of the Members.
E3.3	<b>List of Mortgagees</b>	Enclosed is a List of Mortgagees entitled to notice of meetings of the Association as permitted by § 7.2 of the Declaration. Some lenders require that they be provided with notice of meetings or at least that the Condominium Documents provide that lenders be provided with notice of Meetings, if the lender requests that it be notified. Unless a lender has requested that it be notified of Meetings, no notice is required.
E3.4	<b>Minutes</b>	Enclosed is a draft of Minutes of First Annual Meeting of the Members. Attached as Exhibit A to the Minutes is a List of Members Entitled to Notice of Annual Meeting and Members Present in Person or by Proxy.
E4	<b>Management Agreement</b>	You will need to review this and we can customize as appropriate Section 7.1 and Schedule 1 will need to be completed to address compensation.

**F. Association Operation Forms.** See pages 194 *et seq.*

<b>Tab</b>	<b>Document Title</b>	<b>Comments</b>
F1	<b>Resale Certificate</b>	Enclosed is a form of Resale Certificate required to be delivered by the Association to a buyer upon request pursuant to TUCA §82.157.
F2	<b>Condominium Lien Affidavit</b>	Enclosed is a form for use by the Association in the event of non-payment of assessments.

**A2. Condominium Declaration – Checklist of Provision and Questions.****MEMORANDUM**

TO: [Client]  
 FROM: [Lawyer]  
 DATE: March 10, 2005  
 RE: Condominium Declaration – Checklist of Provisions and Questions

The following is a Checklist of provisions and questions as to the Condominium Declaration at **Tab B1**. See Pages 23 *et seq.*

**Declaration**

<b>§</b>	<b>Section Heading</b>	<b>Comments</b>
1.13, 1.26 & 1.43	<b>Unit and Common Elements</b>	Article I, §§1.13 "General Common Elements," 1.26 "Limited Common Elements" and 1.43 "Unit." Please review these definitions and advise if any additional items need to be include within their definition.
1.28	<b>Plat, Map or Plan</b>	TUCA §§ 82.003(a)(18) and (19) and 82.059 set out the statutory requirements for the plat. It must be prepared and certified by a surveyor or engineer.
1.17	<b>Construction Period</b>	§1.17 defines the "Declarant Control Period" as being the period ending on the earlier to occur of the sale of __ Units or 3 years following the sale of the first Unit. See §5.12 <i>Payment of Assessments by Declarant</i> for a limitation on the assessments owing by the Developer during the Declarant Control Period and TUCA §82.112.
2.9 4.2(d) 5.12	<b>Special Declarant Rights</b>	<p><b>(1) <u>Reservation of Special Declarant Rights.</u></b> §2.11 reserves certain rights to the Developer.</p> <p><b>(2) <u>Declarant Control Period.</u></b> As permitted by TUCA, § 4.2(d) provides that the Developer may appoint all Directors until __ Units have been conveyed and may thereafter appoint 2/3rds of the Directors until __ of the Units have been conveyed.</p> <p><b>(3) <u>Payment of Assessment by Declarant.</u></b> As permitted by §82.112 of TUCA, §5.12 limits the Declarant's obligation for assessments during the Declarant Control Period.</p>

3.4	<b>Nonresidential Purposes</b>	§3.4 restricts use of the Units to nonresidential purposes.
3.7	<b>Owner Maintenance</b>	§3.7 defines the items to be maintained by the Owners.
4.2	<b>Board of Directors</b>	The Board is to be composed of 1 representative of each Unit. The term is 1 year.
4.4 2.4	<b>Administration and Enforcement of Condominium Documents</b>	§4.4 provides for various means to enforce the Condominium Documents, including §§4.4(f) <i>Fines</i> , 4.4(g) <i>Remedies against tenants</i> , 2.4(r) <i>Venue and Lawsuit Authority</i> , 2.4(t) <i>Association Entry</i> , and 2.4(v) <i>Assignment of Revenues</i> .
4.5(b)	<b>Votes</b>	§4.5(b) provides that each Unit has 1 vote.
4.6	<b>Insurance</b>	§4.6 provides the types of insurance to be maintained by the Association.
5.3	<b>Assessments</b>	§5.3 provides that assessments are to be determined by the Board.

### Exhibits to Condominium Declaration

The Condominium Declaration has attached to it the following Exhibits.

Ex.	Document Title	Comments
A	<b>Legal Description</b> (Tab B2, p. 67)	You will need to provide me with the legal description of the Property.
B	<b>Plat or Plan of the Property</b> (Tab B3, p. 67)	A plat or plan of the Property subject to the Declaration meeting the requirements of TUCA (See §§ 82.058, 82.003(a)(18) and (19), 82.052, and 82.055(4) and (12). A reduced version is to be attached to the Declaration and a separate larger version is to be separately recorded with the County Clerk in the Condominium Plat Records.
C	<b>Percentage of Ownership of Common Elements</b> (Tab B3, p. 71)	This Exhibit allocates a fraction to each unit equal to 1 divided by the number of total Units in the Project of the Common Elements and 1 vote to each Unit.

D	<b>Articles of Incorporation of the Association</b> (Tab B5, p. 72)	The separate original of the Articles will be filed of record with the Secretary of State.
E	<b>Bylaws of the Association</b> (Tab B6, p. 74)	The Bylaws are to be adopted by the initial Board at its Organizational Meeting.
F	<b>Management Certificate</b> (Tab B7, p. 81)	A separate original of the Management Certificate is to be executed by the Management Company and filed for record.
G	<b>Consent of Declarant's Mortgagee</b> (Tab B8, p. 83)	You will need to provide several completed executed originals of the Declaration to the Mortgagee. The Mortgagee will need to execute the <i>Consent of Declarant's Mortgagee</i> on the original of the Declaration that is to be filed of record.
H	<b>Rules and Regulations</b> (Tab B9, p. 84)	These are a basic set of rules and regulations or policies to be adopted by the Board of Directors as governing the conduct of owners of office condominiums in the project.
I	<b>Architectural Guidelines</b> (Tab B10, p. 91)	The Architectural Guidelines are to be adopted by the initial Board at its Organizational Meeting.
J	<b>Boundary Designation</b> (Tab B11, p. 101)	This form is to be completed and filed in connection with each unit as its building's perimeter is finalized.

**A3. Condominium Sales Contract – Checklist of Provisions and Questions.****MEMORANDUM**

TO: [Client]  
 FROM: [Lawyer]  
 DATE: March 10, 2005  
 RE: Condominium Sales Contract – Checklist of Provisions and Questions

The following is a Checklist of provisions and questions as to the Sales Contract and the Attachments at **Tab C1** (p. 103 *et seq.*). The Project's construction lender may wish for the Seller to pledge these contracts as collateral for its development loan. I can provide you with a collateral assignment form if desired by the interim lender.

