

EXHIBIT "D"  
BYLAWS  
OF  
MERRITT AT WHITEMARSH, A CONDOMINIUM ASSOCIATION, INC.  
DATED AS OF FEBRUARY 8, 2006

ARTICLE I.  
GENERAL

Section 1. Applicability. These Bylaws provide for the self-government of Merritt at Whitemarsh, A Condominium Association, Inc., a Georgia non-profit corporation (the "Association"), in accordance with the Articles of Incorporation for the Association filed with the Secretary of State and the Declaration of Condominium for Merritt at Whitemarsh which will be recorded in the Chatham County, Georgia land records ("Declaration").

Section 2. Definitions. All capitalized terms shall have the meanings specified in the Declaration. All other terms used herein shall have their generally accepted meanings.

Section 3. Membership. An Owner of a Unit shall automatically become a Member of the Association upon taking title to the Unit and shall remain a Member for the entire period of ownership. As is more fully provided below, a spouse or a cohabitant of a Member may exercise the powers and privileges of the Member. If title to a Unit is held by more than one (1) Person, the Membership shall be shared in the same proportion as the title, but there shall be only one (1) Membership and one (1) vote per Unit. Membership does not include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's Membership. Membership shall be appurtenant to the Unit and shall be transferred automatically by conveyance of that Unit and may be transferred only in connection with the transfer of title.

The total number of Units on the Property shall be the actual number of Units shown on the Plats and submitted to the Declaration of Condominium, regardless of any different number of Units shown from time to time on Declarant's land use plan for the Property.

Section 4. Entity Members. In the event an Owner is a corporation, partnership, trust, or other legal entity that is not a natural person, then any natural person who is an officer, director, or other designated agent of such corporation, partner of such partnership, beneficiary or other designated agent of such trust, or manager of such other legal entity shall be eligible to represent such entity or entities in the affairs of the Association. Such person's relationship with the Association shall automatically cease upon the termination of such person's relationship with the entity or entities which are the Owner, and termination of the person's relationship with the Association will create a vacancy in any elected or appointed position within the Association in which such person may have been serving. Such vacancy will be filled in accordance with these Bylaws.

Section 5. Voting. Each Unit shall be entitled to one equal vote, which vote may be cast by the Owner, the Owner's spouse, the cohabitant of the Owner, or by a lawful proxy as

303  
X  
625



exercised as they determine between or among themselves, but in no event shall more than one (1) vote be cast with respect to any Unit. If only one (1) co-owner attempts to cast the vote for a Unit, it shall be conclusively presumed that such co-owner is authorized on behalf of all co-owners to cast the vote for such Unit. In the event of disagreement between or among co-owners and an attempt by two (2) or more of them to cast such vote or votes, such Persons shall not be recognized and such vote or votes shall not be counted.

No Owner shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors, if that Owner is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association or if the Owner has had voting rights suspended for the infraction of any provision of the Declaration, these Bylaws, or any rule of the Association. If the voting rights of an Owner have been suspended, that Owner shall not be counted as an eligible vote for purposes of establishing a Majority (as that term is defined below) or a quorum (as that term is defined below).

303  
BOOK  
X  
626  
PAGE

**Section 6. Majority.** As used in these Bylaws, the term "Majority" shall mean those votes, Owners, or other group, as the context may indicate, totaling more than fifty (50%) percent of the total number of eligible votes, Owners, or other group, respectively. Unless otherwise specifically stated, the words "Majority vote" mean more than fifty (50 %) percent of those voting in person or by proxy. Except as otherwise specifically provided in the Declaration or these Bylaws, all decisions shall be by Majority vote.

**Section 7. Purpose.** The Association shall have the responsibility of performing all of the acts that may be required to be performed by the Association pursuant to the Georgia Nonprofit Corporation Code and the Declaration. Except as to those matters which the Declaration or the Georgia Nonprofit Corporation Code specifically require to be performed by the vote of the Association Membership, the administration of the foregoing responsibilities shall be performed by the Board of Directors as more particularly set forth below.

**Article I.**  
**Meetings of Members**

**Section 1. Annual Meetings.** The regular annual meeting of the Members shall be held during the 60-day period immediately preceding the last day of each fiscal year, with the date, hour, and place to be set by the Board of Directors. At the annual meeting, comprehensive reports of the affairs, finances, and budget projections of the Association shall be made to the Owners.

