

**Bylaws (Required Civil Code Sec. 4525)**  
**The Diplomat Homeowners Association**

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RESTATED BYLAWS OF THE DIPLOMAT OWNER'S ASSOCIATION, INC.  
*A Condominium Residential Development*

ARTICLE 1 – NAME, LOCATION AND APPLICABILITY

1.1 **Name.** The name of the association is THE DIPLOMAT OWNER'S ASSOCIATION, INC., a California Nonprofit Mutual Benefit Corporation ("Association").

1.2 **Principal Office.** The principal office of the Association is located in Palm Springs, California. The Board shall have the full power and authority to change the principal office of the Association from one location to another in the County of Riverside, California. Any such change shall be adopted by a resolution of the Board and noted in the meeting minutes.

1.3 **Application.** These Bylaws are applicable to the residential condominium development known as The Diplomat subdivision ("Development"), located in the City of Palm Springs in Riverside County, California. These Bylaws are also applicable to all Members of the Association and all tenants, employees, and other persons who use the facilities of the Development in any manner.

1.4 **Definitions.** Unless otherwise specified in these Bylaws, the definitions set forth in Article 1 of the Restated Declaration for Establishment of Covenants, Conditions and Restrictions for The Diplomat Owner's Association recorded on \_\_\_\_\_, 20\_\_, as Instrument No. \_\_\_\_\_ of Official Records of the County Recorder of Riverside County ("Restated Declaration"), apply to these Bylaws.

1.5 **Membership Rights.** The qualifications for membership are set forth in the Restated Declaration and are hereby incorporated by reference.

ARTICLE 2 – MEETINGS OF MEMBERS

2.1 **Place of Member Meetings; Conduct.** All meetings of the Members shall be held at the principal office of the Association or a place designated by the Board which shall be as close to the Development as reasonably possible. If no meeting place is designated, the meetings shall be held at the principal office of the Association. No meeting of the Members shall, unless unusual conditions exist, be held outside of Riverside County, California. Meetings of Members shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Board may adopt by resolution.

2.2 **Annual Member Meeting.** The annual meeting of the Members shall be held on a date and time established by the Board, so long as the annual meeting is held within the month of January. At such meetings the results of the secret ballot for the election of the Board of Directors shall be announced. The Owners may transact such other business of the Association as may properly come before them.

2.3 **Special Member Meetings.** Special meetings of the Members may be called for any lawful purpose by a majority of a quorum of the Board, the President of the Association, or by a written request signed by Members representing at least five percent (5%) of the total voting power of the Association. The special member meeting shall be held not less than thirty-five (35) nor more than ninety (90) days after adoption of the resolution or receipt of the request by an officer of the Association. Only that business stated in the notice of meeting given pursuant to Section 2.4 of these Bylaws shall be transacted at the special meeting.

2.4 **Notice of Member Meetings.** The Secretary of the Association shall give written notice of any Member meeting to each Member of record in accordance with the following:

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2.4.1 Except as otherwise provided in this Article, the notice shall be given at least ten (10) but not more than ninety (90) days before the meeting, by first class mail or by personal delivery or in accordance with California *Corporations Code Section 5016* and any amendment thereto.

2.4.2 The notice shall be addressed to the Member at the address appearing on the books of the Association, or the address supplied by the Member to the Association for this purpose. If there is no such address, notice shall be given at the principal office of the Association. When there is more than one (1) record Owner of a Unit ("Co-Owners"), only one of them shall be entitled to notice under this provision. It shall be up to the Co-Owners to designate the Member entitled to notice and, failing to do so, then it shall be provided to the first name listed on the Association's records for said Unit.

2.4.3 The notice shall state the place, date, and time of the meeting. If directors are to be elected at the meeting, the notice shall include the names of all those who are nominees at the time the notice is given. The notice shall also state those matters that the Board, at the time the notice is given, intends to present for action by the Members.

2.4.4 In the case of a special meeting which is called by Members, pursuant to Section 2.3 of these Bylaws, the notice shall be given within twenty (20) days after receipt of the request for the meeting. If said notice is not given with the twenty (20) day timeline, the Members who called the meeting may give the notice.

2.4.5 Any approval of the Members required for those items listed in Sections 2.8.1 to 2.8.8, other than unanimous approval by those entitled to vote, shall be valid only if the general nature of the matter to be voted upon was stated in the notice of meeting or any written waiver of notice.

2.4.6 A certificate or declaration of the mailing or other means of giving any notice of any Members' meeting may be executed by the Secretary, and if so executed shall be filed with the corporate records or made a part of the minutes of the meeting. Such certificate or declaration shall constitute prima facie evidence of the giving of notice.

2.5 **Waiver of Notice or Consent of Absentees.** The transactions of any meeting of Members, however called and noticed, shall be as valid as though taken at a duly called, noticed, and held meeting, if a quorum is present either in person or by proxy, and if either before or after the meeting, each of the Members not present in person or by proxy (i) signs a written waiver of notice, or (ii) a consent to the holding of the meeting, or (iii) an approval of the minutes of the meeting.

2.5.1 Any such waiver, consent, or approval shall be filed with the corporate records or made a part of the minutes of the meeting.

2.5.2 Attendance by a person at a meeting shall also constitute a waiver of notice of that meeting, except when the person objects at the beginning of the meeting to the transaction of any business due to the inadequacy or illegality of the notice. Attendance at a meeting is not a waiver of any right to object to the consideration of matters not included in the notice of the meeting which are required to be described therein if that objection is expressly made at the meeting.