**Sales Contract**

<b>¶</b>	<b>Paragraph Heading</b>	<b>Comments</b>
2A	<b>Property</b>	The Sales Contract calls for there to be attached as Addenda a Site Plan depicting the layout of the Building on the Property and a Floor Plan of the Unit. Attached to the Sales Contract are cover sheets for these Addenda containing various disclaimers. The Sales Contract contemplates an assignment without recourse of any manufacturer's and contractor's warranties.
2B	<b>Condominium Documents</b>	The Sales Contract provides alternative boxes as to whether Buyer has received a copy of the Condominium Documents prior to executing the Sales Contract. The Texas Uniform Condominium Act permits parties to a nonresidential condominium sales contract to waive the Purchaser Protections set out in Subchapter D of TUCA. These protections include a requirement that the Buyer be provided with a copy of the Condominium Documents and a comprehensive Condominium Information Statement prepared in accordance with TUCA. I have added a provision to Paragraph 2C whereby Buyer waives the provisions of Subchapter D of TUCA. Despite having done so, I have drafted the Sales Contract to provide by contract some of the protections of Subchapter D of TUCA, such as providing the Buyer before or after execution of the Contract with the Condominium Documents and a Commercial Condominium Information Statement. This approach will avoid the rigors of preparing a Condominium Information Statement meeting and continuing to comply with the rigors of Subchapter D of TUCA, but at the same time affording the Buyer with these documents and disclosure. This approach also allows for disclosure as to

		important aspects of the Project. Buyer should sign the separate Buyer's Receipt for the Condominium Documents ( <b>Tab C3</b> ) signifying that it received and reviewed the Condominium Documents. I have provide a form of Receipt in the Sales Package.
2C	<b>Commercial Condominium Information Statement</b>	The Sales Contract states that the Buyer has received a copy of the Commercial Condominium Information Statement prior to executing the Sales Contract. The Buyer should sign the separate Buyer's Receipt ( <b>Tab C3</b> ) for the CCIS signifying that it received and reviewed the CCIS prior to executing the Sales Contract. As noted above, the Sales Contract provides for waiver by Buyer of application of the provisions of Subchapter D of TUCA to the transaction. I have provided in the Sales Contract this waiver. However, I have included in the Sales Contract an alternative form of disclosure document (the CCIS) so that this type of information is provided to a Buyer in connection with its decision to buy a Unit.
3 & 4	<b>Sales Price</b>	The Sales Price for each Unit is a combination of the negotiated price for the Unit's share of the land and infrastructure and the Construction Price for the building shell and/or finish out if the Unit is being sold on a turnkey basis.
5	<b>Earnest Money</b>	The Sales Contract provides for an initial amount of Earnest Money payable at contract execution and an optional additional amount to be deposited "within ___ days" after contract execution. The Title Company selected by the Seller acts as the escrow agent. Your lender may wish for the deposit to be held at its bank.
6	<b>Title Policy</b>	<p>The Sales Contract contains alternative choices as to who pays for the Title Insurance. The Sales Contract differs from the TREC approach as the Buyer is not afforded the opportunity to review a title commitment and to object to matters reflected therein. The Buyer is protected by the Title Policy to be issued at closing. The Title Company probably will proceed as it normally does in providing the Buyer with a title commitment, but the step of affording the Buyer the right to terminate the Sales Contract based on its review of the title commitment and its exceptions is eliminated. The standard list of Title Exceptions is revised to include the following exceptions:</p> <p>(a) <b><u>Matters in Progress.</u></b> ¶ 6A(5) (also see ¶ 11A(2)) is an exception for any easements reserved or granted by Seller in connection with the development of the Condominium or in developing adjacent property, and for</p>

		<p>management agreements, service contracts and other agreements not of record executed by the Seller prior to the formation of the Association or by the Association after its formation.</p> <p>(b) <b>Construction.</b> ¶ 6A(11) is an exception for any pre-closing work that may be requested or undertaken by Buyer.</p>
7A	<b>Inspection</b>	¶ 7A provides the Buyer the right to inspect the Unit prior to closing. But, Buyer is not afforded an out based on its post contract inspection of the Unit. Buyer is to make an appointment with Seller at least 2 days in advance.
7B	<b>“As Is” Limited Warranty</b>	¶ 7B provides that the sale is "as is" except for the limited warranties to be provided by the Seller as set out in the Limited Warranty and Service Procedures Agreement to be provided by Seller in connection with each sale. Seller also assigns its interest in any manufacturer warranties. If you are not providing a post-closing warranty, then this provision will need to be revised.
8	<b>Broker's Fees</b>	¶ 8 is the standard TREC provision requiring any commission agreements to be in writing.
9	<b>Closing</b>	This provision permits the Title Company to be designated by the Seller. This form has alternate provisions addressing determination of the Closing Date, depending on whether or not the sale contract is executed before or after construction of improvements of the Project. The Contract will need to be revised prior to its use.
11	<b>Special Provisions</b>	<p>(a) <b>Reserved Rights.</b> ¶ 11A(1) provides that Seller may impose additional covenants, agreements and easements on the Project after execution of the Sales Contract but prior to the closing of the first sale, so long as they do not substantially or materially affect the use of the property as a nonresidential condominium.</p> <p>(b) <b>Seller's Rights.</b> ¶ 11A(2) provides that the Seller reserves certain rights to assist it in marketing the unsold Units.</p> <p>(c) <b>Financial Information.</b> ¶ 11B requires the Buyer to submit financial information to Seller, if requested by Seller. Seller is also permitted to make credit inquiries.</p>

12 & 13	<b>Closing</b>	<p>(a) <b>Association Reserve.</b> ¶ 12B(2) provides for Buyer to post with the Association a reserve (e.g. 4 months' reserve).</p> <p>(b) <b>Utilities.</b> ¶ 12B(5) provides for Buyer to make all utility continuance arrangements.</p> <p>(3) <b>Insurance.</b> ¶ 13 provides for tax proration and for Buyer to reimburse Seller for any prepaid insurance paid by Seller on the Association's master policy.</p>
14	<b>Casualty Loss</b>	¶ 14 provides that in the event that the Project is damaged or destroyed prior to closing (fire, <i>etc.</i> ), Seller may elect to terminate the Sales Contract or may elect to continue the contract for up to 90 days if the damage may be repaired within 90 days.
16	<b>Dispute Resolution</b>	¶ 16 provides for mediation and binding arbitration of disputes.
25A	<b>No Oral Agreements</b>	¶ 25A provides that there are no oral agreements or understandings and provides specific disclaimers (e.g., investment potential or resale potential, tax advice, and square footage).
25E	<b>Performance</b>	¶ 25E provides that time is of the essence.
26	<b>Releases, Waivers, and Indemnities</b>	¶ 26 contains various releases, waivers and indemnities not contained in the standard TREC form, including waiver by the Buyer of its rights to seek damages under the DTPA (Buyer can still seek recourse for misrepresentation), waiver by both parties of jury trial (dispute resolution is to be by arbitration not lawsuits), waiver of rights to punitive damages by either party, and a release and indemnity by the Buyer as to claims arising out of injuries due to Buyer or Buyer's invitees being on site prior to closing. The nature of these provisions requires that they be in conspicuous type and be worded in the manner they are worded.