**Section 2. Special Meetings.** Special meetings of the Members may be called for any purpose at any time by the President or Secretary, by request of any Member of the Board of Directors, or upon written petition of at least fifteen percent (15%) of the Owners. Any such written petition by the Members must be submitted to the Association's Secretary. The Secretary shall then verify that the required number of Members have joined in the petition and shall submit all proper petitions to the Association's President. The President shall then promptly call a special meeting for the purpose stated in the petition, and the Secretary shall send notice of the



meeting in accordance with these Bylaws. Only those matters that are within the purpose or purposes described in the meeting notice may be conducted at the special meeting.

Section 3. Notice of Meetings. It shall be the duty of the Secretary to mail or deliver to each Owner of Units of record or to the Units a notice of each annual or special meeting of the Association, at least twenty-one (21) days prior to each annual meeting and at least seven (7) days prior to each special meeting. The notice shall state the purpose of any special meeting, as well as the time and place where it is to be held. The notice shall be delivered personally, sent by United States mail, postage prepaid statutory overnight delivery or issued electronically in accordance with the Official Code of Georgia to all unit owners of record at such address or addresses as any of them may have designated in writing to the Association's Secretary or, if no other address has been so designated, at the address of their respective Units. The mailing or delivering of a notice of meeting in the manner provided in this Section shall be considered proper service of notice.

Section 4. Waiver of Notice. Waiver of notice of a meeting of the Owners shall be deemed the equivalent of proper notice. Any Owner may, in writing, waive notice of any meeting of the Owners, either before or after such meeting. Attendance at a meeting by an Owner, whether in person or represented by proxy, shall be deemed waiver by such Owner of notice of the time, date, and place thereof unless such Owner specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted at such meeting unless objection to lack of notice is raised before the business, of which proper notice was not given, is put to a vote.

Section 5. Quorum. Except as may be provided elsewhere, the presence of Owners, in person or by proxy, entitled to cast more than one-third (1/3) of the eligible votes of the Association shall constitute a quorum. Once a quorum is established for a meeting, it shall conclusively be presumed to exist until the meeting is adjourned and shall not need to be reestablished. Owners whose voting rights have been suspended pursuant to the Declaration or these Bylaws shall not be counted as eligible votes toward the quorum requirement.

Section 6. Adjournment. Any meeting of the Owners may be adjourned from time to time for periods not exceeding ten (10) days by vote of the Owners holding the Majority of the votes represented at such meeting, regardless of whether a quorum is present. Any business which could be transacted properly at the original session of the meeting may be transacted at a reconvened session, and no additional notice of such reconvened session shall be required.

Section 7. Proxy. Any Member entitled to vote may do so by written proxy duly executed by the Member setting forth the meeting at which the proxy is valid. To be valid, a proxy must be signed, dated, and filed with the Secretary prior to the opening of the meeting for which it is to be used. Proxies may be delivered to the Board of Directors by personal delivery, U.S. mail or facsimile transmission to any Board of Director Member or the Association's management agent. Proxies may be revoked only by written notice delivered to the Association, except that the presence in person by the giver of a proxy at a meeting for which the proxy is given shall automatically invalidate the proxy for that meeting. A proxy holder may not appoint a substitute proxy holder unless expressly authorized to do so in the proxy.



Section 8. Action Taken Without a Meeting. In the discretion of the Board of Directors, any action that may be taken at any annual, regular, or special meeting of Members may be taken without a meeting if the Association delivers a written consent form or ballot to every Member entitled to vote on the matter.

(a) A written ballot shall: (1) set forth each proposed action; and (2) provide an opportunity to vote for or against each proposed action.

(b) Approval by written ballot pursuant hereto shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(c) All solicitations for votes by written ballot shall: (1) indicate the number of responses needed to meet the quorum requirements; (2) state the percentage of approvals necessary to approve each matter other than election of directors; and (3) specify the time by which a ballot must be received by the Association in order to be counted.

(d) A written ballot may not be revoked. The Association shall maintain such ballots in its file for a period of at least three (3) years.

- Section 9. Membership List. After fixing a record date for a meeting, the Association shall prepare an alphabetical list of the names of all its Members who are entitled to notice of the meeting. The list must show the address of each Member entitled to vote at the meeting. The list of Members must be available for inspection by any Member for the purpose of communication with other Members concerning the meeting, beginning two (2) business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, as provided further in the Georgia Nonprofit Corporation Code. This list shall not be used to solicit money or property unless such money or property will be used solely to solicit the votes of the Members in an election to be held for the Association, used for commercial purposes, sold to or purchased by any Person.

