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CONDOMINIUM DECLARATION  
FOR  
GALLERIA DIPLOMAT TOWNHOMES

THE STATE OF TEXAS }  
COUNTY OF HARRIS }  
KNOW ALL MEN BY THESE PRESENTS:

THAT, WHEREAS CADILLAC DEVELOPMENT CORPORATION, a Texas corporation, having its principal office at 3031 Westheimer, Suite 1600, Houston, Texas, 77024, hereinafter called "Declarant", is the Owner of certain real property situated in the County of Harris, State of Texas, being described more fully on Exhibit "A", which by this reference is made a part hereof; and

WHEREAS, Declarant desires to establish a Condominium Regime under the Condominium Act of the State of Texas, Title 7, Chapter 81, Texas Property Code, herein called the "Act"; and

WHEREAS, Declarant has prepared plans for the construction of a cluster of twenty-five (25) multifamily buildings and other improvements appurtenant thereto on the Property described in said Exhibit "A", which when completed shall consist of two hundred two (202) separately designated Condominium Units and which will be known as GALLERIA DIPLOMAT TOWNHOMES; and

WHEREAS, Declarant does hereby establish a plan for the individual ownership in fee simple of certain space consisting of the area or space contained in each of the Units, herein called the "Condominium Regime", in the twenty-four (24) Buildings and the co-ownership by the individual and separate Unit Owners thereof, as tenants in common, of all the remaining property, which includes both Limited Common Elements and General Common Elements, as hereinafter defined in Paragraph 1.1 hereof, and which are hereinafter collectively referred to as the "Common Elements" or "Common Areas".

NOW, THEREFORE, Declarant does hereby submit the real property described on the attached Exhibit "A", and all improvements thereon, to the provisions of the Act and the Condominium Regime, and does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, limitations and obligations shall be deemed to run with the land and shall be a burden and a benefit to Declarant, its successors and assigns and to any person acquiring or owning an interest in the real property and improvements, their grantors, successors, heirs, executors, administrators, devisees and assigns.

GALLERIA DIPLOMAT TOWNHOMES

ARTICLE I  
DEFINITIONS AND TERMS

1.1 DEFINITIONS OF TERMS. As used in this agreement, the following terms shall have the following meanings unless the context shall expressly provide otherwise:

a. "Board" or "Board of Directors" shall refer to the Board of Directors of GALLERIA DIPLOMAT TOWNHOMES HOMEOWNERS ASSOCIATION, INC.

b. "Common Assessment" means the charge against each Unit Owner and his Unit, representing a portion of the total costs to the Association of maintaining, improving, repairing, replacing, managing and operating the Property, which are to be paid uniformly by each Unit Owner of the Association, as provided in Paragraph 3.4a hereof. This shall also include charges assessed against each Unit Owner to maintain a reserve for replacement fund and to cover costs incurred by the Association to participate in any condemnation suit, as provided in Paragraph 6.3 hereof.

c. "Common Elements" means and includes all of the Property described in Exhibit "A", and all of the improvements thereto and thereon located, excepting all Units. Common Elements shall consist of the General Common Elements and the Limited Common Elements.

d. "Common Expenses" means and includes:

(1) All sums lawfully assessed against the Common Elements by the Managing Agent or Board;

(2) All expenses of administration and management, maintenance, operation, repair or replacement of and addition to the Common Elements (including unpaid special assessments);

(3) Expenses agreed upon as Common Expenses by the Unit Owners; and

(4) Expenses declared to be Common Expenses by this Declaration or by the By-Laws.

e. "Completed Unit" means a completely finished Unit, including, but not limited to, the installation of all appliances and utilities, rendering it ready for occupancy by an Owner other than the Declarant.

refrigeration, central air conditioning and central heating reservoirs, water tanks and pumps, swimming pool, and the like;

(6) All elevators and shafts, garbage incinerators and, in general, all devices or installations existing for common use;

(7) Unassigned parking spaces;

(8) All other elements of the Buildings desirably or rationally of common use or necessary to the existence, upkeep and safety of the Condominium Regime established by this Declaration.