### Attachments to Sales Contract

The Sales Contract has attached to it the following Addenda (the CCIS can be a separate booklet due to its length).

---

Tab	Document Title	Comments
C2 C3	<b>CCIS Buyer's Receipt</b>	Three separate originals of the Buyer's Receipt for these documents need to be signed by Seller and Buyer prior to the time of execution of the Sales Contract.
C4-5	<b>Addendum</b>	This Addendum sets out Buyer's obligation to complete the Finish-Out in accordance with Specifications to be attached to the Addendum or later to be agreed to by the parties.
C6	<b>TREC Form Information About Brokerage Services</b>	If a real estate broker is involved, three separate originals of these documents need to be signed by Seller and Buyer at the time of execution of the Sales Contract.

**B. Condominium Documents Package.**

**B1. Condominium Declaration.**

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
\_\_\_\_\_ OFFICE PARK, A CONDOMINIUM

\_\_\_\_\_ St.  
\_\_\_\_\_, Texas

Prepared By:  
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### Schedules

- 1.0 Definitions
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### Exhibits

- A. Legal Description of Property
- B. Map of the Property Subject to the Declaration
- C. Percentage of Ownership of Common Elements

- D. Articles of Incorporation of Condominium Owners' Association
- E. Bylaws of Condominium Owners' Association
- F. Management Certificate
- G. Consent of Declarant's Mortgagee
- H. Rules and Regulations
- I. Architectural Guidelines
- J. Boundary Designation

**DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
\_\_\_\_\_ OFFICE PARK,  
A CONDOMINIUM**

**RECITALS**

This is a Declaration of Covenants, Conditions, and Restrictions for \_\_\_\_\_ Office Park, a Condominium. The property initially subject to this Declaration is described in Exhibit A. The property initially consists of \_\_\_\_\_ non-residential condominium units, and no more, and various common area improvements, all of which are to be built. The undersigned Declarant is the owner of the property at the time of recordation of this Declaration. The property is locally known as the “\_\_\_\_\_ **Office Park.**”

The Declaration establishes a plan for individual ownership in fee simple of each condominium unit and an undivided interest in the common area and common facilities. Each owner shall have exclusive ownership of, possessory interest in, and responsibility for the area or space contained within such owner’s condominium unit, subject to the covenants, conditions, and restrictions contained in the Declaration.

The Declaration and the property subject to it shall be governed by the Texas Uniform Condominium Act, Chapter 82, Texas Property Code (“**TUCA**”). The terms, covenants, conditions, easements, restrictions, uses, limitations, and obligations in this Declaration shall be deemed to run with the land and shall be binding upon any person acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors administrators, devisees, and assigns.

**ARTICLE I. Definitions and Terms.**

Definitions of terms are contained in Schedule 1.0 hereto.

**ARTICLE II. Condominium Unit Designations and Descriptions.**

**2.1 Recordation of Plat.** A reduced copy of the Map is in Exhibit B. The large original Map is contained in the Association’s records and is recorded in the Condominium Plat Records of \_\_\_\_\_ County, Texas. The Map contains:

(a) **Land Description.** The Map contains the legal description of the surface of the land described in Exhibit A.

(b) **The Improvement Locations.** The Map contains the linear measurements and location, with reference to the exterior boundaries of said land, of the Buildings and all other improvements constructed, or to be constructed, on said land. The Map contains the footprint of the Units and Buildings constructed, or to be constructed by the Declarant, showing the exterior boundaries and number of the Units, and any other data necessary for the identification of them, which information is depicted by plats of each floor of each Building showing the respective letters of the Buildings, the numbers of the floors and the numbers of the Units therein.

(c) **Limited Common Elements.** The Map contains the location of Limited Common Elements, including the Building Sites, and the identification of the Units to which the same relate. Declarant or the Board may amend the Map, from time to time, to ensure that the same conform with the actual location of any of the improvements and to establish, vacate, and relocate easements, access road easements, and on-site parking areas.

**2.2 Designation of Units.** The Project consists of \_\_\_\_\_ separately designated Units to be built. Each Unit is identified by a number on the Map. The remaining portion of the Project, referred to as

the Common Elements, shall be owned in common by the Owners. The Owners of each Unit shall own an undivided interest in said Common Elements, the percentage or fraction thereof attributable to each Unit being as shown on **Exhibit C**.

### **2.3 Limited Common Elements.**

(a) **Areas of Exclusive Use.** Portions of the Common Elements are set aside and reserved for the exclusive use of the individual Owners, such areas being Limited Common Elements, and include the areas described in **Section 1.26** of **Schedule 1.0** attached hereto. Limited Common Elements are allocated and assigned by the Declarant to the respective Units, as indicated on the Map. Limited Common Elements for a Unit are (1) the enclosed courtyards, sidewalks, and driveways exclusively serving the Unit and (2) the air conditioning pad(s) exclusively serving the Unit. Such Limited Common Elements shall be used in connection with the particular Unit, to the exclusion of the use thereof by the other Owners, except by invitation.