2.6 **Voting Rights.** Members shall have the power to exercise their voting rights as set forth in the Restated Declaration, subject to the following provisions:

2.6.1 Fractional votes shall not be allowed. When there is more than one (1) record Owner of a Unit (Co-Owners), all of the Co-Owners shall be Members, but only one (1) of them shall be entitled to cast the single vote attributable to the Unit. Co-Owners may designate in writing one (1) of their Owners to vote. If no such designation is made or if it is revoked, the Co-Owners shall decide among themselves, by majority vote, how that Unit's vote is to be cast. Unless the Board receives a written objection in advance from a Co-Owner, it shall be conclusively presumed that the voting Co-Owner is acting with the consent of his Co-Owners. No vote shall be cast for the Unit on a particular matter if a majority of the Co-Owners present in person or by proxy cannot agree on a vote.

2.6.2 Any provision of the Governing Documents that requires the approval of a specified percentage of the voting power of the Association shall require the approval of the specified percentage of the voting power of the membership. If no percentage of the voting power is specified in the Governing Documents or by California law, the approval of a majority of a quorum shall be required.

2.6.3 The Board may fix, in advance, a record date or dates for the purpose of determining the Owners entitled to notice of, and to vote at, any meeting of Owners. The record date for notice of a meeting shall not be more than sixty (60) nor less than ten (10) days before the date of the meeting. The record date for voting shall not be more than sixty (60) days before the date of the meeting or before the date on which the first written ballot is mailed or solicited. The Board may also fix, in advance, a record date for the purpose of determining the Owners entitled to exercise any rights in connection with any other action. Any such date shall not be more than sixty (60) days prior to the action.

2.6.4 Only Members in good standing shall be entitled to vote on any issue or matter presented to the Members for approval. In order to be in good standing, a Member must be current in the payment of all assessments levied against the Member's Unit and not be subject to any suspension of voting privileges as a result of any disciplinary proceeding conducted in accordance with the Governing Documents. A Member's good standing shall be determined as of the record date established in accordance with Section 2.6.3 above. The Association shall not be obligated to conduct a hearing in order to suspend a Member's voting privileges on the basis of the nonpayment of assessments, although a delinquent Member shall be entitled to request such a hearing in accordance with these Bylaws.

2.7 **Quorum.** At any meeting, the presence either in person or by proxy of Members entitled to cast votes equal to at least fifty percent (50%) plus one vote of all Members of the Association shall constitute a quorum for any action except as otherwise provided in the Articles, these Bylaws, or the Restated Declaration. The Members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough Members to leave less than a quorum, as long as the action taken (other than adjournment) is approved by at least a majority of Members required to constitute a quorum. If a quorum is not present at a duly called meeting, a majority of those Members present in person or by proxy may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the meeting date, but no other business may be transacted. Provided that the date, time and place of the adjourned meeting are announced at the original meeting, the adjourned meeting may be held without additional written notice. If no such announcement is made, or if the selected date is changed after adjournment, notice of the time and place shall be given to Members in the manner provided in Section 2.4 of these Bylaws. The quorum for any adjourned meeting shall be twenty-five percent (25%).

2.8 **Proxies.** At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary of the Association. A proxy shall be deemed signed if the Member's name is placed on the proxy (whether by original signature or facsimile transmission, if said transmission is legible and deemed to be authentic by the Inspectors of the Election) by the Member or the Member's attorney in fact. Any form of proxy or written ballot distributed by any person or entity to the membership shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted on. The proxy or written ballot shall provide that, when the member specifies a choice, the vote shall be cast in accordance with that choice. Every proxy shall be revocable and shall automatically cease upon conveyance of its maker's membership, or upon receipt of written notice by the Secretary of the maker's death or judicially declared incapacity. No proxy shall be valid after the expiration of eleven (11) months from its date of execution, unless otherwise provided in the proxy, but in no event may the maximum term of any proxy exceed three (3) years from its date of execution. The maker of a proxy may revoke it by delivering a written revocation to the Association, by executing a subsequent proxy and presenting it to the meeting, or by attending any meeting and voting in person. Any revocable proxy may not be used to vote on any of the following matters unless it sets forth the general nature of the matter to be voted upon:

2.8.1 Removing a director without cause, pursuant to Section 3.6 of these Bylaws;

2.8.2 Filling director vacancies pursuant to Section 3.7 of these Bylaws;

2.8.3 Entering into or approving a contract or transaction between the Association and one (1) or more of the directors, or between the Association and any entity in which one (1) or more of the directors has a material financial interest, except as allowed by *California Corporations Code Section 7233*;

2.8.4 Amending the Articles after approval by the Board, in accordance with *California Corporations Code Section 7812*;

2.8.5 Electing to dissolve the Association, by approval of a majority of all Members or by approval of both the Board and Members pursuant to *California Corporations Code Section 8610*;

2.8.6 Amending the Articles or these Bylaws to repeal, restrict, create, or expand proxy rights;

2.8.7 Disposing of assets other than in the usual regular course of corporate activities pursuant to *California Corporations Code Section 7911(a)(2)*;

2.8.8 Agreements for corporate merger, and amendments thereof, in accordance with the provisions of *California Corporations Code Sections 8012 and 8015(a)*.

2.9 **Action Taken Without A Meeting.** Any action that may be taken at a meeting of the Members may be taken without a meeting provided the following ballot requirements are satisfied:

2.9.1 The Association shall distribute a written ballot to every Member entitled to vote on the matter. The ballot shall be solicited in the same manner as provided in Section 2.4 of these Bylaws for the giving of notice of meetings of Members.

2.9.2 The ballot shall (1) set forth the proposed action; (2) provide an opportunity to specify approval or disapproval of any proposal, including confirmation that, if the Member specifies a choice, the vote shall be cast in accordance with that Member's choice; (3) provide a reasonable time within which to return the ballot; (4) indicate the number of responses needed to meet the quorum requirement; and (5) state the percentage of approvals necessary to pass the measure submitted.