1. "Lienholder" and "First Mortgage" shall mean the holder of a first mortgage lien on any Unit in the Condominium Project.

m. "United Common Elements" means and includes those Common Elements which are reserved for the exclusive use of an individual Owner of a Unit or a certain number of individual Owners of Units.

for the exclusive use of those Owners, which may include "Air handlers", pipes, ducts, electrical wiring and conduits located entirely within a Unit or adjoining Units and serving only such Unit or Units, and such portions of the perimeter walls, floors and ceilings, doors, vestibules, windows, entryways, and all associated fixtures and structures therein, and patio and/or balcony structures as lie outside the Unit boundaries.

n. "Majority of Unit Owners" means those Owners with fifty-one percent (51%) of the votes entitled to be cast, as weighted as herein provided.

o. "Occupant" means a person or persons in possession of a Unit, regardless of whether said person is a Unit Owner.

p. "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof, who owns, of record, title to one (1) or more Condominium Units.

q. "Easement", "Survey Map", "Map" and "Plan" mean or include the engineering survey of the land, locating thereon all of the improvements, the floor and elevation plans and any other drawing or

f. "Condominium Owners Association" or "Association" means CALIFORNIA DELIGHT TOWNHOMES INDIVIDUALS ASSOCIATION, INC., a Texas non-profit corporation, the By-laws of which shall govern the administration of this Condominium Property and the membership of which shall be composed of all the Owners of the Condominium Units according to such By-laws.

g. "Condominium Unit" shall mean an individual Unit together with the interest in the Common Elements (General or Limited) appurtenant to such Unit.

h. "Construction Period" means that period of time during which Declarant is developing the Premises and selling the Condominium Units, which time period shall extend from the date hereof until such time as the Declarant transfers title to all of the Condominium Units, including all Units annexed to this Condominium Regime pursuant to the provisions of Paragraph 2.11 hereof.

i. "Declarant" shall mean CARILLAC DEVELOPMENT CORPORATION, a Texas corporation, or its successors or assigns, who is developing the Property as a condominium.

j. "Declaration" shall mean this Condominium Declaration Instrument as the same may be amended pursuant to Paragraph 2.11 hereof.

k. "General Common Elements" means a part of the Common Elements and includes:

- (1) The real property described in Exhibit "A" attached hereto, less and except the Units;
- (2) All foundations, bearing walls and columns, roofs, halls, lobbies, stairways and entrances and exits or communicationways;
- (3) All basements, roofs, yards and gardens, except as otherwise herein provided or stipulated;
- (4) All premises for the lodging of tenants or persons in charge of the Buildings, except as otherwise herein provided or stipulated;
- (5) All compartments or installations of central services, such as power, light, gas, cold and hot water,

(2) The expense of any other contingencies or unbudgeted costs; provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to the interest in the Common Elements owned by each. The Association, after due notice and hearing, shall also have the authority to establish and fix a special assessment upon any Unit to secure the liability of the Owner of such Unit to the Association for any breach by such Owner of any of the provisions of this Declaration, which breach shall require an expenditure by the Association for repair or remedy. Special assessments may be billed or collected on a monthly basis. The above mentioned liability of any Owner is to be established as set forth in this Declaration.

t. "Unit" shall mean the elements of an individual Condominium Unit, including garage space, which are not owned in common with the Owners of the other Condominium Units in the Project as shown on the Maps, which air exhibits attached hereto, and each Unit shall include the air space assigned thereto. The boundaries of each such Unit and garage space shall be and are the interior surfaces of the perimeter walls, floors, ceilings, window frames, doors, door frames and trim, and exterior surfaces of the patio and balconies; and the space includes both the portions of the Building so described and the air space so encompassed, excepting the Common Elements. In interpreting deeds, mortgages, deeds of trust and other instruments, the existing physical boundaries of the Unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries, regardless of setting, rising or lateral movement of the Building and regardless of variance between boundaries shown on the Plat and those of the Building. The individual ownership of each Unit space herein defined shall further include the interior construction, partitions, appliances, fixtures and improvements which are intended

diagrammatic plan depicting a part of, or all of, the improvements, same being herewith filed, labeled Exhibit "B" and incorporated herein. It is expressly agreed and each and every Purchaser of a Unit, his heirs, executors, administrators, assigns and grantees hereby agree that the square footage, area and dimensions of each Unit as set out or shown in this Declaration or in the survey Plat exhibited hereto are approximate, and are shown for descriptive purpose only. The Declarant does not warrant, guarantee or represent that any Unit actually contains the area, square footage or dimensions shown by the Plat thereof. Each Purchaser and Owner of a Unit or interest therein agrees that the Unit has been or will be purchased as actually and physically existing at the time such purchase is closed. Each Purchaser of a Unit expressly waives any claim or demand which he may have against the Declarant or any person who ever on account of any difference, shortage or discrepancy between the Unit as actually and physically existing and as it is shown on the respective Plat thereof exhibited hereto. It is specifically agreed that in interpreting deeds, mortgages, deeds of trust and other instruments for any purposes whatsoever or in connection with any matter, the existing physical boundaries of the Unit shall be conclusively presumed to be the boundaries regardless of setting, rising or lateral movements of the Building, and regardless of variance between boundaries as shown on the Plat and those of the buildings.