(b) **Reallocation of General Common Elements to Limited Common Elements.** Common Elements will be allocated in Limited Common Elements to one or more Units from time to time, pursuant to the following provisions:

(1) **Delineation at Time of Construction.** At the time of submission of preliminary plans for a Building to the Architectural Control Committee, Owner shall submit a request for any requested reallocation of General Common Elements to Limited Common Elements for the Unit Owner's use as driveways, walkways, exclusive Unit Owner use, and the Building Envelope for the Unit, which shall be shown on a detailed drawing of the Unit and the area surrounding the Unit. Generally the Building Envelope will be an area located 10' outside of the Building Site (as it may be expanded pursuant to **Section 2.3(b)(2)** below), but such Building Envelope may be larger or smaller at the discretion of the Architectural Control Committee. Upon approval of the general location Limited Common Elements, including the Building Envelope, the Owner shall deliver to the Architectural Control Committee an amendment to this Declaration in form similar to the Boundary Designation attached as **Exhibit J** hereto, containing a revised Plat and Plan for the Unit with legally accurate description of the General Common Elements intended to be reallocated as Limited Common Elements for such Unit and for the Building Envelope. The Architectural Control Committee may condition its approval of any such amendment of the Unit Owner agreeing that any driveway or other facility may be jointly used by one or more Units. Upon approval of the amendment the Board shall cause to be executed and recorded a Boundary Designation at the cost of the Owner of the Unit proposing the amendment, and the areas and improvements located within the areas so designated as Limited Common Elements (other than the Unit itself) shall thereafter be deemed to be Limited Common Elements appurtenant to such Unit. The Limited Common Elements so allocated to the Unit shall be landscaped and maintained by the Owner of the applicable Unit in accordance with landscape plans approved by the Architectural Control Committee. Likewise, the improvements within the Limited Common Elements will be maintained in good repair and appearance in accordance with this Declaration, the Rules and Regulations and the Architectural Guidelines by the Owner of the Unit to which such areas are declared to be a Limited Common Element.

(2) **Expansion of Building Site.** As permitted in **Section 3.8**, the Architectural Guidelines provide for the possibility of the expansion of a Building Site and a reallocation of General Common Elements to Limited Common Elements of a Unit. Upon approval by the Architectural Control Committee (and, if required under the Architectural Guidelines, any adjacent Owners), the Owner requesting an extension of the Building Site shall submit to the Architectural Control Committee for its approval an amendment to this Declaration, containing a revised Plat and Plan with a legally accurate description of the General Common Elements intended to be reallocated as Limited Common Elements for the Building Site expansion. Upon approval of the amendment and revised Plat and Plan by the Architectural Control Committee, the Board shall cause to be executed and recorded the amendment, at the cost of the Owner of the Unit requesting the expansion, and the expansion of the Building Site shall thereafter be deemed to a Limited Common Element appurtenant to such Unit.

**2.4 Regulation of Common Areas.** Rules governing the use of such areas by Owners and by their guests and invitees shall be promulgated by the Declarant, or by the Board of Directors of the Association after the same has been elected. All Owners shall be furnished with a copy thereof at the direction of the Board. Each Owner shall be required to comply strictly with said rules and regulations and shall be responsible to the Association for compliance therewith by the members of their respective families, relatives, guests, invitees, tenants, and contractors, both minor and adult.

**2.5 Inseparable Units.** Each Unit and its corresponding pro-rata interest in and to the Common Elements appurtenant thereto shall be inseparable and may not be conveyed, leased, or encumbered separately, and shall at all times remain indivisible. Except for easements to utility companies, any attempted conveyance of an interest in the Common Elements shall be void unless it also conveys the Unit to which that interest is attached.

**2.6 Descriptions.** Every deed, lease, mortgage, trust deed, or other instrument may legally describe a Unit by its identifying Unit number, as shown on the Map, followed by the words "a condominium" and a reference to this recorded Declaration. Every such description shall be deemed good and sufficient for all purposes to convey, transfer, encumber, or otherwise affect the undivided interest in the Common Elements appurtenant to such Unit.

**2.7 Encroachments.** If any portion of the Common Elements encroaches upon a Unit or Units, a valid permanent easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. If any portion or portions of a Unit or Units encroach upon the Common Elements, a valid permanent easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist.

**2.8 Taxes.** The Association shall give written notice to the \_\_\_\_\_ County Appraisal District of the establishment of the Condominium Regime with respect to the Project, as is provided by law, so that each Unit and its percentage or fraction of undivided interest in the Common Elements shall be deemed a separate parcel and subject to separate assessment and taxation.

**2.9 Reservation of Special Declarant Rights.** The Declarant reserves the special rights set out in the **Schedule 2.9** Special Declarant Rights attached hereto, notwithstanding anything in the Declaration to the contrary ("**Special Declarant Rights**").

### **ARTICLE III. Rights and Obligations of Ownership.**

**3.1 Ownership.** A Unit will be a fee simple estate and may be held and owned by any person, firm, corporation, or other entity singularly, as joint tenants, as tenants in common, or in any real property tenancy relationship recognized under the laws of the State of Texas. Each Unit Owner is allocated an undivided interest in the Common Elements in accordance with **Exhibit C** and shall have a right to use easements and any Limited Common Elements in accordance with the Declaration. Each Owner shall have an unrestricted right of ingress and egress to the Owner's Unit, subject to reasonable routes of such vehicular and pedestrian access.

**3.2 No Partition.** The Common Elements (both General and Limited) shall be owned in common by all of the Owners of the Units and shall remain undivided, and no Owner shall bring any action for partition or division of the Common Elements other than that as specifically provided in **Section**. Nothing in this Declaration shall be construed as limiting the right of partition of a Unit between the Owners thereof, but such partition shall not affect any other Unit.

**3.3 Rights of Ownership.** Each Owner (including unsold Units owned by Declarant) shall be entitled to exclusive ownership and possession of the Unit owned by such Owner. Each Owner may use the Common Elements in accordance with the purposes for which they are intended and without hindering or encroaching upon the lawful rights of the other Owners, subject to the rules and regulations

adopted from time to time by the Board for the purpose of facilitating such common use and enjoyment by all Owners.

**3.4 Use and Occupancy Restrictions.** Subject to restrictions in **Schedule 3.4:**

(a) **Non-Residential Purposes.** Subject to the other provisions of this Declaration, no part of the Project may be used for residential purposes as defined in TUCA.

(b) **Common Elements.** The Common Elements are intended for use for the purposes of affording vehicular and pedestrian movement within the Project; providing access to the Units; providing for the beautification of the Project; and providing privacy for the occupants thereof through landscaping and such other means as shall be deemed appropriate. No part of the Common Elements shall be obstructed or damaged so as to interfere with its intended use or for its maintenance and operations. No part of the Common Elements shall be used for general storage purposes, nor shall anything be done on the Common Elements in any manner which shall increase the rate for hazard and liability insurance covering said area and improvements situated thereon.

**3.5 Mechanic's and Materialman's Liens.** Subsequent to the completion of the improvements described on the Map, no labor performed or materials furnished and incorporated in a Unit, notwithstanding the consent or request of the Owners, its agent, contractor or subcontractor, shall be the basis for filing of a lien against the interest in the Common Elements owned by the 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 Unit of the other Owners or against their interest in the Common Elements for construction performed or for labor, materials, services, or other products incorporated in such Owner's Unit.