2.9.3 The proposed action shall be considered approved if:

(a) The number of votes cast by ballot within the specified time period equals or exceeds the quorum required to be present at a meeting authorizing the action; and

(b) The number of approvals equals or exceeds the number of votes that would be required for approval at a meeting at which the total number of votes cast was the same as the number of ballots received in response to the ballot solicitation.

2.9.4 No written ballot may be revoked.

2.9.5 Any deadline stated for return of the ballots may be extended for three (3) successive thirty-day periods with the approval of a majority of the Board. Written notice of any extension must be sent to the Members within thirty (30) days of the previously noticed deadline date.

### ARTICLE 3 – BOARD OF DIRECTORS

3.1 **Number; Qualifications.** The affairs of this Association shall be managed and its duties and obligations performed by an elected Board of Directors, consisting of five (5) persons. Members of the Board must be Members of the Association and meet all the eligibility requirements set forth in Section 3.3.

3.2 **Nomination.** Nominations for election to the Board of Directors may be made by any of

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the following:

3.2.1 A nominating committee appointed by the Board at least ninety (90) days prior to an annual meeting of Members, provided the Board receives the committee's nomination or nominations at least forty-five (45) days prior to the annual meeting of Members;

3.2.2 A written petition signed within eleven (11) months preceding the annual meeting by Members representing fifteen percent (15%) of the voting power of the Association. The petition shall identify the nominee, contain that person's written consent to serve as a director, and be delivered to the Secretary of the Association at least thirty (30) days prior to the annual meeting;

3.2.3 Any Member who is present in person or by proxy, who makes a nomination from the floor at the annual meeting of Members at which the director is to be elected, provided that said nominee is present and consents to the nomination; or

3.2.4 The Board, which may make nominations at any time.

3.3 Eligibility. Candidates for nomination for election to the Board of Directors shall meet the following minimum standards in order to qualify to be a Board member:

3.3.1 Must be a Member in good standing as that term is defined in Section 2.6.4 of these Restated Bylaws;

3.3.2 Must own a minimum twenty-five percent (25%) interest in his Unit either as a fee simple Owner or, if ownership is in the form of a trust or business entity, a minimum twenty-five percent (25%) beneficial interest in the trust or business entity. The Board may establish rules, regulations, and procedures from time to time to assist the nominating committee in verifying this eligibility requirement of beneficial interests in trust or business entities; and

3.3.3 Must be the only Member of the Unit running for election to the Board of Directors and/or serving on the Board of Directors. The nominating committee shall verify that all candidates meet the eligibility standards set forth in this Section. However, any candidate determined by the nominating committee to not meet the eligibility standards may appeal the committee's decision to the Board of Directors, but must do so in writing and no later than ten (10) days after the Committee mails or delivers its ruling to the candidate.

3.4 Election. At each annual meeting of the Association, the Members shall fill, by election, all vacant positions on the Board. However, if an annual meeting is not held or does not include an election, the election may be held at a special meeting of Members called for that purpose. Voting of directors shall be by secret written ballot. At an election, the Member or the Member's proxyholder may cast, in respect to each vacancy, one vote on a non-cumulative basis. The nominees receiving the highest number of votes up to the number of directors to be elected shall be elected as directors and shall take office immediately following their election. In the event that there is a tie vote between those nominees who receive the lowest number of votes necessary to be elected, the tie shall be broken by lot. Each Member shall be entitled to his respective voting rights for each Unit owned within the Development. Cumulative voting shall not be allowed.

3.5 Term. Each Board member shall serve for a two (2) year term on a staggered basis. However, in order to implement staggered terms, five (5) directors shall be elected at the 2004 annual meeting (or at the 2005 annual meeting if the ability to elect at the 2004 annual meeting is precluded by the required approval period for this Restated Declaration), with the three nominees receiving the highest number of votes serving terms of two years and the two nominees receiving the next highest number of votes serving terms of one year. Thereafter, two directors will be elected in odd numbered years and three directors will be elected in even numbered years, so that two year terms are staggered. Each director shall hold office until the election of his successor or until the director's death, resignation, removal, or judicial adjudication of mental incompetence. Directors shall be elected at each annual meeting.

3.6 **Removal.** Directors may be removed as follows:

3.6.1 The Board on a majority vote of at least three directors may declare vacant the office of a director on the occurrence of any of the following events:

- (a) The director is declared of unsound mind by a final order of Court;
- (b) The director is convicted of a felony; or
- (c) The director has failed to attend three (3) regular meetings of the Board in any twelve-month period; or
- (d) The director has become delinquent in the payment of any assessment for a period in excess of forty-five (45) days. In this regard, the director who is delinquent for over forty-five (45) days shall be given a minimum of fifteen (15) days' written notice to pay any such delinquency, and only upon the failure of such director to pay such delinquency shall the Board declare vacant the office of such director; or

(e) The director fails to meet the eligibility requirements set forth in Section 3.3 of these Bylaws.

3.6.2 One (1) or more directors may be removed prior to the expiration of their terms, without cause, at an annual or special meeting of the Members. Any removal without cause shall be approved by the vote of Members representing a majority of a voting power of the membership.

3.7 **Filling Vacancies.** The remaining directors shall fill any vacancy on the Board caused by the death, removal or resignation of a director unless the vacancy is created by the removal of a director by the Members. The Members shall vote to fill any vacancy on the Board created by the removal of a director by the Members. A successor director shall serve for the unexpired term of the director he replaces.

3.8 **Compensation.** No director shall receive any compensation for any service he may render to the Association; provided, however, that a director may be reimbursed for actual out of pocket expenses incurred by the director in the performance of his duties.

