

EXHIBIT D

BY-LAWS  
OF  
THE LINKS GOLF VILLAS CONDOMINIUM OWNERS ASSOCIATION, INC.

ARTICLE I  
GENERAL PROVISIONS

Section 1. Identity. These are the By-Laws of THE LINKS GOLF VILLAS CONDOMINIUM OWNERS ASSOCIATION, INC., a not for profit corporation, which was formed under the Alabama Nonprofit Corporation Act (Code of Alabama 1975 §§10-3A-1 et seq.) (the "Nonprofit Act") by filing the Articles of Incorporation of the Association with the Probate Office. The Association has been organized for the purpose of providing for the operation, management, maintenance, control and administration of the Condominium Property pursuant to the provisions of the Act and the Declaration, as filed with the Probate Office in accordance with the provisions of the Act. (Capitalized terms used but not defined in these By-Laws shall have the respective meanings given such terms in the Declaration.)

Section 2. Principal Office. The principal office of the Association in the State of Alabama shall be located at 1960 Stonegate Drive, Birmingham, Alabama 35242. The Association may have such other offices, either within or without the State of Alabama, as the Board may designate or as the business of the Association may require from time to time.

Section 3. Registered Office. The registered office of the Association, required by the Nonprofit Act to be maintained in the State of Alabama, may be, but need not be, identical with the principal office in the State of Alabama, and the address of the registered office may be changed from time to time by the Board.

ARTICLE II  
MEMBERSHIP

Section 1. Annual Meeting. The annual meeting of the Association shall be held on the third Tuesday in the month of October in each year, beginning with the year 200\_ at the hour of 6:00 P.M., or at such other time on such other day within such month as shall be fixed by the Board, for the purpose of electing directors, if the Period of Developer Control has ended, and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in the State of Alabama, such meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting of the Association, or at any adjournment thereof, the Board shall cause the election to be held at a special meeting of the Association as soon thereafter as conveniently may be.

Section 2. Special Meetings. Special meetings of the Association, for any purpose or purposes, unless otherwise prescribed by the Act, may be called by the President or by a majority

of the Board and shall be called by the President or the Secretary at the request of holders of not less than twenty percent (20%) of all the outstanding votes of the Association.

Section 3. Place of Meeting. The Board may designate any place, within or without the State of Alabama, as the place of meeting for any annual meeting or for any special meeting of the Association. If no designation is made, or if a special meeting is otherwise called, the place of the meeting shall be the principal office of the Association in the State of Alabama.

Section 4. Notice of Meeting. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, or of a meeting which is required by the Act to be held for any special purpose, or of an annual meeting at which special action is to be taken, the purpose or purposes for which the meeting is called, or the special action which is proposed to be taken, shall, unless otherwise prescribed by the Act, be delivered not less than ten (10), nor more than sixty (60) days before the date of the meeting, either personally or by mail, by or at the direction of the President, the Secretary, or the persons calling the meeting, to each member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his address as it appears on the records of the Association, with postage thereon prepaid.

Section 5. Fixing of Record Date. The Board may fix in advance a date as the record date for the purpose of determining the members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or for any other proper purpose, such date in any case to be not more than thirty (30) days and, in case of a meeting of the Association, not less than ten (10) days prior to the date on which the particular action, requiring such determination of members, is to be taken. If no record date is fixed for the determination of members entitled to notice of or to vote at a meeting of the Association, the date on which notice of the meeting is mailed shall be the record date for such determination of members. When a determination of members entitled to vote at any meeting of the Association has been made as provided in this section, such determination shall apply to any adjournment thereof.

Section 6. Voting Lists. The officer or agent having charge of the records of members of the Association shall make, at least ten (10) days before each meeting of the Association, a complete list of the members entitled to vote at such meeting, or any adjournment thereof, arranged in alphabetical order, with the address of each member and the number of votes to which he is entitled, which list, for a period of ten (10) days prior to such meeting, shall be kept on file at the principal office of the Association and shall be subject to inspection by any member making written request therefor at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any member during the whole time of the meeting.