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

g. "Special Assessments," In addition to the common assessments described above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of deferring, in whole or in part:

- (1) The cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto; or

to exclusively serve such Unit space, such as interior room walls, floor coverings or finish, closets, cabinets, shelving, individual bathroom and kitchen fixtures, plumbing and appliances, individual lighting and electrical fixtures and other separate items or chattels belonging exclusively to such Unit, any of which may be removed, replaced, disposed of or otherwise treated without affecting any other Unit space or ownership, use or enjoyment thereof. None of the land in this Project on which any Unit space or porch space is located shall be separately owned, as all land in this Project shall constitute part of the "Common Elements" of the Property as herein defined, and shall be owned in common by the Owners of the Units in this Condominium Project. It is intended the term "Unit", as used in this Declaration, shall have the same meaning as the term "Apartment" as used in the Act.

ARTICLE II  
CONDOMINIUM UNIT DESIGNATIONS AND DESCRIPTIONS

2.1 REGISTRATION OF FLAT. The Flat shall be filed for record simultaneously with the recording of this Declaration as a part hereof, and prior to the first conveyance of any Condominium Unit. Such Flat consists of and sets forth:

- a. The legal description of the surface of the land;
- b. The linear measurements and locations, with reference to the exterior boundaries of the land, of the buildings and all other improvements constructed, or to be constructed, on said land by Declarant;
- c. The exterior boundaries and number of each Unit, expressing its square footage, and any other data necessary for its identification, which information will be depicted by a Plat of such floor of each building showing the letter of the building, the number of the floor and the number of the Unit; and
- d. The location of the Limited Common Elements; and
- e. The location and number of each garage which is subject to individual ownership.

2.2 DESCRIPTION OF UNITS. The Property is hereby divided into two hundred two (202) separately designated Units contained within the twenty-four (24) buildings. Each Unit is identified by number and each

Building is identified by letter on the Map. The remaining portion of the Property, referred to as the Common Elements, shall be owned in common by the Owners. The Owners of each Unit shall own an undivided interest in said Common Elements, the percentage or fraction thereof for each Unit being as shown on the attached Exhibit "C".

2.3 LIMITED COMMON ELEMENTS. Portions of the Common Elements are set aside and reserved for the exclusive use of the individual Owners, such areas being Limited Common Elements. The Limited Common Elements reserved for the exclusive use of the individual Owners are the patio and balcony structures. Such spaces and structures are allocated and assigned by the Declarant to the respective Units, as indicated on the Plat. Such Limited Common Elements shall be used in connection with the particular Unit, to the exclusion of the use thereof by the other Owners, except by invitation.

2.4 REGULATION OF COMMON AREAS. Portions of the Common Areas are intended as recreation areas, and are improved with green areas, swimming pool, and other facilities. Reasonable regulations governing the use of such facilities by Owners and by their guests and invitees shall be promulgated by the Declarant, or by the Board of Directors of the Association after the same has been elected. Such regulations shall be permanently posted at the office and/or elsewhere in said recreational areas, and all Owners shall be furnished with a copy thereof. Each Owner shall be required to strictly comply with said Rules and Regulations, and shall be responsible to the Association for the compliance therewith by the members of their respective families, relatives, guests or invitees, both minor and adult.

2.5 INSEPARABLE UNITS. Each Unit and its corresponding pro-rata interest in and to the Common Elements appurtenant thereto shall be inseparable and may not be conveyed, leased or encumbered separately, and shall at all times remain indivisible.

2.6 DISCRETIONS. Every deed, lease, mortgage, trust deed or other instrument may legally describe a Condominium Unit by its identifying building letter and unit number, as shown on the Map, followed by the words GAZIPIA or DIFDAHAT TOWNHOMES and by reference to this recorded Declaration and Map. Every such description shall be deemed good and sufficient for all purposes to convey, transfer, encumber or otherwise affect the Common Elements.