**3.6 Right of Entry.** In addition to the rights of access granted in §82.066 and §82.107 (d) of TUCA, an easement is hereby created over, through and across the Regime in favor of the Association for the purpose of providing access to each Unit and to abate any nuisance or any dangerous or unauthorized activity or condition being conducted or maintained within the Regime, to remedy any prohibited or unlawful activity which affects the welfare or health of other Owners, to enforce the provisions of this Declaration, the Bylaws or the Rules and Regulations. Declarant and the Association reserve the right, without the necessity or the joinder of any Owner or other person to grant, dedicate, reserve or otherwise create, at any time or from time to time, easements for utility purposes (including without limitation, gas, water, electricity, telephone, data transmission, HVAC) in favor of any Owner or other person. The Association also shall have the right to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any of the Common Elements, or at any time for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit or Units.

**3.7 Owner Maintenance.** An Owner shall maintain and keep in repair the Building and the improvements, grounds, and landscaping in the Limited Common Elements designated for such Unit. All fixtures and equipment, including, without limitation, the heating and air conditioning system, and water heater, installed for the Unit, 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 security system, the air conditioning compressor, fans, ductwork, heating unit and cooling coils, utilized in and for its Unit, as well as other fixtures appurtenant to such Unit which are situated within or installed into or on the Limited Common Element such as an air conditioning compressor, together with all pipes, wiring, ducts, and other equipment appurtenant thereto.

An Owner shall be obligated to repair and replace promptly any broken or cracked windows, doors, or glass forming a boundary of such Unit, subject to the Association's right to control the exterior finish and color of the doors. Notwithstanding anything to the contrary contained in this Section, an Owner when exercising its right and responsibility of repair, maintenance, replacement, or remodeling

shall never alter in any manner whatsoever, the exterior appearance of its Condominium Unit without obtaining the prior approval of the Architectural Control Committee.

**3.8 Approval for Construction, Alteration, or Modification.** No Owner shall construct a condominium Unit without the prior written approval of the plans therefor by the Architectural Control Committee (or if the approval is sought during the Declarant Control Period and Declarant has elected to act as the Architectural Control Committee, the Declarant in accordance with **Schedule 2.9**). No Owner shall construct, alter, modify, add to, or otherwise perform any work whatever in a Unit or upon any of the Common Elements, Limited or General, without the prior written approval of the plans therefor by the Architectural Control Committee. Owners shall follow and comply with the Architectural Guidelines as adopted by the Architectural Control Committee or Declarant. The initial Architectural Guidelines are attached hereto as **Exhibit I**.

Any proposed construction, alteration, or modification shall be in harmony with the external design and location of the surrounding structures and topography, and shall not be considered until submission to the Architectural Control Committee of complete plans and specifications showing the nature, kind, shape, size, materials, color, location, and any other information requested by the Architectural Control Committee for all proposed work. The Architectural Control Committee shall have the obligation to answer in writing within 30 days after receipt of notice of the proposed construction, alteration, or modification. Failure to so answer in writing within the stipulated time shall be deemed approval of the proposed construction, alteration, or modification.

During the Declarant Control Period, Declarant or the Architectural Control Committee, at Declarant's election, shall have the sole right to approve or reject any plans and specifications submitted by a Unit Owner for approval.

An Owner shall do no act nor any work that will impair the structural soundness or integrity of the Units, Buildings, or Common Elements or impair any easement or appurtenance.

**3.9 Liability for Negligent Acts.** If the need for maintenance or repair to any portion of the Project is caused through the willful or negligent act of an Owner, its tenants or invitees and is not covered or paid for by insurance either on such Owner's Unit or the Common Elements, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Unit is subject, pursuant to **Article IV**.

**3.10 Subject to Declaration and Bylaws.** The Owner of each Unit (including unsold Units owned by Declarant) and the Association shall comply strictly with the provisions of this Declaration, the Bylaws of the Association, and the decisions and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover damages or for injunctive relief, or both, maintainable by the Association on behalf of the Owners or, in proper cause, by an aggrieved Owner against another Owner or against the Association, including the right to judicially contest the decisions of the Board or the Association.

**3.11 INDEMNITY.** *Unit Owners and the Association indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director, officer, committee member, employee, servant or agent of the Association, the Architectural Control Committee, other Committee appointed by the Board, or the Board, against all claims and liabilities, including such person's negligence, in whole or in part, or strict liability and expenses including attorney's fees reasonably incurred by such person in connection with such action, suit or proceeding, if it is found and determined by the Board or a court that such person (a) acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interests of the Association, or (b) with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that*

*such person did not act in good faith or in a manner which such person reasonably believed to be in, or not opposed to, the best interests of the Association, or, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful. The Board may purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member, employee, servant or agent of the Association, the Architectural Control Committee, or the Board, against any liability asserted against such person or incurred by such person in any such capacity, or arising out of such person's status as such.*

#### **ARTICLE IV. Management and Administration.**

**4.1 Authority to Manage; Association Duty to Maintain.** Except as otherwise provided in the Declaration, the affairs of the Project shall be managed and administered by the Association. The Association shall have all rights, powers and duties of, and shall constitute and be, the "**Association**," as that term is used in TUCA. The Association shall have the right, power, and obligation to provide for the maintenance, repair, replacement, and administration of the Project, including Common Elements, to the degree and in the manner as *provided* in this Declaration, the Bylaws, and the Rules and Regulations of the Association. However, the Association shall not be responsible for owner maintenance obligations outlined in **Section 3.7**. The business and affairs of the Association shall be managed by the Board, and the Association may enter into a management agreement upon the terms and conditions approved by the Board.

#### **4.2 Board of Directors.**

**(a) Composition of Board.** The Board shall consist of at least 3 persons. The election of Directors and determination of the number of directors shall be conducted at the annual meeting of members except as provided in **Section 4.2(d)**. Each member shall be entitled to cast his total number of votes, as calculated in the manner provided in **Section 4.5(b)** of this Declaration. No member shall cast for any one candidate more than the total number of votes that member has. The candidates receiving the highest number of votes up to the number of Vacancies shall be deemed elected. All votes shall be cast by written ballot. Members shall not vote cumulatively for the election of Directors.