Section 7. Quorum. The presence at any meeting of the Association of the members entitled to cast twenty percent (20%) of the votes in the Association, represented in person or by proxy, shall constitute a quorum. If a quorum is not present at any meeting, a majority of the members so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. The members present or represented at a meeting at which a quorum is present may continue to transact

business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

Section 8. Majority Vote. The vote of members entitled to cast a majority of the votes represented at a meeting of the Association at which a quorum is present shall be the act of the Association, unless the vote of a greater number is required by the Act, the Declaration, the Articles, or these By-Laws.

Section 9. Proxies. At all meetings of the Association, an Owner may vote in person or by proxy executed in writing by the Owner or by his duly authorized attorney in fact. A proxy is void if it is not dated or purports to be revocable without notice. Such proxy shall be filed with the Secretary of the Association before or at the time of the meeting. No proxy shall be valid after one year from the date of its execution, unless a shorter term is provided in the proxy.

Section 10. Voting Rights. If only one of the multiple Owners of a Condominium Unit is present at a meeting of the Association, he is entitled to cast all the votes allocated to that Condominium Unit. If more than one of the multiple Owners are present, the votes allocated to that Condominium Unit may be cast only in accordance with the agreement of a majority in interest of the multiple Owners. There is a majority agreement if any one of the multiple Owners casts the votes allocated to that Condominium Unit without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Condominium Unit.

Section 11. Informal Action by Owners. Any action required to be taken at a meeting of the Association, or any other action which may be taken at a meeting of the Association, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Owners entitled to vote with respect to the subject matter thereof.

### **ARTICLE III** **BOARD OF DIRECTORS**

Section 1. General Powers. The business and affairs of the Association shall be managed by or under the direction of its Board.

Section 2. Number, Tenure and Qualifications. The number of directors of the Association shall consist of not less than three (3) nor more than seven (7) directors with the exact number to be fixed from time to time by the Owners holding a majority of the votes of the Association. The initial Board shall consist of three (3) directors.

Section 3. Election of Directors.

(a) Election of directors shall be held at the annual meeting of the Association. The election shall be by secret ballot (unless dispensed with by unanimous consent) and by a plurality of the votes cast. The owner of each Condominium Unit shall be entitled to cast his votes for each of as many nominees as there are vacancies to be filled at the time of the election. There shall be no cumulative voting.

(b) Notwithstanding the provisions of subparagraph (a) above, the Developer (as defined in the Declaration), its successors and assigns, shall elect the members of the Board, and

in the event of vacancies, the Developer shall fill vacancies, until such time as the first to occur of the following: (i) 60 days after the conveyance to Persons other than the Developer of seventy five (75%) percent of the Condominium Units which may be created; (ii) two (2) years after the expiration of the Sales Period; (iii) two (2) years after the Additional Units which may be created pursuant to Section 2.02 of the Declaration have been created; or (iv) the Developer's election to terminate control of the Association. Not later than ninety (90) days after conveyance of 25% of the Units, the Owners other than Developer shall be entitled to elect 25% of the members of the Board. Not later than ninety (90) days after conveyance of 50% of the Units to Owners other than Developer, not less than 33 1/3% of the members of the Board may be elected by the Owners. The Developer shall be entitled to elect at least one member of the Board as long as the Developer holds for sale in the ordinary course of business at least 5% of the Condominium Units. Within sixty (60) days before the date of termination of control of the Association by the Developer, the Board shall call and give not less than (10) nor more than thirty (30) days notice of a special meeting of the Association for the purpose of electing the members of the Board.

Section 4. Regular Meetings. A regular meeting of the Board shall be held without further notice than as provided in these By-Laws, immediately after and at the same place as the annual meeting of the Association; provided, however, that any such regular meeting may be held at any other time or place which shall be specified in a notice given as hereinafter provided for special meetings, or in a consent and waiver of notice thereof, signed by all Board members. The Board may provide, by resolution, the time and place, within or without the State of Alabama, for the holding of additional regular meetings without further notice than provided in such resolution.

Section 5. Special Meetings. Special meetings of the Board may be called by or at the request of the President or any two directors.

