

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

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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 1/11th 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.

Tab	Document Title	Comments
A1	Texas Uniform Condominium Act (" TUCA ")	This Memo is found at Tab A1 . 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 Tab 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 Tab C . 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	Declaration of Covenants, Conditions and Restrictions		<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 Tab C2).</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 Tab D4.</p>
B2	Exhibit A - Legal Description		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	Exhibit B - Plat and Plan of the Property	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 " plat " and § 82.059(b) lists the information to be included on the " plan ." § 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	Certificates	Enclosed are separate Surveyor's and Architect's Certificates.
B4	Exhibit C - Percentage of Ownership of Common Elements		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 th 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	Exhibit D - Articles of Incorporation of the Association	Enclosed is a copy of Articles of Incorporation for the Association which we have previously filed with the Secretary of State.
B6	Exhibit E - Bylaws	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 Tab E below.
B7	Exhibit F - Management Certificate	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	Exhibit G - Consent of Declarant's Mortgagee	<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 (Tab D4) 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 (Tabs C) and Note and Deed of Trust (Tabs D5 and D6) 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	Exhibit H - Rules and Regulations	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 Tab E below.

B10	Exhibit I - Architectural Guidelines	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	Exhibit J - Boundary Designation	This document is to be executed by the Board at the time that an Owner's obtains approval from the Architectural Control Committee (" ACC ") 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	Notice of Dedicatory Instrument	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	Sales Contract	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.	
	Attachments to Sales Contract	To be attached to the Sales Contract are the following documents (the " Attachments ").	
C2	CCIS	This document is a "commercial" condominium information statement (" CCIS ") patterned after the TREC form of condominium information statement provided in connection with residential projects.	
	C2.1	Site Plan	Item (3) to CCIS. This Attachment is to be prepared by you and depicts/describes the Unit being sold.
	C2.2	Allocations	Item 9 to CCIS. This attachment is the % allocation for unit owners and any special user fees.
	C2.3	Budget	Item (10)(f) to CCIS

	C2.4	Title Exceptions	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	Condo Doc.s	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 Tab B6, 7, 10 & 13 . You may wish to package this Attachment along with the attachments C2.1 - C2.4 into a separate booklet to be delivered along with the Sales Contract and receipted for by the Buyer.
	C2.6	Special Declarant Rights	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	Insurance	Item (8) to CCIS. This is a schedule of the types and coverages of insurance to be maintained by the Association.
	C2.8	Warranties	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	Buyer's Receipt		This is a part of the form at Tab C2 .
C4	"Check-the-Box" Addenda		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	Bldg. Site Only	Building Site Only Addendum. 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	Shell	Unfinished-Out Shell Space Addendum. 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.

	C4.3	Turnkey	Sale of a Finished-Out Unit. This Addendum is for use in cases where the Seller is selling a Unit on a turnkey basis (completed Building Shell with Finish-Out).	
C5	Addenda and Schedules to Accompany C4 Addenda		<p>For Use With:</p> <p>C5.1—Use C5.1.1-C5.1.5 with C4.1 and C4.2/3 where Buyer is undertaking construction of Shell or Shell and Finish-Out.</p> <p>C5.2—Use with C4.3 if Seller is constructing Unit on a Cost Plus Basis as opposed to a Fixed Fee Basis.</p>	
	C5.1	Buyer Construction	C5.1.1	Insurance Schedule and Construction Contract Addendum. 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.
			C5.1.2	Insurance Schedule. This schedule needs to be reviewed by the Seller's insurance agent and limits and coverages approved or revised.
			C5.1.3	Certificate of Liability Insurance. This certificate needs to be reviewed by the Seller's insurance agent and limits and coverages approved or revised.
			C5.1.4	Certificate of Property Insurance. This certificate needs to be reviewed by the Seller's insurance agent and limits and coverages approved or revised.

			<p>C5.1.4 Attachment to Contractor's Certificate of Insurance. This is an attachment to accompany C5.1.3 and C5.1.4. 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>C5.1.5 Schedule of Provisions for Construction Contracts.</p>
			<p>C5.1.6 Payment Bond and Dual Obligee Rider. 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>
	C5.2	Seller Construction	<p>Sale of a Finished-Out Unit – Cost Plus Addendum. This Addendum is for use with C4.3 if Seller is providing a completed Unit on a Turnkey Basis and if the Finish-Out is on a Cost Plus Basis.</p>
	C5.3	Pre-Closing Walk-Through Inspection	<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 (Tab D5)executed by buyer and payable to you.</p>
C6	TREC Form		<p>Agreement for Mediation; Information About Brokerage Services. 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	Special Provisions Addendum	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	Deed	The deed will be completed at the time of sale based on an updated Title Commitment and after recording of the Declaration.
D2	Management Certificate	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	Seller's Assignment of Manufacturer's Limited Warranties	The Sales Contract contemplates an assignment by the Seller to Buyer of any manufacturer's warranties incorporated into the units.
D4	Partial Release of Liens	<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 (Tab D4) 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 (Tabs C) and Note and Deed of Trust (Tabs D5 and D6) 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	Promissory Note	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	Deed of Trust	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.*

Tab	Document Title	Comments
E1	Reservation of Corporate Name for Association Articles of Incorporation	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	Directors' Meetings	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	Organizational Meeting	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.
	E2.1.1 Waiver	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.