Section 10. Order of Business. At all meetings of the Association, Roberts Rules of Order (latest edition) shall govern when not in conflict with the Declaration, these Bylaws or the Articles of Incorporation, unless the Owners present at a particular meeting vote to suspend Robert's Rules at that meeting.

Article II.  
Board of Directors

A. Composition and Selection.

Section 1. Number. The affairs of the Association shall be governed by a Board of Directors. During the Declarant Control Period (as hereinafter defined), the Board of Directors shall be composed of one or more persons to be appointed by the Declarant. After the Declarant Control Period, the Board of Directors shall be composed of three (3) persons who shall be



elected by majority vote of all Owners. Except for directors appointed by the Declarant hereunder, the directors shall be Owners or spouses or cohabitants of such Owners; provided, however, no Owner and his spouse or cohabitant may serve on the Board of Directors at the same time, and no co-owners may serve on the Board of Directors at the same time.

Section 1. Term of Office. Notwithstanding anything to the contrary herein, Declarant shall have exclusive authority to appoint and remove the member or member of the Board of Directors, with or without cause, until such time as the earlier of the following dates shall occur: (i) the expiration of seven (7) years after the recording of this Declaration, (ii) the date as of which eighty percent (80%) of all undivided interest in the Common Elements shall have been conveyed by Declarant to Unit Owners other than a successor to Declarant; provided that the Declarant's authority to appoint and remove shall not expire due solely to the conveyance of eighty (80%) percent of the undivided interest in the Common Elements until the earlier of: (a) the addition of all of the Additional Property to the Condominium in which an unexpired option exists; or (b) the expiration of the time period in which Declarant is entitled to expand the Condominium as provided herein; or (iii) surrender by Declarant of such authority by an express amendment to this Declaration executed and recorded by Declarant and consented to by holders of first mortgages on Units owned by Declarant. The period of time during which the Declarant has the right to appoint or remove directors is herein referred to as the "Declarant Control Period." The directors appointed by the Declarant need not be Owners or residents of the Property.

BOOK X  
PAGE 629

At the first election of directors of the Association following the expiration or termination of the Declarant Control Period, the one (1) director receiving the most votes shall be elected for a term of two (2) years and the remaining two (2) directors elected shall have a term of one (1) year. At that time or at any time thereafter, the Board of Directors, by Majority vote, may elect to change the number of directors to another number so long as the total number of directors is an odd number and there are no less than three (3) and no more than nine (9) directors. At the expiration of the term of office of each Board Member, and at each annual meeting thereafter, a successor shall be elected to serve for a term of two (2) years. The Board Members shall hold office until their respective successors shall have been elected by the Association.

Section 2. Removal of Members of the Board of Directors. At any regular or special meeting of the Association duly called, any one or more directors, except for directors appointed by Declarant hereunder, may be removed with or without cause by a Majority of the Members of the Association and a successor may then and there be elected to fill the vacancy thus created. Further, any director who has had three (3) consecutive unexcused absences from regularly scheduled Board meetings or is more than sixty (60) days past due in the payment of any assessment may be removed by the vote of a Majority of the other directors. Any director whose removal has been proposed shall be given at least ten (10) days notice of the calling of the meeting to consider his removal and the purpose thereof and shall be given an opportunity to be heard at the meeting.

Section 4. Resignation of Directors. A director may resign at any time by delivering notice in writing or by electronic transmission to the Board of Directors. A resignation is effective when the notice is delivered unless the notice specifies a later effective date.



Section 5. Vacancies. Vacancies in the Board of Directors caused by any reason, except the removal of a director by Declarant or by vote of the Membership, shall be filled by a vote of the Majority of the remaining directors, even though less than a quorum, at any meeting of the Board of Directors. The successor so selected shall hold office for the remainder of the term of the director being replaced.

Section 6. Compensation. Directors shall not be compensated for services as such unless and only to the extent that compensation is authorized by a Majority vote of the Members. Directors may be reimbursed for the expenses incurred in carrying out their duties as directors upon approval of such expenses by the Board of Directors.