Section 6. Notice. Notice of any special meeting shall be given at least three (3) days prior thereto by written notice delivered personally or mailed to each director at his business address, or by hand deliver. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice be given by hand delivery, such notice shall be deemed to be delivered when such notice is delivered to the director. Any director may waive notice of any meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting.

Section 7. Quorum. A majority of the number of directors fixed in accordance with Section 2 of this Article III shall constitute a quorum for the transaction of business at any meeting of the Board. But if less than such majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

If a quorum is present when the meeting is convened, the directors present may continue to do business, taking action by a vote of the majority of a quorum, until adjournment,

notwithstanding the withdrawal of enough directors to leave less than a quorum present, or the refusal of any director present to vote.

Section 8. Manner of Acting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board.

Section 9. Action without a Meeting. Any action that may be taken by the Board at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors.

Section 10. Vacancies. Any vacancy occurring in the Board and any directorship to be filled by reason of an increase in the number of directors may be filled by a majority of the remaining directors. A director elected or appointed, as the case may be, shall be elected or appointed for the unexpired term of his predecessor in office.

Section 11. Compensation. By resolution of the Board, the directors may be paid their expenses, if any, of attendance at each meeting of the Board, and may be paid a fixed sum for attendance at each meeting of the Board or a stated salary as a director or both. No such payment shall preclude any director from serving the Association in any other capacity and receiving compensation therefor.

Section 12. Committees. The Board may, by resolution or resolutions, passed by a majority of the Board, designate one or more committees, each of which shall consist of two or more directors and which to the extent provided in said resolution or resolutions, or in these By-Laws, shall have and may exercise all of the powers of the Board in the management of the activities and affairs of the Association and may have power to authorize the seal of the Association to be affixed to all papers which may require it; except that no such committee shall have the authority of the Board in reference to amending, altering or repealing these By-Laws; electing, appointing or removing any member of any such committee or any director or officer of the Association; amending the Articles, restating the Articles, adopting a plan of merger or adopting a plan of consolidation with another corporation; authorizing the sale, lease, exchange, or mortgage of all or substantially all of the property and assets of the Association; authorizing the voluntary dissolution of the Association or revoking proceedings therefor; adopting a plan for the distribution of assets of the Association; or amending, altering or repealing any action or resolution of the Board which by its terms provides that it shall not be amended, altered, or repealed by such committee. The designation of such committee or committees, or the delegation thereto of authority, shall not operate to relieve the Board or any individual director of any responsibility imposed upon it or him by law.

Section 13. Resignations. Any director of the Association may resign at any time either by oral tender of resignation at any meeting of the Board or by giving written notice thereof to the Secretary of the Association. Such resignation shall take effect at the time specified therefore, and the acceptance of such resignation shall not be necessary to make it effective.

Section 14. Place of Meeting. The Board may designate any place within or without the State of Alabama as the place of meeting for any regular or special meeting of the Board.

Section 15. Presumption of Assent. A director of the Association who is present at a meeting of the Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

#### **ARTICLE IV OFFICERS**

Section 1. Number. The officers of the Association shall be a President, one or more Vice President(s) (the number thereof to be determined by the Board), a Secretary, and a Treasurer, each of whom shall be elected by the Board, and such other officers and assistant officers as may be deemed necessary may be elected or appointed by the Board. Any two or more offices may be held by the same person, except that of the President and Secretary. The failure of the Board to elect any officers other than a President and a Secretary shall not constitute a violation of these By-Laws.

Section 2. Election and Term of Office. The officers of the Association to be elected by the Board shall be elected annually by the Board at the first meeting of the Board held after each annual meeting of the Association. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Each officer shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall have resigned or shall have been removed in the manner hereinafter provided.

Section 3. Removal. Any officer or agent elected or appointed by the Board may be removed at any time, by the affirmative vote of the Board, whenever in their judgement the best interests of the Association will be served thereby. Any such removal shall be without prejudice to the contract rights, if any, of the person so removed. The election or appointment of an officer shall not in itself create any contract rights in favor of such officer.