2.7 ENCROACHMENTS. If any portion of the Common Elements encroaches upon a Unit or Units, a valid statement for the encroachment and for the

maintenance of sewer, so long as it stands, shall and does exist. If any portion or portions of a Unit or Units encroach upon the Common Elements, a valid easement for the encroachment and for the maintenance of sewer, so long as it stands, shall and does exist. A valid easement also exists to that portion of the General Common Elements and of the Limited Common Elements occupied by any part of an Owner's Unit not contained within the physical boundaries of such Unit, including, but not limited to, space occupied by heating and air conditioning equipment, utility lines and similar equipment which serves only one (1) Unit. For title or other purposes, such encroachments and easements shall not be considered or determined to be encroachments either on the Common Elements or the Individual Units.

**2.8 GOVERNMENTAL ASSESSMENT.** Declarant shall give written notice to the Assessor's Office of the creation of Condominium Ownership of this Property, as provided by law, so that each Unit and its percentage or fraction of undivided interest in the Common Elements shall be deemed a separate parcel and subject to separate assessment and taxation.

**2.9 USE AND OCCUPANCY RESTRICTIONS.**

a. Subject to the provisions of this Declaration and By-Laws, no part of the Property may be used for purposes other than housing and the related common purposes for which the Property was designed. Each Unit or any two (2) or more adjoining Units used together shall be used for residential purposes or such other uses permitted by this Declaration, and for no other purposes. The foregoing restrictions as to residence shall not, however, be construed in such manner as to prohibit a Unit Owner from:

- (1) Maintaining his personal professional library;
- (2) Keeping his personal business or professional records or accounts; or
- (3) Handling his personal business or professional telephone calls or correspondence, which uses are expressly declared customary incidental to the principal residential use and not in violation of said restrictions.

b. That part of the Common Elements separating and located between and exclusively serving two (2) or more adjacent Units used together (including, without limitation, portions of any hallway and any walls) may be altered with written consent of the Board, as

provided in Paragraph 3.8 herein, to afford ingress to and egress from such Units and to afford privacy to the occupants of such Units when using such Common Elements, and that part of the Common Elements so altered may be used by the Unit Owner or Owners of such Units as a license, pursuant to a license agreement with the Association, provided:

(1) The expense of making such alterations shall be paid in full by the Unit Owner or Owners making such alterations;

(2) Such Unit Owner or Owners shall pay in full the expense of restoring such Common Elements to their condition prior to such alteration in the event such Units shall cease to be used together, as aforesaid; and

(3) Such alteration shall not interfere with use and enjoyment of the Common Elements (other than the aforesaid part of the Common Elements separating such adjacent Units), including, without limitation, reasonable access and ingress to and egress from the other Units in the hallway affected by such alteration.

c. The Common Elements shall be used only by the Unit Owners and their agents, servants, tenants, family members, customers, invitees and licensees for access, ingress to and egress from the respective Units and for other purposes incidental to use of the Units; provided, however, receiving rooms, swimming pool, and any other areas designed for specific use shall be used for the purpose approved by the Board.

d. The use, maintenance and operations of the Common Elements shall not be obstructed, damaged or unreasonably interfered with by any Unit Owner, and may be subject to lease, concession or easement, presently in existence or entered into by the Board at some future time.

e. Without limiting the generality of the foregoing provisions of this Paragraph 2.9, use of the Property by the Unit Owners shall be subject to the following restrictions:

- (1) Nothing shall be stored in the Common Elements without prior consent of the Board, except in storage areas or as otherwise herein expressly provided;

(2) Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance for the Property without the prior written consent of the Board. No Unit Owner shall permit anything to be done or kept in his Unit or the Common Elements which will result in the cancellation of insurance on any Unit, or any part of the Common Elements, or which will be in violation of any law;

(3) No waste shall be committed in or on the Common Elements;

(4) Subject to Declarant's rights under Paragraph 2.3e(1)(d) of this Declaration, no sign of any kind shall be displayed to the public view on or from any Unit or Common Elements without the prior written consent of the Board or the written consent of the Managing Agent acting in accord with the Board's direction;

(5) No noxious or offensive activity shall be carried on, in or upon the Common Elements, nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any other Unit Owner. No loud noises or noxious odors shall be permitted on the Property, and the Board shall have the right to determine in accordance with the By-Laws if any such noise, odor or activity constitutes a nuisance. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisily or smoky vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or other items which may unreasonably interfere with reception or reception of any Unit Owner in the Property, shall be located, used or placed on any portion of the Property or exposed to the view of other Unit Owners without the prior written approval of the Board;

(6) Except as expressly provided hereinabove, nothing shall be altered or constructed in or removed from the Common Elements, except upon the written consent of the Board;