**(b) Voting by Board Members.** The presence of a majority of Directors at a meeting of Directors shall constitute a quorum for the transaction of business. The action of a majority of the Directors present at a meeting at which there is a quorum shall be the act of the Board. A meeting of the Board shall be held each year promptly after the annual meeting of the members, at the place of such annual meeting of members, for the election of officers and the consideration of any other business that may properly be brought before such meeting. Regular meetings of the Board shall be held at such times and places as the Board shall determine.

**(c) Length of Term.** The members of the Board shall serve for a term of one year commencing at the time of their election, or until their death, resignation, removal, or until they are no longer members of the Association, whichever is earlier. Except for Directors appointed by Declarant pursuant to the rights of Declarant during the Declarant Control Period, any member of the Board may be removed from membership on the Board, with or without cause, by a Majority of Unit Owners at a quorum meeting of the Owners called to consider such action or at an annual meeting of the Members.

**(d) Declarant Control Period.** Notwithstanding **Section 4.2(a) and (c)** preceding and **Section 4.5**, the Declarant shall have the sole and absolute right to appoint all the members of the Board until that date, which is 120 days after the conveyance of 75% of the Units have been conveyed to persons other than Declarant and, further, thereafter shall have the continuing sole and absolute right to appoint 2/3rds of the members of the Board until that date which is the earlier to occur of 120 days after the conveyance of 50% of such Units or 3 years from the conveyance of the first Unit by Declarant. The foregoing right of the Declarant shall not be affected by any transfer of Special Declarant Rights created

or reserved herein. After the expiration of the Declarant's Control Period, the Unit Owners shall elect the Board, which members, within 31 days thereafter, shall elect the officers of the Association.

**4.3 Articles of Incorporation and Bylaws.** The administration of this Condominium Project shall be governed by this Declaration, the Articles of Incorporation of the Association, and the Bylaws of the Association, and the resolutions of and rules and regulations adopted by the Board. The initial Articles of Incorporation of the Association and initial Bylaws of the Association are contained in **Exhibit D** and **Exhibit E**, respectively. Each of the foregoing documents may be amended or changed only in accordance with the amendment procedures contained in the respective documents. An Owner of a Unit, upon becoming an Owner, shall be a member of the Association and shall remain a member for the period of its ownership.

**4.4 Administration and Enforcement of Declaration, Bylaws and Rules.** The Association or any Owner may utilize any of the rights and remedies set forth below, for the enforcement of all restrictions, conditions, covenants, reservations, liens, bylaws, rules, charges, and liabilities imposed by the provisions of this Declaration, the Articles of Incorporation, the Bylaws, or Rules. Failure of the Association or any Owner to enforce shall not be deemed a waiver of the right to do so thereafter.

(a) **Rules and Regulations.** The Board may adopt Rules and Regulations (which may be referred to as "**Community Policies**") for governing the use and maintenance of the property and obtaining compliance by Owners and their contractors, invitees and tenants with the Declaration and with Association Bylaws, and Rules and Regulations, provided that same are not prohibited by this Declaration or Texas law. The Rules and Regulations may address any subject relating to uses of Units, Common Areas, construction, repairs, parking, unsightly objects, relationships between Owners, invitees, tenants and/or the Association, enforcement, and other subjects reasonably affecting the Project. The rules must be consistent with and not in conflict with this Declaration. The initial Rules and Regulations are attached as **Exhibit H**.

(b) **Late Charges.** The Board may adopt late charges, from time to time, for late payment by the Owners of monies owed to the Association.

(c) **Returned Check Charges.** The Board may assess returned check charges against an Owner, as set by the Board from time to time, for each returned check, plus late charges, until acceptable payment is received.

(d) **Nonassessment Items First.** All monies received from an Owner may be applied first to nonassessment obligations of the Owner, such as fines, late charges, returned check charges, user fees, damages, etc., regardless of notations on checks and transmittal letters.

(e) **Suspension of Voting Rights and Use Rights.** The right to vote and the right to use Common Areas of any Owner who is more than 30 days delinquent on any sum owed to the Association may be suspended by the Board.

(f) **Fines.** The Board or the Association's manager may assess fines against an Owner for violations by the Owner or its invitees, contractors, or tenants of standards of conduct contained in the Declaration and the Association rules. Fines may also be assessed for violation of suspended common facility use rights. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owners. There must be notice of the alleged infraction and fine to the Owner no later than 45 days from the alleged infraction.

(g) **Remedies Against Tenants.** The Board shall have authority to evict tenants of Owners, after reasonable notice, for substantial or repeated violations of Association Rules. The Board shall have authority to enforce all Rules against the Owner's tenants, including collection of fines for violations of the Declaration or Bylaws by the tenants.

(h) **Tenants May Pay.** If an Owner is delinquent in the payment of any sum due the Association for a period of 30 days or more, any tenant of the Owner occupying the Unit may pay any sums due to the Association by the Owner in order to avoid suspension of Common Area use rights; and the Tenant may deduct same from rent due to the Owner. The Association may enter into indemnity agreements to protect tenants who pay money to the Association under authority of this Section.

(i) **Leasing.** The Board may adopt reasonable requirements for leasing a Unit. For example, the Board may require (1) that tenant names, work phones, home phones, and emergency contact persons be registered with the Board or the Association's management company, or (2) that a particular lease form be used, provided that members are free to modify or amend such lease form as they deem proper.

The management company managing the Association does not have authority to act for the Association in leasing or managing individual units. A Unit Owner may contract with the same management company which manages the Association to lease or manage a Unit owned by the Owner. Additionally, in such case the Unit Owner shall inform the tenant that in leasing or managing the Owner's Unit, the management company is not acting on behalf of the Association.

(j) **Interest.** All sums due the Association by Owners shall bear interest from due date at the highest lawful rate, compounded annually.

(k) **Fees for Special Services.** Fees chargeable to Owners for special services (such its furnishing resale certificates, eligibility certificates, copies of declarations, copies of information sent to mortgagees, copies of accounting records, etc.) shall be set by the Board from time to time.

(l) **Parking Limitations.** Vehicle owners shall reimburse the Association for any costs incurred in towing vehicles illegally parked provided notice required in applicable statutes is complied with in accordance with applicable statutes regarding illegal parking. Owners shall be responsible for parking violations of their tenants.

(m) **Publication of Delinquencies.** The Board may disclose and publish to Association members and mortgagees the financial condition of the Association, including a list of names and amounts of any delinquencies. The Board may notify mortgage lenders and tenants of delinquent monies owed by such Owners to the Association. Mortgage lenders may notify the Board of any delinquencies in the payment of mortgages.