Section 7. Director Conflicts of Interest. Nothing herein shall prohibit a director from entering into a contract and being compensated for services or supplies furnished to the Association in a capacity other than as director, provided that the director's interest is disclosed to the Board of Directors and the contract is approved by a Majority of the directors who are at a meeting of the Board of Directors at which a quorum is present, excluding the director with whom the contract is made. The interested director shall not count for purposes of establishing a quorum of the Board of Directors. The interested director shall be entitled to be present at any meeting at which the proposed contract is discussed and to discuss the proposed contract unless requested by any other director to leave the room during the discussion.

Section 8. Nominations and Declarations of Candidacy. Prior to the election of directors, the Board of Directors shall prescribe the opening date and the closing date of a reasonable filing period in which all eligible persons who have an interest in serving as a director may file as a candidate for such positions. The Board of Directors shall also have the right to establish such other rules and regulations as it deems appropriate to conduct the nomination of directors in a fair, efficient and cost-effective manner. Each candidate shall be given a reasonable, uniform opportunity to communicate his qualifications to the Members and to solicit votes.

Section 9. Elections. All Members of the Association eligible to vote in an election shall be entitled to cast their entire vote for each directorship to be filled. There shall be no cumulative voting. The directorships for which elections are held shall be filled by that number of candidates receiving the most votes. Voting for election of Board Members shall be by written ballot (unless dispensed by unanimous consent at such meeting at which such voting is conducted).

#### B. Meetings.

Section 1. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by the Board of Directors but such meetings shall be held at least once every six (6) months. The newly elected Board of Directors shall meet within ten (10) days after each annual meeting of the Membership.

Section 2. Special Meetings. Special meetings of the Board of Directors may be called by the President on two (2) days' notice to each director given by mail, in person, by

303  
X  
630  
JULY



telephone, or by facsimile transmission, which notice shall state the time, place, and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President, Vice President, Secretary, or Treasurer in like manner and on like notice on the written request of at least two (2) directors.

Section 3. Waiver of Notice. Any director may, at any time, in writing, waive notice of any meeting of the Board of Directors, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board of Directors shall also constitute a waiver of notice by him of the time and place of such meeting. If all directors are present at any Board of Directors' meeting, no notice shall be required and any business may be transacted at such meeting.

Section 4. Conduct of Meeting. The President shall preside over all meetings of the Board of Directors and the Secretary shall keep a minute book recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings. A Majority of directors shall constitute a quorum for the transaction of business. One or more directors who participate in a meeting by means of telephone or electronic communication shall be deemed present and in attendance for all purposes at such meeting, provided all persons participating in the meeting can hear each other.

Section 5. Open Meetings. All meetings of the Board of Directors shall be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless expressly so authorized by the Board of Directors. Notwithstanding the above, the Board of Directors may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 6. Action Without a Meeting. Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if a Majority of the directors consent in writing to such action. Such written consents must describe the action taken and be signed by no fewer than a majority of the directors and such written consent or consents shall be filed with the minutes of the Board of Directors.

C. Powers and Duties.

Section 1. Powers and Duties. The Board of Directors shall manage the affairs of the Association and shall have all the powers and duties necessary for the administration of the Condominium and may do all such acts and things as are not, by the Declaration, the Articles of Incorporation, or these Bylaws, directed to be done and exercised exclusively by the Members. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to and shall be responsible for the following, in the way of explanation, but not limitation:

- (a) preparing and adopting an annual budget, in which there shall be established the contribution of each Owner to the Common Expenses;

303  
X  
631  
WAI



(b) making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment;

(c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility as more particularly described in the Declaration;

(d) designating, hiring, and dismissing the personnel necessary for the operation of the personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a financial depository or institution which it shall approve, or otherwise investing the proceeds in accordance with any limitations set forth in O.C.G.A. §14-3-302, and using the proceeds to administer the Association;

(f) making and amending rules and regulations and imposing sanctions for violation thereof, including, without limitation, monetary fines;

(g) opening of bank or other financial accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to, or alterations of the Common Areas in accordance with the other provisions of the Declaration and these Bylaws, after damage or destruction by fire or other casualty;

(i) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(k) paying the costs of all services rendered to the Association or its Members and not directly chargeable to specific Owners;

(l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred; and

(m) contracting with any Person for the performance of various duties and functions. The Board of Directors shall have the power to enter into common management agreements with trusts, or other associations or corporations. Any and all functions of the Association shall be fully transferable by the Board of Directors, in whole or in part, to any other entity.