(7) No structure of a temporary character, trailer, tent, shack, garage, barn or other outbuilding shall be permitted on the Property at any time temporarily or permanently, except with the prior written consent of the Board; provided, however, that temporary structures may be erected for use in connection with the repair or rebuilding of the buildings or any portion thereof;

(8) No rubbish, trash or garbage or other waste material shall be kept or permitted upon any Unit or the Common Elements, except in sanitary containers located in appropriate areas screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unattractive, offensive or detrimental to any other Property in the vicinity thereof or to its Occupants. There shall be no exterior fires whatsoever except barbecue fires contained within receptacles designed in such a manner that no fire hazard is created. No clothing or household fabrics shall be hung, dried or aired in such a way in the Property as to be visible to other Property and no lumber, grass, shrub or tree clippings, plant waste, metals, bulk material, scrap, refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Property, except within an enclosed structure or if appropriately screened from view;

(9) No Unit Owner shall park, store or keep any vehicle, except solely within the parking space designated therefor, and any impermissible vehicle shall not be stored in a parking space or within the Common Elements in general. No Unit Owner shall park, store or keep within or adjoining the Property any large commercial-type vehicle (dump truck, cement-mixer truck, oil or gas truck,

enclosed patio or on a leash being held by a person capable of controlling the animal. The enclosure must be so maintained that the animal cannot escape therefrom and shall be subject to the approval of the Board. Should any animal belonging to a Unit Owner be found unattended out of the enclosure and not being held on a leash by a person capable of controlling the animal, such animal may be removed by Declarant (for so long as it has control over the Association) or a person designated by the Declarant to do so, and subsequent thereto by the Association or its Managing Agent, to a pound under the jurisdiction of the local municipality in which the Property is situated, and subject to the laws and rules governing said pound, or to a comparable animal shelter. Furthermore, any Unit Owner shall be absolutely liable to each and all remaining Unit Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Property by a Unit Owner or members of his family, his tenants or his guests; and it shall be the absolute duty and responsibility of each such Unit Owner to clean up after such animals which have used any portion of the Common Elements;

(13) No Unit Owner shall be permitted to lease his Unit for hotel or transient purposes, which, for purposes of this paragraph is defined as a period less than thirty (30) days. No Unit Owner shall be permitted to lease less than the entire Unit. Every such lease shall be in writing. Every such lease shall provide that the lessee shall be bound by and subject to all of the obligations under the Declaration and By-laws, of the Unit Owner making such lease and failure to do so shall be a default thereunder. The Unit Owner making such lease shall not be relieved thereby from any of said obligations; and

(14) In order that Declarant may establish the Property as a fully occupied Condominium, no Unit Owner

delivery truck and any other vehicle equipment, mobile or otherwise, deemed to be a nuisance by the Board), or any recreational vehicle (camper unit, motor home, truck, trailer, boat, mobile home or other similar vehicle deemed to be a nuisance by the Board). No Unit Owner shall conduct major repairs or major restorations of any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of the Common Elements. Parking spaces shall be used for parking purposes only;

(10) Except within individual Units, no planting, transplanting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon the Property, except as approved by the Board;

(11) Motorcycles, motorcycles, motor scooters or other similar vehicles shall not be operated within the Property except for the purpose of transportation directly from a parking space to a point outside the Property, or from a point outside the Property directly to a parking space;

(12) No animals, livestock, reptiles, or poultry of any kind shall be raised, bred or kept in any Unit or the Common Elements. Dogs, cats, fish, birds and other household pets may be kept in Units subject to rules and regulations adopted by the Association, provided they are not kept, bred or maintained for commercial purposes or in unreasonable quantities. As used in this Declaration, "unreasonable quantities" shall ordinarily mean more than two (2) pets per household; provided, however, the Association may determine a reasonable number in any instance to be more or less, and the Association may limit the size and weight of any household pets allowed. The Association, acting through the Board, shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to any other Unit Owner. Animals belonging to Unit Owners, occupants or their licensees, tenants or invitees within the Property must be kept either within an enclosure, an



owned by the Declarant, and will not change or affect the price, or fraction of ownership of any other Unit. This reservation shall be effective for any amended and merged Condominium Regime but shall not work to readjust or reallocate any vested interests in the Common Elements appurtenant to any said Unit.