3.9 **Powers and Duties.** The Board shall exercise for the Association all powers and duties vested in or delegated to the Board or the Association by the Governing Documents and the laws of the State of California governing nonprofit mutual benefit corporations. Said powers and duties shall be subject to the limitations of the Governing Documents, and shall include, but not be limited to, the following:

3.9.1 Formulating Rules and Regulations for the use and operation of the Units, the Common Area, common facilities and facilities owned or controlled by the Association, and the conduct of members and their guests, invitees, renters, tenants, etc.;

3.9.2 Enforcing the applicable provisions of the Governing Documents and any other instruments governing the ownership, management, and control of the Development;

3.9.3 Initiating and executing disciplinary proceedings against Members for violations of provisions of the Governing Documents in accordance with procedures set forth in Section 3.13 herein;

3.9.4 Paying taxes and assessments that are, or could become, a lien on all or a portion of the Common Area;

3.9.5 Fixing and establishing the fiscal year for the Association, including the power to modify the fiscal year;

3.9.6 Contracting for casualty, liability, and other insurance on behalf of the Association;

3.9.7 Contracting for goods and services for the Common Area facilities, and interests of the Association, subject to the limitations set forth in Section 3.10 herein;

3.9.8 Borrowing money, incurring indebtedness and executing promissory notes or other evidences of debt for the Association, provided, however, that no action of the Board shall be taken that will cause a deed of trust or mortgage to be placed on any of the common areas of the Association without the approval of a majority of a quorum of the Owners;

3.9.9 Creating committees pursuant to resolutions adopted by a majority of the Board; provided that if a committee will exercise any power or authority of the Board, it shall consist of two (2) or more directors, and as many other Members as the Board may designate, to serve at the pleasure of the Board. No directors need serve on any committee which does not exercise any power or authority of the Board (e.g., social committees);

3.9.10 Delegating its authority, duties, and responsibilities to its officers, employees, committees, or agents, including a general manager, property manager, or professional management agent. The term of any agreement with a manager shall not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods, and shall provide for termination by either party for cause on thirty (30) days' written notice, or without cause and without payment of a termination fee or penalty on ninety (90) days' or less written notice;

3.9.11 Authorizing the withdrawal of monies from the Association's operating and reserve accounts, upon the signatures of two (2) directors;

3.9.12 Entering any Unit to perform necessary construction, maintenance, inspection for compliance with the Governing Documents, and/or emergency repair work for the benefit of the Common Area, Association Property, or the Members in the aggregate;

3.9.13 Filling vacancies on the Board, except for a vacancy created by the removal of a director by Members;

3.9.14 Extending the time for return of ballots when an action is taken without a meeting pursuant to Section 2.9 herein, by majority approval of the Board; and

3.9.15 Providing any Owner with the following documents within ten (10) days of the mailing or delivery of a written request therefor and receipt of the costs to prepare and reproduce said documents:

(a) A copy of the Governing Documents;

(b) A copy of the most recent financial statement;

(c) A written statement from an authorized representative of the Association specifying (i) the amount of the Association's current Regular, Special, and/or other assessments and fees; (ii) the amount of any assessments levied on the Owner's Unit that are unpaid on the date of the statement; and (iii) the amount of late charges, interest, and costs of collection that, as of the date of the statement, are or may be made a lien on the Owner's Unit pursuant to the Restated Declaration;

(d) A statement noting any change in the Association's current assessments and fees which have been approved by the Board, but which have not become due and payable as of the date disclosure is provided pursuant to this Section.

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3.10 **Limitation on Powers.** Notwithstanding the provisions of Section 3.9, the Board shall be prohibited from taking any of the following actions, except with the vote or written assent of a majority of a quorum of the Members of the Association:

3.10.1 Entering into a contract with a third person under which the third person will furnish goods or services for the Common Area or the Association Property for a term longer than one (1) year with the following exceptions:

(a) A management contract approved by the Federal Housing Administration or Veterans Administration;

(b) A contract with a public utility if the rates charged are regulated by the Public Utilities Commission, provided that the term shall not exceed the shortest term for which the utility will contract at the regulated rate;

(c) Prepaid casualty and/or liability insurance of not more than three (3) years duration, provided that the policy provides for short rate cancellation by the insured;

(d) Agreements for cable television services and equipment not exceeding five (5) years in duration;

(e) Agreements for the sale or lease of burglar alarm and fire alarm equipment, installation, and services not exceeding five (5) years' duration; and

(f) Agreements for trash pick up and other trash services not exceeding five (5) years in duration.

3.10.1 Incurring aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the gross budgeted expenses of the Association for that fiscal year. This section shall not limit expenditures for repair, maintenance and replacement of reserve line items;

3.10.2 Selling during any fiscal year property of the Association having an aggregate fair market value in excess of five percent (5%) of the gross budgeted expenses of the Association for that fiscal year;

3.10.3 Borrowing money, incurring indebtedness and executing therefor promissory notes or other evidences of debt for the Association in excess of ten percent (10%) of the gross budgeted expenses of the Association for that fiscal year; or

3.10.4 Filling a vacancy on the Board created by the removal of a director by the Members.

3.11 **Financial Documentation, Preparation, Reporting and Review Responsibilities.** With regard to the preparation, reporting and review of the Association's financial documentation, the Board shall have the following responsibilities:

3.11.1 Preparing a pro forma operating budget for each fiscal year and distributing a copy thereof to each Owner not less than forty-five (45) and not more than sixty (60) days prior to the beginning of the fiscal year, unless California law provides a different time line, in which case the statute shall control. The budget shall contain at least the following:

(a) The estimated revenue and expenses on an accrual basis;