Section 2. Management Agent. The Association may, but shall not be required to, hire a professional management agent or agents, at a compensation established by the Board of Directors, to perform such duties and services as the Board of Directors shall authorize. The

303 BOOK  
X  
632  
MAY



Board of Directors shall use reasonable efforts in any management contract to provide for termination of such contract with or without cause and without penalty, upon no more than thirty (30) days written notice. No management contract shall have a term in excess of one (1) year.

Section 3. Borrowing. The Board of Directors shall have the power to borrow money for the purpose of maintenance, repair, restoration, or improvement of the Area of Common Responsibility, and for other purposes, with the approval of a Majority of the Members of the Association.

Section 4. Liability and Indemnification of Officers and Directors and Committee Members. The Association shall indemnify every officer, director and committee member against any and all expenses, including attorney's fees, reasonably incurred by or imposed upon such officer, director or committee member in connection with any action, suit, or other proceeding (including settlement of any such action, suit, or proceeding, if approved by the then Board of Directors) to which he or she may be made a party by reason of being or having been an officer, director or committee member, whether or not such person is an officer, director or committee member at the time such expenses are incurred subject to the limitations below. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, or for injury or damage caused by any such individual in the performance of his duties, except for his own individual willful misfeasance or malfeasance. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such individuals may also be Members of the Association), and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member or former officer, director or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and, if obtainable, officers' and directors' liability insurance to fund this obligation, and the insurance shall be written as provided in the Declaration.

D. Committees.

Section 1. Architectural Control Committee. The Board of Directors shall establish an Architectural Control Committee for the purpose of establishing and maintaining architectural standards as provided in the Declaration.

Section 2. Other Committees. There shall be such other committees as the Board of Directors determines with the powers and duties that the Board of Directors shall authorize.

Section 3. Service on Committees. Unless otherwise provided in these Bylaws or in the resolution authorizing a particular committee, the members of any committee shall be appointed by the President and shall serve at the pleasure of the Board of Directors. Any committee member may be removed by the Board of Directors with or without cause at any time and with or without a successor being named.

GO  
CO  
X  
633  
WVA



Article III.  
Officers

Section 1. Designation. The principal officers of the Association shall be the President, the Secretary and the Treasurer, all or any of which may be the same person. A Vice President may be elected at the discretion of the Board of Directors.

Section 2. Election of Officers. The Association officers shall be elected annually by the Board of Directors at the first Board of Directors meeting following each annual meeting of the Members and shall hold office at the pleasure of the Board of Directors and until a successor is elected.

Section 3. Removal and Resignation of Officers. Upon the affirmative vote of a Majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and a successor may be elected. An officer may resign at any time by delivering notice to the Association. If the resignation is made effective on a future date, the Board of Directors may fill the pending vacancy before the effective date and provide that the successor does not take office until the effective date.

Section 4. Vacancies. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 5. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members and of the Board of Directors. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the Georgia Nonprofit Corporation Code, including, but not limited to, the power to appoint committees from among the Members from time to time as he or she may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association.

Section 6. Vice President. The Vice President, if any, shall act in the President's absence and shall have all powers, duties, and responsibilities provided for the President when so acting.

Section 7. Secretary. The Secretary shall keep the minutes of all meetings of the Members and of the Board of Directors and shall have charge of such books and papers as the Board of Directors may direct, and shall, in general, perform all duties incident to the office of the secretary of a corporation organized under Georgia law.

Section 8. Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board of Directors. The Treasurer shall be responsible for the preparation of

303 UNION  
X  
634 RAGE



the budget as provided in the Declaration. The Treasurer may delegate all or a part of the preparation and notification duties associated with the above responsibilities to a management agent.

Section 9. Other Officers. Other offices may be created by the Board of Directors, and the Board of Directors Members which hold such offices shall have such titles and duties as are defined by the Board of Directors.

Section 10. Agreements, Contracts, Deeds, Leases, Etc. All agreements, contracts, deeds, leases, checks, promissory notes, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors.

Article IV.  
Rule Making and Enforcement

Section 1. Authority and Enforcement. The Board of Directors shall have the authority to make, modify, repeal and enforce reasonable rules and regulations governing the conduct, use, and enjoyment of Units and the Common Areas; provided that the rules or regulations must be in furtherance of, and not contrary to, the uses and purposes set forth in the Declaration, and provided further that copies of all such rules and regulations shall be furnished to all Owners and occupants. Following the expiration of the Development Period, any rule or regulation may be repealed by the affirmative vote or written consent of a Majority of the total Association vote at an annual or special meeting of the Membership. Every Owner and occupant shall comply with the Declaration, Bylaws and rules and regulations of the Association, and any lack of compliance therewith shall entitle the Association and, in an appropriate case, one or more aggrieved Unit Owners, to take action to enforce the terms of the Declaration, Bylaws or rules and regulations.