	<p>E2.1.2 Agenda</p>	<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"> (1) <u>Management Agreement.</u> Item 12 - Approval of the management agreement with the management service. (2) <u>Budget.</u> Item 14 - Approval of the Budget and assessments of the Members. (3) <u>Third Party Services.</u> Item 13 - Approval of other third party service contracts (e.g., cable system, security system). (4) <u>Bank Account.</u> Item 9 - Establishment of bank account. (5) <u>Insurance.</u> Approval of insurance program. (6) <u>Rules.</u> Item - 15 - Adoption of Rules and Regulations.
	<p>E2.1.3 Minutes</p>	<p>Enclosed is a draft of the Minutes of the Organizational Meeting of the Board of Directors</p>
<p>E2.2</p>	<p>First Annual Meeting of Elected Directors</p>	<p>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.</p>
	<p>E2.2.1 Agenda</p>	<p>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.</p>
	<p>E2.2.2 Minutes</p>	<p>Enclosed is a draft of the Minutes of the First Annual Meeting of the Board of Directors.</p>

E3	Members' Meetings	
	First Annual Meeting	
E3.1	Agenda	Enclosed is an Agenda for First Annual Meeting of Members.
E3.2	Affidavit of Notice	Enclosed is an Affidavit to be executed in connection with the giving of notice of Annual Meetings of the Members.
E3.3	List of Mortgagees	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	Minutes	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	Management Agreement	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.*

Tab	Document Title	Comments
F1	Resale Certificate	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	Condominium Lien Affidavit	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

§	Section Heading	Comments
1.13, 1.26 & 1.43	Unit and Common Elements	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	Plat, Map or Plan	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	Construction Period	§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	Special Declarant Rights	<p>(1) <u>Reservation of Special Declarant Rights.</u> §2.11 reserves certain rights to the Developer.</p> <p>(2) <u>Declarant Control Period.</u> 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>(3) <u>Payment of Assessment by Declarant.</u> As permitted by §82.112 of TUCA, §5.12 limits the Declarant's obligation for assessments during the Declarant Control Period.</p>

3.4	Nonresidential Purposes	§3.4 restricts use of the Units to nonresidential purposes.
3.7	Owner Maintenance	§3.7 defines the items to be maintained by the Owners.
4.2	Board of Directors	The Board is to be composed of 1 representative of each Unit. The term is 1 year.
4.4 2.4	Administration and Enforcement of Condominium Documents	§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)	Votes	§4.5(b) provides that each Unit has 1 vote.
4.6	Insurance	§4.6 provides the types of insurance to be maintained by the Association.
5.3	Assessments	§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	Legal Description (Tab B2, p. 67)	You will need to provide me with the legal description of the Property.
B	Plat or Plan of the Property (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	Percentage of Ownership of Common Elements (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	Articles of Incorporation of the Association (Tab B5, p. 72)	The separate original of the Articles will be filed of record with the Secretary of State.
E	Bylaws of the Association (Tab B6, p. 74)	The Bylaws are to be adopted by the initial Board at its Organizational Meeting.
F	Management Certificate (Tab B7, p. 81)	A separate original of the Management Certificate is to be executed by the Management Company and filed for record.
G	Consent of Declarant's Mortgagee (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	Rules and Regulations (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	Architectural Guidelines (Tab B10, p. 91)	The Architectural Guidelines are to be adopted by the initial Board at its Organizational Meeting.
J	Boundary Designation (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

¶	Paragraph Heading	Comments
2A	Property	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	Condominium Documents	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 (Tab C3) signifying that it received and reviewed the Condominium Documents. I have provide a form of Receipt in the Sales Package.
2C	Commercial Condominium Information Statement	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 (Tab C3) 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	Sales Price	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	Earnest Money	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	Title Policy	<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) <u>Matters in Progress.</u> ¶ 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) Construction. ¶ 6A(11) is an exception for any pre-closing work that may be requested or undertaken by Buyer.</p>
7A	Inspection	¶ 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	“As Is” Limited Warranty	¶ 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	Broker's Fees	¶ 8 is the standard TREC provision requiring any commission agreements to be in writing.
9	Closing	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	Special Provisions	<p>(a) Reserved Rights. ¶ 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) Seller's Rights. ¶ 11A(2) provides that the Seller reserves certain rights to assist it in marketing the unsold Units.</p> <p>(c) Financial Information. ¶ 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	Closing	<p>(a) Association Reserve. ¶ 12B(2) provides for Buyer to post with the Association a reserve (e.g. 4 months' reserve).</p> <p>(b) Utilities. ¶ 12B(5) provides for Buyer to make all utility continuance arrangements.</p> <p>(3) Insurance. ¶ 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	Casualty Loss	¶ 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	Dispute Resolution	¶ 16 provides for mediation and binding arbitration of disputes.
25A	No Oral Agreements	¶ 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	Performance	¶ 25E provides that time is of the essence.
26	Releases, Waivers, and Indemnities	¶ 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	CCIS Buyer's Receipt	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	Addendum	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	TREC Form Information About Brokerage Services	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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