2.11 RESERVATION OF RIGHT OF MERGER AND ANNEXATION.

a. For a period of five (5) years from the date of recordation of this Declaration, the Declarant reserves the right, authority and power, as allowed by law, to annex the adjoining land described in the attached Exhibit "B" for the purpose of establishing, amending and merging one or more additional Phases(a). It is contemplated that Declarant will annex approximately one hundred sixty-nine (69) additional Units to the Project, but nothing contained herein shall restrict Declarant in this number of Units or obligate Declarant to annex this number of Units. The Units may be created simultaneously or staggered and, notwithstanding Paragraph 2.10 hereof, shall conform in basic respects to the general restrictions, limitations and benefits contained in this Declaration. The intended improvements in the future annexation tracts must be substantially completed prior to annexation. Upon the recordation of Condominium Declaration Supplements or Declarations of Annexation and Merger in compliance with this Paragraph 2.11, this Declaration shall further apply to and affect all of the Property described in this Declaration and the Property described in such Declaration Supplements or Declarations of Annexation and Merger, and shall also bind all Owners of any part of the subsequent Phases with the same effect as if the Phases were originally subject to and described in this Declaration.

Thereafter, the powers and responsibilities of the Board and Association shall be construable with regard to all Property included within the expanded Condominium and the Board and Association shall, pursuant to the provisions of this Declaration, constitute the Board and Association for the entire Condominium, as expanded. The rights, obligations and duties of each Owner shall be the same and identical to the rights, obligations and duties of the Owners prior to recordation of such Declaration Supplements or

nor the Association shall do anything to interfere with, and nothing in the Declaration shall be understood or construed to:

(a) Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from doing in any Unit owned by them whatever they determine to be necessary or advisable in connection with the completion of any work thereon;

(b) Prevent Declarant, its successors or assigns, or its or their representatives, from erecting, constructing and maintaining on the Common Elements or any Unit owned or controlled by Declarant, its successors or assigns, or its or their contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business of completing any work and establishing the Property as a Condominium and disposing of the same by sale, lease or otherwise;

(c) Prevent Declarant, its successors or assigns, or its or their representatives, from maintaining a Sales Office and maintaining and showing model Units to aid in the marketing of the Units during the Construction Period; or

(d) Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from maintaining such sign or signs for marketing of Units in the Property.

2.10 RESERVATION OF VARIANCE. Notwithstanding any provision of this Declaration to the contrary, the Declarant reserves unto itself the exclusive right to amend the Condominium Plat and to vary the size, shape, physical lay-out or location of the un sold Units and to correspondingly adjust the sales price and the percentage or fraction of ownership of the Common Elements or the respective Units remaining unsold. Such adjustment in the percentage or fraction of ownership of the Common Elements will only affect those Units

Declarations of Annexation and Merger, except as each Owner's percentage or fraction of ownership interest may be modified as herein provided. The assessments and voting rights will become effective for the annexed Units upon filing of the Supplemental Declaration.

b. The Association shall continue to maintain one (1) Common Expense Fund for the collection and disbursement of monies as required and permitted hereby for the maintenance, repair, replacement and operation of the expanded Condominium and in all respects and meetings, the Condominium, as expanded, shall be deemed to be a single Condominium Project for the purposes of and in accordance with the provisions of this Declaration and the Act.

c. Any annexation and merger shall entail Buildings and Units of comparable quality and shall be accomplished by the filing of appropriate Declaration Supplements or Condominium Declarations of Annexation and Merger. Said documents shall be recorded in the Condominium Records of Harris County, Texas, which will, inter alia:

- (1) Be executed by only the Declarant or its successors or assigns;
- (2) Contain a legal description of the land to be annexed to the Condominium;
- (3) Contain a sufficient description of the Units built or to be built on the annexed land;
- (4) Contain a recalculation of percentage or fraction of ownership interest in the Common Elements (as expanded by annexation) among all Units in the Condominium. Such recalculation will be calculated by determining the square footage of the individual Units in proportion to the new total square footage of all the Units; and
- (5) Any other information required by law or necessary to effectuate the intent of this Article.

d. This Declaration, including, but not limited to this Paragraph 2.11, does not presently create any interest in or with respect to the Property shown as Exhibit "D" which may be annexed, and this Declaration shall not affect in any manner all or any part of such Property and Declarant shall have no obligation to annex any

Units to GALLERIA DIPLOMAT TOWNHOMES unless and until a Supplemental Declaration or Declaration of Annexation and Merger is filed thereto in accordance with this Paragraph 2.11.

e. This Paragraph 2.11 may not be amended without the approval of Declarant.