(b) A summary of the Association's reserves based upon the most recent review or study conducted pursuant to California *Civil Code Section 1365.5*, which shall be printed in bold type and include all of the following:

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- (i) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component;
- (ii) As of the end of the fiscal year for which the study is prepared:
  - (1) the current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components, and
  - (2) the current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain those major components; and
  - (iii) The percentage that the amount determined for purposes of clause (2) of subparagraph (ii), above, is of the amount determined for purposes of clause (1) of subparagraph (ii), above;
- (c) The summary of the Association's reserves disclosed pursuant to this Section shall not be admissible in evidence to show improper financial management of the Association, provided that other relevant and competent evidence of the financial condition of the Association is not made inadmissible by this provision;
- (d) A statement as to whether the Board has determined or anticipates that the levy of one or more Special Assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor;
- (e) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the Association is obligated to maintain, or other components identified by the Board;
- (f) In lieu of the distribution of the pro forma operating budget, the Board may elect to distribute a summary of the statement to each Owner with a written notice that the statement is available at the business office of the Association or designated location and that copies will be provided upon written request and at the expense of the Association. The Association shall provide the copy to the Owner within five (5) working days of the receipt of the Owner's written request; and
- (g) A summary of the Association's insurance policies.

3.11.2 Preparing and distributing an annual report, within one hundred twenty (120) days after the close of each fiscal year, consisting of the following:

- (a) A balance sheet as of the end of the fiscal year;
- (b) An operating (income and expense) statement for the fiscal year;
- (c) A statement of changes in financial position for the fiscal year; and
- (d) For any fiscal year in which the gross income to the Association exceeds \$75,000.00, a copy of the review or audit, if applicable, of the annual financial statement prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy. If this report is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statement was prepared without independent audit or review from the books and records of the Association.

3.11.3 Preparing and distributing to the Owners, within sixty (60) days before the beginning of each fiscal year, a statement describing the Association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its Assessments against Owners;

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3.11.4 Causing to be conducted at least once every three (3) years a reasonably competent and diligent visual inspection of the accessible areas of the major components which the Association is obligated to repair, replace, restore, or maintain as part of a study of the reserve account requirements of the Development. The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review. This study shall, at a minimum, include:

- (a) Identification of the major components which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years;
- (b) Identification of the probable remaining useful life of the components identified in (a), above, as of the date of the study;
- (c) An estimate of the cost of repair, replacement, restoration or maintenance of the components identified in (a), above, during and at the end of their useful life; and
- (d) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain the components identified in (a), above, during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

3.11.5 As used herein, the term "reserve account requirements" means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace, or restore those major components which the Association is obligated to maintain; and

3.11.6 Reviewing the following on at least a quarterly basis:

- (a) A current reconciliation of the operating and reserve accounts of the Association;
- (b) The actual reserve revenues and expenses for the current year to date compared to the budget for the current year;
- (c) An income and expense statement for the operating and reserve accounts of the Association; and
- (d) The most current account statements prepared by the financial institution where the Association has its operating and reserve accounts.

3.11.7 Members of the Association shall be notified in writing at the time that the pro forma operating budget required in California *Civil Code Section 1365* is distributed, or at the time of any general mailing to the entire membership of the Association, of their right to have copies of the minutes of meetings of the board of directors, and how and where those minutes may be obtained.

3.12 **Expending Reserve Funds.** The Board may not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement or maintenance of, or litigation involving the repair, restoration, replacement or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established.

3.12.1 The foregoing notwithstanding, the Board may reallocate monies in the reserve account for different specific line items of major components which the Association is obligated to repair, restore, replace, or maintain, as long as said reallocation is based upon a written finding by the Board of Directors, which explains the reason for the reallocation and includes the opinion(s) of professionals and/or experts confirming the need for the reallocation.

3.12.2 Additionally, notwithstanding the above, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses, provided the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except that the Board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the Development, temporarily delay the restoration. The Board shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this Section. This special assessment is subject to the limitation imposed by California *Civil Code Section 1366*. The Board may, at its discretion, extend the date the repayment on the special assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid special assessment.

3.12.3 When the decision is made to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the Association shall notify the Members of that decision, and of the availability of an accounting of those expenses, in the next available mailing to all Members of a notice or report addressed and mailed or delivered to a Member as part of a newsletter, magazine or other article regularly sent to Members. The Association shall make an accounting of expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by Members at the Association's office.

### 3.13 Disciplinary Actions Against Members.

3.13.1 The Board shall have the right to discipline a Member and/or his family, tenants, residents, Co-Owners, guests and/or invitees ("Invitees") for violation of any of the provisions of the Restated Declaration or Bylaws (or any amendments thereto), Rules and Regulations and Architectural Guidelines or any other Governing Document by (i) suspending the Member's rights and privileges, including voting rights and the rights and privileges to use the Common Area and/or facilities appurtenant to the Member's Unit, rights and privileges to cable services (if the Association has in existence a bulk cable agreement), as well as other use privileges granted to Owners in good standing, and/or (ii) imposing a monetary fine or penalty.

3.13.2 The Board shall have the right to suspend the voting rights of any Member, cable service to a Unit (but only if the Association has entered into a bulk cable agreement for the Property), and the rights of any Member, and the Invitees deriving rights from any Member, to use and enjoy the Common Area for any period during which the Member is delinquent in the payment of any assessment or monetary fine or penalty, or as otherwise provided in the Governing Documents.

3.13.3 In connection with the general power of enforcement described above, the Board may discipline a Member for violations by the Member and/or his Invitees of any of the provisions of the Governing Documents, subject to the following limitations:

3.13.3.1 The accused Member shall be given an opportunity to be heard and shall be given notice of a hearing before the Board of Directors in executive session, where the imposition of a suspension of membership privileges, monetary fine or penalty, or both will be considered with respect to any alleged violation. Said notice shall be given not less than ten (10) days prior to the hearing.