The Board of Directors shall have the power to impose reasonable fines, which shall constitute a lien upon the Owner's Unit, and to suspend an Owner's right to vote or to use the Common Areas for violation of any duty imposed under the Declaration, these Bylaws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Unit. In the event that any occupant of a Unit violates the Declaration, Bylaws, or a rule or regulation and a fine is imposed, notice of such violation shall be sent to the Owner and occupant, and the fine shall first be assessed against such occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Board of Directors, and the fine shall be an assessment and a lien against the Unit until paid. The failure of the Board of Directors to enforce any provision of the Declaration, Bylaws, or any rule or regulation shall not be deemed a waiver of the right of the Board of Directors to do so thereafter.

Section 2. Fining and Suspension Procedure. The Board of Directors shall not impose a fine, suspend the right to vote or suspend the right to use the Common Areas (provided, however, if an Owner is shown on the books or management accounts of the Association to be

303  
WORK  
X  
635  
J.W.L



more than thirty (30) days delinquent in any payment due the Association, suspension of the right to vote and the right to use the Common Areas shall be automatic; provided further, however, suspension of common utility services shall require compliance with the provisions of Section 10(c)(v) of the Declaration, where applicable), unless and until the Association has sent or delivered written notice to the violator as provided in subsection (a) below. Any such fine or fines may be effective or commence upon the sending of such notice or such later date as may be set forth in such notice, notwithstanding the violator's right to request a hearing before the Board of Directors to challenge such fine under subsection (b) below.

(a) Notice. If any provision of the Declaration or Bylaws or any rule or regulation of the Association is violated, the Board of Directors shall send the violator written notice identifying the violation and fine(s) being imposed and advising the violator of the right to request a hearing before the Board of Directors to contest the violation or fine(s) or to request reconsideration of the fine(s). Fine(s) may be effective or commence upon the sending of such notice or such later date specified in such notice, notwithstanding the violator's right to request a hearing before the Board of Directors to challenge the fine. In the event of a continuing violation, each day the violation continues or occurs again constitutes a separate offense, and fines may be imposed on a per diem basis without further notice to the violator.

(b) Hearing. If a written request for hearing is received from the violator within ten (10) days of the date of the violation notice provided above, then the Board of Directors shall schedule and hold in executive session a hearing affording the violator a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. The Board of Directors may establish rules of conduct for such hearing, which may include limits on time and on the number of participants who may be present at one time.

Section 3. Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Board of Directors may elect to enforce any provision of the Declaration, the Bylaws, or the rules and regulations by self-help (specifically including, but not limited to, the towing, booting or other means of handling vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity for compliance with the procedure set forth in Section 2) of this Article. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation for which abatement is sought shall be responsible for reasonable attorney's fees actually incurred.

The Association or its duly authorized agent shall have the power to enter a Unit or upon any portion of the Common Areas to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Declaration, the Bylaws, or the rules and regulations; provided, however, written notice shall be given to the Owner of the Unit at least two (2) days prior to the time that any items of construction are altered or demolished. All costs of self-help, including reasonable attorney's fees, shall be assessed against the violating Unit Owner and shall be collected as provided herein for the collection of assessments.

303  
X  
636



Article V.  
Miscellaneous

Section 1. Notices. Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

- (a) If to a Unit Owner, at the address which the Unit Owner has designated in writing and filed with the Secretary, or if no such address has been designated, at the address of the Unit of such Owner;
- (b) If to an occupant, at the address of the Unit occupied; or
- (c) If to the Association or the Board of Directors, at the principal office of the Association, if any, or at such other address as shall be designated in writing and filed with the Secretary.

Section 2. Severability. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws or the Declaration.

Section 3. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these Bylaws or the intent of any provision thereof.

Section 4. Gender and Grammar. The use of the masculine gender in these Bylaws shall be deemed to include the feminine gender, and the use of the singular shall be deemed to include the plural whenever the context so requires.

Section 5. Fiscal Year. The fiscal year of the Association may be set by Board of Directors resolution and, in the absence thereof, shall be the calendar year.