#### ARTICLE III

##### RIGHTS AND OBLIGATIONS OF OWNERSHIP

3.1 **OWNERSHIP.** A Condominium Unit will be a fee simple estate and may be held and owned by any person, firm, corporation or other entity singularly, as joint tenants, as tenants in common, or in any real property tenancy relationship recognized under the laws of the State of Texas.

3.2 **PARTITION.** The Common Elements (both General and Limited) shall be owned in common by all of the Owners of the Condominium Units and shall remain undivided, and no Owner shall bring any action for partition or division of the Common Elements other than that as specifically provided for hereinafter in Paragraph 6.2, "Judicial Partition", and, in any event, all mortgages must be paid prior to the bringing of an action for partition or the consent of all Mortgagees must be obtained. Nothing contained herein shall be construed as limitation of the right of partition of a Condominium Unit between the Owners thereof, but such partition shall not affect any other Condominium Unit.

3.3 **EXCLUSIVENESS OF OWNERSHIP.** Each Owner shall be entitled to exclusive ownership and possession of his Unit. Each Owner may use the Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners.

3.4 **ONE-FAMILY RESIDENTIAL DWELLING.** Each Condominium Unit shall be occupied and used or leased by the Owner only as and for a residential dwelling for the Owner, his family, his social guests or his tenants.

3.5 **Mechanics' and Materialman's Liens.** No labor performed or materials furnished and incorporated in a Unit, notwithstanding the consent or request of the Owner, his agent, contractor or subcontractor, shall be the basis for filing of a lien against the Common Elements owned by such other Owners. Each Owner shall indemnify and hold harmless each of the other Owners from and against all liability arising from the claim of any lien against the Unit of any other Owner or against the Common Elements for construction performed or for labor, materials, services or other products incorporated in the Owner's Unit at such Owner's request.

3.6 RIGHT OF ENTRY. The Association shall have the irrevocable right to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements therein or accessible therefrom, or at any time for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit or Units.

3.7 OWNER MAINTENANCE. An Owner shall maintain and keep in repair the interior, patio and/or balcony areas, and garage of his own Unit, including the fixtures thereof. All fixtures and equipment installed with the Unit, commencing at a point where the utility lines, pipes, wires, conduits or systems (which for brevity are hereafter referred to as "utilities") enter the Unit, shall be maintained and kept in repair by the Owner thereof; and an Owner shall be obligated to promptly repair and replace any broken or cracked glass in windows and doors. An Owner shall be totally responsible for his own heating and cooling system.

3.8 ALTERATION. An Owner shall do no act nor any work that will impair the structural soundness and integrity of the Building or repair any easement or encroachment. No Owner shall in any way alter, modify, add to or otherwise perform any work whatever upon any of the Common Elements, limited or General, without the prior written consent and approval in writing by the Board of Directors. Any such alteration or modification shall be in harmony with the external design and location of the surrounding structures and topography, and shall not be considered until submission to the Association of complete plans and specifications showing the nature, kind, shape, size, materials, color and location for all proposed work. The Board shall have the obligation to ensure within thirty (30) days after receipt of notice of the proposed alterations. Failure to answer within the stipulated time shall mean that there is no objection to the proposed alteration or modification. During the Construction Period, the Board shall have the sole right to approve or reject any plans and specifications submitted for consideration by an Owner.

3.9 RESTRICTION OF OWNERSHIP. As a restriction of the ownership provisions set forth in Paragraph 1.11, "Unit", an Owner shall not be deemed to own the unfinished surfaces of the perimeter walls, floors, ceilings, balconies, patio and roofs surrounding his Unit, nor shall such Owner be deemed to own the utilities running through his Unit which are utilized for or serve more than one (1) Unit, except as a tenant in common with the other

Owners. An Owner shall be deemed to own and shall maintain the inner, finished surfaces of the perimeter and interior walls, floors and ceilings, doors, windows and other such elements consisting of paint, wallpaper and other such finishing material.

3.10 LIABILITY FOR NEGLIGENCE. In the event the need for maintenance or repair is caused through the willful or negligent act of an Owner, his family, guests or invitees, and is not covered or paid for by insurance, either on such Unit or the Common Elements, the cost of such maintenance or repair shall be added to and become a part of the assessment to which such Unit is subject, pursuant to Article IV hereof. Such liability is limited in the liability Owner has under Texas law.

3.11 SUBJECT TO DECLARATION AND BY-LAWS. Each Owner and the Association shall comply strictly with the provisions of this Declaration, the By-Laws and the declarations and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damage or for injunctive relief, or both, maintainable by the Association on behalf of the Owners or, in proper case, by an aggrieved Owner against another Owner or against the Association.