3.13.3.2 Notwithstanding the foregoing, under circumstances involving conduct that constitutes either (a) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Members, or (b) a traffic or fire hazard, or (c) a threat of material damage to, or destruction of, the Common Area, or (d) a violation of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether a violation has occurred, the Board or its agents may undertake immediate corrective or disciplinary action, including but not limited to the imposition of a monetary fine or penalty, and conduct a hearing as soon thereafter as reasonably possible, if

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either (1) requested by the offending Member within five (5) days following the Association's action(s), or (2) on its own initiative;

3.13.3.3 The amount of any monetary fine or penalty shall be established from time to time for each type of violation in an amount to be determined by the Board, and a schedule thereof shall be distributed to the Members by personal delivery or first class mail. Distribution of additional schedules is not required unless there are any changes to an existing schedule;

3.13.3.4 Except for nonpayment of any assessments (including monetary fines or penalties), any suspension of a Member's privileges shall not exceed six (6) months for each violation. For nonpayment of any assessment (including monetary fines or penalties), suspension of the Members' privileges shall continue until the Member remits payment of all monies due, including any collection costs.

#### ARTICLE 4 – MEETINGS OF DIRECTORS

4.1 **Regular Meetings.** Regular meetings of the Board of Directors shall be held as determined by the Board of Directors, provided however, that meetings are held at a minimum of once every three months at a time and place within the Development or within the Coachella Valley as fixed by resolution of the Board. Any meeting room selected by the Board shall be as close as possible to the Development. Except for an emergency meeting, notice of the time and place of the meeting shall be posted at a prominent place or places within the Common Area, if possible, four days in advance or as otherwise permitted by law, and shall be communicated to the directors not less than seventy-two (72) hours prior to the meeting; provided, however, that prior to or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

4.2 **Special Meetings.** Special meetings of the Board shall be held when called by written notice signed by the President of the Association or by any two (2) directors other than the President. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. Notice of any special meeting shall be provided to the Members in the manner provided for notice of regular meetings and shall be sent to all directors not less than seventy-two (72) hours prior to the scheduled time of the meeting; provided, however, that notice need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

4.3 **Organizational Meeting.** Immediately after the annual meeting, described in Section 2.2, herein, or as soon thereafter as reasonably practicable, the Board shall meet to elect the officers of the Association and conduct any other business of the Association as the Board, in its discretion, shall determine is necessary.

4.4 **Quorum.** A majority of the Board shall constitute a quorum and if a quorum is present, the decision of a majority of the directors present shall be the act of the Board.

4.5 **Open Meetings.** Regular and special meetings of the Board shall be open to all Members of the Association; provided, however that Members who are not on the Board may not participate in any deliberation or discussion unless expressly authorized to do so by the vote of the majority of the Board. The Board of Directors shall set aside a time during any meeting of the Board for Members to speak, except for meetings of the Board held in executive session. A reasonable time limit for all Members of the Association to speak to the Board shall be established from time to time by the Board of Directors.

4.6 **Electronic Participation in Meetings.** Members of the Board may participate in a meeting through use of conference telephone, electronic video screen communications, or other communications equipment. Participation in a meeting through the use of conference telephone, pursuant to this subdivision, constitutes presence in person at that meeting as long as all members participating in the



meeting are able to hear one another. Participation in a meeting through use of electronic video screen communication or other communications equipment (other than conference telephone) pursuant to this paragraph constitutes presence in person at that meeting if all of the following apply:

- (a) Each member participating in the meeting can communicate with all of the other members concurrently.
- (b) Each member is provided the means of participating in all matters before the Board, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the Board.
- (c) Association adopts and implements some means of verifying both of the following: (i) A person participating in the meeting is a director or other person entitled to participate in the board meeting; and (ii) all statements, questions, actions, or votes by, the Board are taken or cast only by the directors and not by persons who are not directors, were made by that director and not by another person not permitted to participate as a director.

**4.7 Emergency Meetings.** An emergency meeting of the Board may be called by the President of the Association, or by any two members of the Board other than the President, if there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the Board, and which of necessity make it impracticable to provide notice as required by Section 4.1 above.

**4.8 Executive Session.** The Board may, with the approval of a majority of a quorum, adjourn a meeting and reconvene in executive session to meet with its legal counsel, or discuss and vote upon (a) litigation in which the Association is or may become involved, (b) matters that relate to the formation of contracts with third parties, (c) personnel matters, (d) member discipline, and (e) to meet with a member regarding his request for a payment plan. The nature of any and all business to be considered in executive session shall first be announced in open session. In the event the executive session does not follow an open session, the Board may conduct an executive session if the nature of any and all business considered in such executive session is announced at the next regularly scheduled Board meeting. Nothing herein contained shall be construed to obligate the Board to first call an open meeting before meeting in executive session. An executive session which does not follow an open meeting may be called and noticed in the same manner as a special meeting. Any matter related to the issues enumerated in this Section discussed in executive session shall be generally noted in the Association minutes of the next Board meeting. The term "generally noted in the Association minutes" means that the date and time of the executive session shall be indicated with a list of the topic(s) discussed under the allowed categories enumerated in this Section.

**4.9 Adjournment.** A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than twenty-four (24) hours, notice of the adjournment shall be given, prior to the time of the adjourned meeting, to the directors who were not present at the time of the adjournment.

**4.10 Action Without A Meeting.** Any action required or permitted to be taken by the Board may be taken without a meeting, if all members of the Board, individually or collectively, consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board. Such written consent or consents may be conveyed by copy or facsimile and shall be filed with the minutes of the proceedings of the Board. An explanation of the action taken shall be communicated by any means the Board deems appropriate.