(n) **Name and Addresses of New Owners.** An Owner may not sell or convey its Unit without all monies due and owing to the Association being paid in full; and if such Owner does sell, convey, or transfer its Unit without paying such monies, such selling Owner shall remain liable for all monies accruing to the Association thereafter on such Unit until such monies are paid in full. If an Owner sells or transfers Ownership of its Unit and fails to notify the Association of the sale, the selling Owner shall continue to be liable for the assessments accruing on the Unit after the sale or transfer until such time as the selling or transferring Owner notifies the Association in writing of the name and address of the new Owner. The new Owner shall also be liable from the date of such new Owner's acquisition of title. The selling or transferring Owner shall have a right of indemnity against the new Owner for recovery of any such sums paid by the selling or transferring Owner under this Section.

(o) **Change of Addresses.** Owners shall keep the Association timely informed of their current addresses and any change of addresses.

(p) **Name and Addresses of Tenants.** Owners shall notify the Association of current names and addresses of tenants of their respective Units.

(q) **Lien of the Association.** The Association shall have a lien on an Owner's Unit, including any rentals and insurance proceeds relating to the Unit, to secure payment of all monies owed by the Owner to the Association. The lien and foreclosure of the lien is addressed further in **Section**.

(r) **Venue and Lawsuit Authority.** All obligations of owners, tenants, and the Association arising under this Declaration, the Bylaws, or Rules shall be performed in \_\_\_\_\_ County, Texas, and venue for any lawsuits relating thereto shall be in \_\_\_\_\_ County, Texas. The Association shall have the right to file and defend a suit (including injunctions) and recover on behalf of the Owners in any cause of action based on damages to the Common Areas or based on liabilities of Owners and their invitees, contractors, tenants, or third parties accruing to Owners and/or the Association.

(s) **Attorney's Fees.** If delinquent accounts or other violations are turned over to the Association's attorney, the Owner shall be liable for all attorney's fees incurred by the Association in collections, filing liens, foreclosing liens, releasing liens, prosecuting lawsuits, and/or otherwise enforcing the Declaration, Bylaws, and Rules and Regulations.

(t) **Association Entry.** The Association shall have the right to enter an Owner's Unit for purposes of (1) inspection, (2) prevention of damage to the Common Elements, (3) enforcement of the Declaration, and (4) protection of property rights and quiet enjoyment of other Owners. The Association may require Owners to furnish the Association with entry keys to their Units for such purposes.

(u) **Notices to Multiple Owners, Tenants, and Mortgagees.** Notice to or from one of multiple Owners or tenants of a Unit shall be deemed as notice to or from all Owners or tenants of that Unit. If Owner is more than 60 days delinquent, the Association may send to the Owner's tenant a copy of any Association notices or communications with the Owner. The Association shall give such notice upon written request of a first lien mortgage or insurer.

(v) **Assignment of Revenues.** The Association shall have the power to convey a security interest in its revenues to a lender for purposes of obtaining loans necessary for the operation and/or improvement of the Project. No such security interest may be given without being approved by a vote of the Board.

(w) **Other Powers.** The Association shall have all other powers necessary and proper for the government and operation of the Association, including but not limited to those powers contained in the Texas Uniform Condominium Act. Such powers include the right to grant permits, licenses, and easements over Common Elements for utilities, roads, and other purposes for the proper operation of the Property.

#### **4.5 Membership and Voting.**

(a) **Membership.** Membership in the Association shall be appurtenant to the legal, fee title to the Condominium Units of the Project, and upon the transfer of title to a Condominium Unit of the Project, the membership appurtenant thereto shall be deemed to be transferred to the grantee of such Condominium Unit, upon recordation of the deed or other conveyance thereof in the Official Records of \_\_\_\_\_ County, Texas.

No membership in the Association may be conveyed or transferred in any other manner. When the title to a Condominium Unit in the Project is owned by more than one person, firm, corporation, or other entity, the membership in the corporation appurtenant to such Condominium Unit shall be owned in the same manner and to the same extent as the Condominium Unit, with all the Owners of such Condominium Unit being collectively the member in the Association.

**(b) Voting.** Ownership of each Condominium Unit in the Project by a member entitles the Owner or Owners (collectively), including Declarant, thereof to one vote per Condominium Unit.

If a Condominium Unit is owned by more than one person, the Owners who own fractional interests in such Condominium Unit aggregating more than 50% of the whole ownership thereof shall appoint one member who shall be entitled to exercise the votes pertaining to that Condominium Unit at any meeting of the members of the Association. Such designation shall be made in writing to the Board of Directors and shall be revocable at any time by actual notice to the Board of Directors or upon the death or judicially declared incompetence of any one of the Owners of such Condominium Unit.

If a Condominium Unit is owned by more than one member claiming to be entitled to exercise the voting right attributable to that Condominium Unit, then none of such members shall be allowed to exercise the voting rights attributable to such Condominium Unit unless such members concur upon the manner in which such votes will be cast. Failure of such Owners to concur shall result in that Condominium Unit being excluded in all respects in determining whether a requisite number of votes has been cast with respect to the matter upon which such vote is being taken. All members of the Association may be present at any meeting of the members and may act at such meetings in person or by proxy (whether physically present or not). If at any time the Association shall hold legal title to one or more Condominium Units, the voting rights to which the Owner thereof otherwise would be entitled shall be exercised as directed by majority vote of the Owners in attendance at the meeting, in person or by proxy.

**(c) Completed and Uncompleted Units.** The membership and voting rights referred to above shall accrue to an Owner of a Unit, regardless whether the Unit has been constructed or completed.

#### **4.6 Insurance.**

**(a) Property Insurance.** The Association shall obtain insurance for the Regime as required by § 82.111 of TUCA. The Association may also obtain and maintain at all times insurance on the Project of the type and kind required by this Declaration, including such other risks, of a similar or dissimilar nature, as are or shall customarily be covered with respect to condominium projects, 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 Owners and all mortgagees of Units (of whose lien interest the Association receives written notice) as the insureds. In addition, each policy shall identify the interest of Unit Owners and shall provide for a standard, noncontributory mortgage clause in favor of each First Lien Mortgagee. Further, the policy shall insure against loss or damage by fire, vandalism, malicious mischief and such other hazards as are covered under standard extended coverage provisions for the full insurable replacement cost of the Common Elements (excluding the Land), and against such other hazards and for such amounts as the Board may deem advisable. Flood insurance is not necessary because none of the Units or improvements are in a Special Flood Hazard Area or in the 100-year flood plain according to FEMA maps.