Section 6. Financial Review. A financial review of the accounts of the Association shall be performed annually in the manner provided by the Board of Directors and a financial statement prepared. However, after having received the Board of Directors' financial statement review at the annual meeting, the Owners may, by a Majority of the Association vote, require that the accounts of the Association be audited as a Common Expense by an independent accountant. Such statement shall be made available to the holder, insurer, or guarantor of any first mortgage on a Unit upon submission of a written request and must be available within one hundred twenty (120) days of the fiscal year end of the Association.

Section 7. Conflicts. The duties and powers of the Association shall be those set forth in the Georgia Nonprofit Corporation Code, the Declaration, these Bylaws, and the Articles of Incorporation, together with those reasonably implied to affect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between the Georgia Nonprofit Corporation Code, the Declaration, these Bylaws, or the Articles of Incorporation, then

303  
X  
637  
PAGE



the provisions of the Georgia Nonprofit Corporation Code, as may be applicable, the Declaration, the Articles of Incorporation and these Bylaws, in that order, shall prevail, and each Owner of a Unit, by acceptance of a deed or other conveyance therefore, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies.

Section 8. Amendment. Except where a higher vote is required for action under a particular provision of the Declaration or Bylaws, in which case such higher vote shall be necessary to amend, these Bylaws may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the Members holding two-thirds (2/3) of the total vote of the Association. During the Development Period, any amendment to these Bylaws shall also require the written consent of Declarant. Notice of any meeting at which an amendment will be considered shall state that fact and the subject matter of the proposed amendment. No amendment shall become effective until it is certified by the President and Secretary of the Association and recorded in the land records of the county in which the Declaration is recorded. Any amendment duly certified and recorded shall be conclusively presumed to have been duly adopted in accordance with the Bylaws.

Any action to challenge the validity of an amendment adopted under this Section must be brought within one (1) year of the amendment's effective date. No action to challenge any such amendment may be brought after such time.

Section 9. Books and Records.

(a) All Members of the Association, any lenders, institutional holders or insurers of a first mortgage, shall be entitled to inspect the following records at a reasonable time and location specified by the Association, upon written request at least five (5) days before the date on which the Member wishes to inspect and copy:

- (i) its Articles or restated Articles of Incorporation and all amendments to them currently in effect;
- (ii) its Bylaws or restated Bylaws and all amendments to them currently in effect;
- (iii) its Declarations or restated Declarations and all amendments to them currently in effect;
- (iv) resolutions adopted by either its Members or Board of Directors increasing or decreasing the number of directors or the classification of directors, or relating to the characteristics, qualifications, rights, limitations, and obligations of Members or any class or category of Members;
- (v) resolutions adopted by either its Members or Board of Directors relating to the characteristics, qualification, rights, limitations, and obligations of Members or any class or category of Members;
- (vi) any rules governing the association;



(vii) any books, records or financial statements of the association

(viii) the minutes of all meetings of Members and records of all actions approved by the Members for the past three (3) years;

(ix) all written communications to Members generally within the past three (3) years, including the financial statements furnished for the past three (3) years;

(x) a list of the names and business or home addresses of its current direct officers; and

(xi) its most recent annual report delivered to the Secretary of State.

(b) A Member may inspect and copy the following records upon written notice at least five (5) business days before the date on which the Member wishes to inspect and copy only if the Member's demand is made in good faith and for a proper purpose that is reasonably relevant to the Member's legitimate interest as a Member; the Member describes with reasonable particularity the purpose and the records the Member desires to inspect; the records are directly connected with this purpose; and the records are to be used only for the stated purpose:

(i) excerpts from minutes of any Board of Directors meeting, records of any action of a committee of the Board of Directors while acting in place of the Board of Directors on behalf of the Association, minutes of any meeting of the Members, and records of action taken by the Members or the Board of Directors without a meeting, to the extent not subject to inspection under subsection 9(a);

(ii) accounting records of the Association; and

(iii) the Membership list only if for a purpose related to the Member's interest as a Member. Without the consent of the Board of Directors, a Membership list or any part thereof may not be: used to solicit money or property unless such money or property will be used solely to solicit the votes of the Members in an election to be held by the Association; used for any commercial purpose; or sold to or purchased by any person.

The Association may impose a reasonable charge, covering the cost of labor and material for copies of any documents provided to the Member.