**4.11 Board Deliberation Regarding Member Discipline.** In any matter relating to the disciplining of a Member, the Board shall meet in executive session if requested by that Member, and the Member shall be entitled to attend that portion of the executive session in which the Board discusses the discipline of that Member.

4.12 **Meeting Minutes.** Except as specified in Section 4.8 related to the minutes for executive sessions, the Board shall keep accurate written minutes of its meetings and shall retain them in the permanent records of the Association. The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any Board meeting, other than executive session, shall be available to Members within thirty (30) days of the meeting. The minutes, proposed minutes, or summary of minutes shall be distributed to any Member upon request and upon reimbursement for the costs in making that distribution. Members shall be notified in writing at the time that the budget is distributed, or at the time of any general mailing to the entire membership, of their right to have copies of the minutes of meetings of the Board, and how and where those minutes may be obtained. The Board may, but is not obligated to, keep minutes of executive sessions. However, if minutes of any executive session are taken, said minutes are confidential and shall be kept in a secure place in a separate minute book. Only members of the Board of Directors and those designated employees and other designated representatives of the Association shall be entitled to review executive session minutes. Designation of employees and representatives eligible for such review of executive session minutes shall be by the Board. It is the intent of the Board that executive session minutes shall generally note the nature of any discussion and any action taken by the Board related thereto. Executive session minutes shall not be considered the type of minutes or Association "books and records" which are normally available to the membership under California *Corporations Code Section 8333* or similar Corporations Code or Civil Code provision.

## ARTICLE 5 – OFFICERS

5.1 **Enumeration of Officers.** The officers of this Association shall be a President, a Vice-President, a Secretary, and a Treasurer. The Board may appoint such additional officers as it may, in its sole discretion, determine necessary or desirable. Any number of offices may be held by the same person except for the offices of (a) President and Treasurer, and (b) President and Secretary. The President, Vice President, Secretary and Treasurer must be members of the Board of Directors. However, all other officers need not be members of the Board.

5.2 **Appointment and Term.** The officers shall be elected annually by the Board. Any vacancies shall be filled by the Board, pursuant to Section 3.7 herein. Each officer shall hold his office at the pleasure of the Board.

5.3 **Duties.** Unless otherwise delegated by the Board, the duties of each officer shall be as follows:

5.3.1 The President shall:

- (a) Preside over all meetings of the Members and of the Board;
- (b) Sign as President all deeds, contracts, and other written instruments that have been approved by the Board, unless the Board, by duly adopted resolution, authorizes the signature of a lesser officer;
- (c) Call meetings of the Board whenever he deems it necessary, in accordance with any rules and notice requirements imposed by the Board and the Governing Documents. The notice period shall be not less than seventy-two (72) hours except in the case of emergencies;
- (d) Have, subject to the approval of the Board, general supervision, direction, and control of the affairs of the Association; and

(e) Discharge any other duties required of him by the Board.

5.3.2 The Vice President shall:

- (a) Act in the place and in the stead of the President in the event of his absence, inability, or refusal to act; and

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(b) Exercise and discharge any other duties required of him by the Board. In connection with any such additional duties, the Vice-President shall be responsible to the President.

5.3.3 The Secretary shall:

(a) Receive and deposit all of the funds of the Association in any bank or banks selected by the Board;

(b) Be responsible for and supervise the maintenance of books and records to account for Association funds and other Association assets;

(c) Disburse and withdraw Association funds in the manner specified by the Board; and

(d) Prepare and distribute the financial statements for the Association required by the Restated Declaration.

5.4 **Resignation and Removal.** The Board may remove any officer from office either with or without cause. An officer may resign at any time by giving notice to the Board, the President or the Secretary. The resignation shall take effect at the date of receipt of the notice, whether verbal or written, or at any later time specified in the notice. Unless otherwise specified in the notice, a acceptance of the resignation by the Board shall not be necessary to make it effective.

5.5 **Compensation.** An officer shall not receive any compensation for any service he may render to the Association; provided, however, that any officer may be reimbursed for actual out of pocket expenses incurred by the officer in the performance of his duties. This section shall not apply to any employee who may be appointed an officer of the Association.

5.6 **Delegation.** With Board approval, an officer may delegate his powers and duties to any committee, employee or agent of the Association, including, but not limited to the property manager.

## ARTICLE 6 - BOOKS AND RECORDS

6.1 **Required Books and Records.** The Association shall maintain at its principal office:

6.1.1 Copies of the Governing Documents as last amended;

6.1.2 Adequate and correct books and records of account;

6.1.3 Written minutes of the proceedings of its Members, of its Board, and of committees of its Board; and

6.1.4 A membership register containing each Member's name, mailing address and voting rights.

6.2 **Inspection Rights.** The above books and records shall be made available for inspection as follows:

6.2.1 Any Member shall have the right to inspect the Governing Documents at the principal office of the Association, at any reasonable time during office hours;

6.2.2 Any Member shall have the right to inspect the accounting books and records described herein and to copy them at any reasonable time and for a purpose reasonably related to his interest as a Member. This right is subject to the authority of the Board to set reasonable times for inspection, notice requirements, and fees to cover the cost of making copies of the documents requested by a Member. For the purposes of this subsection, "accounting books and records" shall be defined to mean: (a) the pro forma

operating budget; (b) annual financial statement; (c) monthly balance sheet and income and expense statement; and (d) reserve study;

6.2.3 Every director shall have the absolute right to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association at any reasonable time. The right of inspection by a director includes the right to make extracts and copies of documents with the exception of secret written ballots, which shall only be reviewed by Inspectors of Election, the management company and/or the Association's general counsel.