The Association may elect to obtain and maintain insurance covering the Units and Unit Owners. Each Owner irrevocably designates the Association, as attorney in fact, to administer and distribute property insurance proceeds applicable to the Owner's Unit, whether or not the property insurance is obtained or maintained by the Association or the Unit Owner. Such insurance policy shall also provide that it cannot be canceled or substantially modified by either the insured or the insurance company until after 10 days prior written notice to each First Lien Mortgagee. The Board of Directors shall, upon request of any First Lien Mortgagee, furnish a certified copy of each blanket policy and a separate certificate identifying the interest of the Mortgagee.

All policies of insurance shall provide that the insurance there under 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 act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

The Association, in order to preserve the integrity of the Project, shall be deemed to have an "insurable interest" in each Unit. Any insurance obtained by the Association or a Unit Owner shall contain appropriate provisions whereby the insurer waives its right of subrogation as to any claims against the Unit Owners, Association and their respective servants, agents or guests.

(b) **Liability Insurance.** The Association shall maintain a policy of commercial liability insurance and property damage insurance against claims for personal injury or death, or property damage suffered by the public, or any Owner or Occupant, family, agent, employee, or invitee of an Owner or Occupant, occurring in, or about the Limited or General Common Elements, which liability and property damage insurance shall afford protection to such limits and extent as the Association deems desirable. Such liability and property damage insurance policy shall also contain a cross-liability endorsement wherein the rights of a named insured under the policy or policies shall not prejudice his, her, or their action or actions against another named insured. Such insurance policy shall also provide that it cannot be canceled or substantially modified by either the insured or the insurance company until after 10 days prior written notice to each First Lien Mortgagee, to the extent allowed by law. This liability coverage does not insure the individual Unit Owner for liability or damages arising out of the use of its individual Unit as distinguished from the Common Elements of the Project.

(c) **Fidelity Bond.** The Association shall maintain or cause to be maintained an adequate blanket fidelity bond covering all persons handling or responsible for funds of or administered by the Association and that such bond shall be of a kind and in an amount the Association deems necessary for the protection of the Owners.

(d) **Condominium Unit Owners' Insurance.** The insurance obtained pursuant to **Section 4.6(a)** does not insure the personal property of Unit Owners, and unless the Association elects to insure Buildings does not insure Units, and each such Unit Owner may, at the Owner's option and expense, obtain such other insurance as the Owner deems necessary to insure such property. In addition, the insurance obtained pursuant to **Section 4.6(a)** might not insure the Units or any fixtures, installations or additions composing a part of the Buildings. An Owner of a Unit may obtain at its cost and expense such additional insurance as may be necessary to insure its Unit and the fixtures and improvements therein.

**4.7 Accounting; Audit; Inspection of Records.** The Board shall keep or cause to be kept books of detailed account of the receipts and expenditures affecting the Project and its administration and specifying the maintenance and repair expenses of the Common Elements and any other expenses incurred by or on behalf of the Project or the Association. Both the books of accounts and all vouchers supporting the entries made therein shall be available for examination at the office of the Association by all Owners at convenient hours on working days and the Board shall cause to be established and announced for general knowledge the days and hours within which such books shall be available for inspection. All such books and records shall be kept in accordance with generally accepted accounting principles, consistently applied, and shall be audited at least once a year by an outside auditor selected by the Board unless directed otherwise by the Association at the annual membership meeting. The fiscal year of the Association shall be the calendar year unless another period is established by resolution of the Board.

At all times, the Association shall have and maintain current copies of the declaration, articles of incorporation, bylaws, and Association rules, along with books, records, and financial statements,

available for inspection by Unit Owners or by holders, insurers, or guarantors of first mortgages that are secured by units in the project, during normal business hours.

The Association shall make an audited statement for the preceding fiscal year available to the holder, insurer, or guarantor of any first mortgage that is secured by a unit in the project on submission of a written request for it. The audited financial statement shall be available within 120 days of the Association's fiscal year-end.

**4.8 Architectural Control Committee.** The Board or a Committee appointed by the Board shall serve as the Architectural Control Committee for the Association, approving or disapproving construction, alteration, and modifications pursuant to **Section 3.8**. The Board can dissolve the committee it has appointed and substitute itself as the Architectural Control Committee. The Board can overrule, supersede or amend any decision made by the Architectural Control Committee it has appointed. The Architectural Control Committee may from time to time designate Advisory Members.

**(a) Action by Architectural Committee.** Items presented to the Architectural Control Committee shall be decided by a majority vote of its members. The Architectural Control Committee may hire consultants, including engineers and architects, and contractors to assist it in its duties hereunder. The Architectural Control Committee may establish reasonable fees and charges payable by Owners to the Association seeking approvals or variances from the Architectural Control Committee, including requiring reimbursement for all reasonable costs incurred in reviewing and processing such requests.

**(b) Term.** Each member of the Architectural Control Committee shall hold office until such time as he has resigned or has been removed or his successor has been appointed, or if the Board is acting as the Architectural Control Committee, for such term as the member is a Director. In the event of death or resignation of any member of the Architectural Control Committee, the remaining members shall have full authority to act until a replacement member has been designated.

**(c) Adoption of Rules and Guidelines.** The Architectural Control Committee may adopt such procedural and substantive rules and guidelines ("**Architectural Guidelines**"), not in conflict with this Declaration, as it may deem necessary or proper for the performance of its duties, including but not limited to, a building code, a fire code, and other similar codes as it may deem necessary and desirable. Each Owner shall comply with said rules and guidelines as the same may be amended from time to time. Absent a material change in circumstances or if an alteration or reconstruction of a previously approved improvement is being undertaken, once plans and specifications are approved by the Architectural Control Committee for a particular construction project, the Owner who has received such approval is not required to obtain a further approval for such construction if the rules and guidelines change subsequent to the original approval ("**grandfathered improvements**").

**(d) Review of Proposed Construction.** Whenever in this Declaration the approval of the Architectural Control Committee is required, it shall have the right to consider all of the plans and specifications for the improvement or proposal in question and all other facts which are relevant. Except as otherwise specifically provided herein, prior to the commencement of any construction of any improvement on the Property or any portion thereof, 3 complete sets of the final plans and specifications therefor shall be submitted to the Architectural Control Committee, and construction thereof may not commence unless and until the Architectural Control Committee has approved such plans and specifications in writing. The Architectural Control Committee shall consider and act upon any and all plans and specifications submitted for its approval pursuant to this Declaration, and perform such other duties assigned to it by this Declaration or as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with plans and specifications approved by the Architectural Control Committee. The Architectural Control Committee may review plans and specifications submitted for its review and such other information as it deems proper. Until receipt by the Architectural Control Committee of any information or documents deemed necessary by the Architectural Control Committee, it may postpone review of any plans and specifications