ARTICLE IV  
MANAGEMENT AND ADMINISTRATION

4.1 BY-LAWS. The administration of this Condominium Property shall be governed by the By-Laws of GALLERIA DIPLOMAT TOWNHOMES HOMEOWNERS ASSOCIATION, INC., a non-profit corporation, referred to herein as the "Association". An Owner of a Condominium Unit, upon becoming an Owner, shall be a Member of the Association and shall remain a Member for the period of his ownership. The Association shall be managed by a Board of Directors, duly appointed or elected, pursuant to the terms and conditions of the By-Laws. In addition, the Association shall enter into a management agreement upon the terms and conditions established in the By-Laws, and said management agreement shall be consistent with this Declaration.

4.2 DECLARANT CONTROL. Paragraph 4.1 notwithstanding, and for the benefit and protection of the Unit Owners and any First Mortgages of record for the sole purpose of insuring a complete and orderly rollout as well as a timely rollout of the Condominium Project, including any amendments as

c. The right of the Association, as allowed by law, to borrow money and mortgage the Common Area and improvements for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property; providing, however, that the rights of any such Mortgagee in such property shall be subordinate to the rights of the Owners hereunder, and in no event shall any such Mortgagee have the right to terminate the Condominium Regime established by this Declaration;

d. The right and duty of the Association to suspend the voting rights and the right to the use of the recreational facilities by an Owner for any period during which any assessment against the Owner's Condominium Unit remains unpaid;

e. The right of Declarant or the Association after the Declarant Control Period to dedicate or transfer all or any part of the Common Area for utility easements to any public agency, authority or utility for the purposes, and subject to the conditions, of such agency, authority or utility. No such dedication or transfer shall be effective unless approved by all First Mortgagees and two-thirds (2/3) vote of the quorum of Owners present at a meeting of the Association specifically called for the purpose of approving any such dedication or transfer, and unless an instrument signed by the Board of Directors reflecting such vote of the Owners agreeing to such dedication or transfer and First Mortgagee approval has been duly recorded in the Condominium Records of Harris County, Texas;

f. The right of the Association to adopt, implement and maintain a private security system for the Premises consistent with applicable laws;

g. The right of the Association to establish rules and regulations governing traffic within the Common Area, and to establish sanctions for any violation or violations of such rules and regulations;

h. The right of the Association to regulate noise within the Premises, including, without limitation, the right of the Association to require mufflers on engines and to prohibit the use of devices producing excessive noise; and

provided in Paragraph 2.11, the Declarant will retain control of and over the Association for a maximum period not to exceed March 1, 1997, or one hundred twenty (120) days from the closing of sale of seventy-five percent (75%) of the Units, including any amendments, or when in the sole opinion of the Declarant, the Project becomes viable, self-supporting and operational, whichever occurs first. It is expressly understood, the Declarant will not use said control for any advantage over the Unit Owners by way of retention of any residual rights or interests in the Association or through the creation of any management agreement with a term longer than three (3) years without majority Association approval upon relinquishment of Declarant control. Should Declarant elect not to amend any of the adjoining tracts, then its control shall extend no longer than three (3) years from the recording of this Condominium Declaration. Within sixty (60) days from the end of the Declarant Control Period, or sooner at the Declarant's option, the Declarant, through the Board of Directors, shall call the first annual meeting of the Association for the purpose of electing, by ballot of owners, a Board of Directors and to transact such other business of the Association as may properly come before it.

4.3 TEMPORARY MANAGING AGENT. During the period of administration of this Condominium Regime by Declarant, the Declarant may employ or designate a temporary manager or managing agent, who shall have and possess all of the rights, powers, authority, functions and duties as may be specified in the contract of employment or as may be delegated by Declarant to him. The Declarant may pay such temporary manager or managing agent such compensation as it may deem reasonable for the services to be rendered, which compensation shall constitute a part of the Common Expenses of this Condominium Regime and shall be paid out of the Association budget.

4.4 SPECIFIC POWER TO RESTRICT USE AND ENJOYMENT. Every Owner and the Declarant shall have a beneficial interest of use and enjoyment in the Common Elements subject to the following limitations, restrictions and provisions:

a. The right of the Association to publish rules and regulations governing use of the Common Areas and the improvements and facilities located thereon, and to establish and enforce penalties for infractions thereof;

b. The right of the Association to charge reasonable fees for the use of the Common Elements, if such facilities are not used by all Owners equally;