## ARTICLE 7 -- NONLIABILITY AND INDEMNIFICATION

7.1 **Limitation on Liability of Association's Directors and Officers.** No directors, committee members or officers of the Association (collectively and individually referred to as the "Released Party") shall be responsible to any Owner, or member of an Owner's family, any of the Owner's tenants, guests, servants, employees, licensees, invitees, or any other person for:

7.1.1 Any error or omission in the discharge of their duties and responsibilities or for their failure to provide any service required by the Governing Documents, provided that such Released Party has, upon the basis of such information as may be possessed by the Released Party, acted in good faith, in a manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. Without limiting the generality of the foregoing, this standard of care and limitation of liability shall extend to such matters as the establishment of the Association's annual financial budget, the funding of Association reserve accounts for repair, replacement and maintenance of Common Areas and enforcement of the Governing Documents.

7.1.2 Any loss or damage suffered by reason of theft or otherwise of any article, vehicle or other item of personal property which may be stored by such Owner or other person within any Unit or Exclusive Use Common Area or for any injury to or death of any person or loss or damage to the property of any person caused by fire, explosion, the elements or any other Owner or person within the Development, or by any other cause, unless the same is attributable to his own willful or wanton act or gross negligence. It is the intent of this Section to provide volunteer directors and officers with protection from liability to the full extent permitted by California *Civil Code Section 1365.7*, or any amendment thereto, and to the extent this provision is inconsistent with said Section, the *Civil Code* shall prevail.

7.2 **Indemnification of Association.** Each Owner shall be liable to the Association for any damage to the Common Areas and/or Association Property caused by the negligence or willful misconduct of the Owner or his family, guests, invitees or lessees. Each Owner shall indemnify, hold harmless, and pay any costs of defense of each other Owner from claims for personal injury or property damage occurring within any Unit owned by the indemnitor, provided that this protection shall not extend to any indemnitee whose negligence or willful misconduct caused or contributed to the injury or damage. This Section is not intended to be for the benefit of any insurer and shall not affect nor limit the duty of any insurer to pay any claim which would be payable by said insurer but for this Section.

7.3 **Indemnification by Association of Directors, Officers, Employees and Other Agents.** To the fullest extent permitted by law, the Association shall indemnify its directors, officers, committee members, employees, and other agents described in California *Corporations Code Section 7237*, including persons formerly occupying any such positions, against all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by them in connection with any "proceeding" as that term is used in California *Corporations Code Section 7237* and including an action by or in the right of the Association, by reason of the fact that such person is or was a person described by that Section. "Expenses", as used in this Section, shall have the same meaning as in California *Corporations Code Section 7237(2)*.

7.4 **Approval of Indemnity by Association.** On written request to the Board by any person

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seeking indemnification hereunder, the Board shall promptly determine in accordance with California *Corporations Code Section 7237(e)*, whether the applicable standard of conduct set forth in California *Corporations Code Section 7237(b) or 7237(c)* has been met, and if it has, the Board shall authorize indemnification. If the Board cannot authorize indemnification because the number of Directors who are parties to the proceeding with respect to which indemnification is sought prevents the formation of a quorum of Directors who are not parties to the proceeding, the Board shall promptly call a meeting of Members. At that meeting, the Members shall determine under California *Corporations Code Section 7237(e)* whether the applicable standard of conduct set forth in California *Corporations Code Section 7237(b) or (c)* has been met, and if it has, the Members present at the meeting in person or by proxy shall authorize indemnification.

7.5 **Advancement of Expenses.** To the fullest extent permitted by law and except as is otherwise determined by the Board in a specific instance, expenses incurred by a director, officer, employee or agent seeking indemnification under Sections 7.2 and 7.3 of this Article in defending any proceeding covered by those Sections shall be advanced by the Association before final disposition of the proceeding, on receipt by the Association of an undertaking by or on behalf of that person that the advance will be repaid unless it is ultimately determined that the person is entitled to be indemnified by the Association for those expenses.

7.6 **Insurance.** The Association shall have the power to purchase and maintain insurance on behalf of its directors, officers, employees or other agents against other liability asserted against or incurred by any director, officer, employee or agent in such capacity or arising out of the director's, officer's, employee's or agent's status as such.

#### ARTICLE 8 – AMENDMENTS

These bylaws may be amended, at a regular or special meeting of the Members, by a vote of the majority of a quorum of members present either in person or by proxy, except in those matters where the Restated Declaration specifies a greater number for approval.

#### CERTIFICATE OF SECRETARY

The undersigned, Secretary of the corporation known as The Diplomat Owner's Association, Inc. does hereby certify that the above and foregoing Restated Bylaws consisting of 17 pages, were duly adopted by written ballot of the Members of said Association on the \_\_\_\_ day of \_\_\_\_\_, 2004 and that they now constitute said Bylaws.

By: \_\_\_\_\_  
Secretary

seeking indemnification hereunder, the Board shall promptly determine in accordance with California *Corporations Code Section 7237(e)*, whether the applicable standard of conduct set forth in California *Corporations Code Section 7237(b) or 7237(c)* has been met, and if it has, the Board shall authorize indemnification. If the Board cannot authorize indemnification because the number of Directors who are parties to the proceeding with respect to which indemnification is sought prevents the formation of a quorum of Directors who are not parties to the proceeding, the Board shall promptly call a meeting of Members. At that meeting, the Members shall determine under California *Corporations Code Section 7237(e)* whether the applicable standard of conduct set forth in California *Corporations Code Section 7237(b) or (c)* has been met, and if it has, the Members present at the meeting in person or by proxy shall authorize indemnification.

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By: \_\_\_\_\_

Secretary