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

Section 5. President. The President shall be the chief executive officer of the Association and, subject to the control of the Board, shall in general supervise and control all of the business and affairs of the Association. He or she shall preside at all meetings of the Association. He or she may sign, with the Secretary or an assistant Secretary, any deeds, mortgages, bonds, contracts or other instruments which the Board has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board, or by these By-Laws, to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed, and in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board from

time to time. The President shall also be the Voting Member on behalf of the Condominium Property, as that term is defined in Article I of the Master Declaration.

Section 6. Vice President. In the absence of the President or in the event of his or her death, inability or refusal to act, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated at the time of their election, or in the absence of any designation, then in the order of their election) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Any Vice President shall perform such other duties as from time to time may be assigned to him or her by the President or by the Board.

Section 7. Secretary. The Secretary shall: (a) keep the minutes at the proceedings of the members and of the Board in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; (c) be custodian of the corporate records and of the seal of the Association and see that the seal of the Association is affixed to all documents, the execution of which on behalf of the Association under its seal is duly authorized; (d) keep a register of the address of each Owner which shall be furnished to the Secretary by such Owner; (e) have general charge of the transfer books of the Owners; and (f) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the President or by the Board.

Section 8. Treasurer. The Treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of the Association; (b) receive and give receipts for monies due and payable to the Association from any source whatsoever, and deposit all such monies in the name of the Association in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article V of these By-Laws; and (c) in general perform all of the duties as from time to time may be assigned to him or her by the President or by the Board. If required by the Board, the Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board shall determine.

Section 9. Assistant Secretaries and Assistant Treasurers. The Assistant Secretaries and Assistant Treasurer. In general, shall perform such duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Board. The Assistant Treasurer shall respectively, if required by the Board, give bonds for the faithful discharge of their duties in such sums and with such sureties as the Board shall determine.

Section 10. Salaries. The salaries of the officers, if any, shall be fixed from time to time by the Board and no officer shall be prevented from receiving such salary by reason of the fact that he is also a director of the Association.

## **ARTICLE V**

### **CONTRACTS LOANS, CHECKS AND DEPOSITS**

Section 1. Contracts. The Board may authorize any officer or officers, agent or agents to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances.

Section 2. Loans. No loans shall be contracted on behalf of the Association and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board. Such authority may be general or confined to specific instances.

Section 3. Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes or other evidence of indebtedness issued in the name of the Association, shall be signed by such officer or officers, agent or agents of the Association and in such manner so shall from time to time be determined by resolution of the Board.

Section 4. Deposits. All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board may select.

Section 5. Proxies. Unless otherwise provided by resolution of the Board, the President may from time to time appoint an attorney or agent of the Association, in the name and on behalf of the Association, to cast the votes which the Association may be entitled to cast as the holder of stock or other securities in any other corporation any of whose stock or other securities may be held by the Association, at meetings of the holders of the stock or other securities of such other corporation, or to consent in writing, in the name and on behalf of the Association, as such holder, to any action by such other corporation, and may instruct the person or persons so appointed as to the manner of casting votes or giving such consent, and may execute or cause to be executed in the name and on behalf of the Association and under its corporate seal or otherwise, all such written proxies or other instruments as he may deem necessary or proper.

## **ARTICLE VI** **BOOKS AND RECORDS**

Section 1. Accounting. The Association shall keep correct and complete books and records of account and shall keep minutes of the proceedings of the Association, Board and committees thereof, and shall keep at its registered or principal office in Alabama a record of the names and addresses of the Association members. The accounting records shall be maintained in accordance with generally accepted accounting principles. All books and records of the Association shall be open to inspection by the Owners or their authorized representatives for any proper purpose at any reasonable time. Such records shall include:

(a) Association Accounts. The receipts and expenditures of the Association shall be credited and charged to the appropriate account as set forth below.

(i) Current Expenses. All funds to be expended during the year for the maintenance of the Common Elements and Limited Common Elements (as defined in the Declaration) and the operation and working capital of the Association shall be held in an expense account. Any balance in this fund at the end of each year may be used to pay Common Expenses and Limited Common



Expenses incurred in any successive year or may be placed in the Working Capital Fund.

(ii) Reserve Funds. All funds to be expended for replacement, acquisition or repair of capital improvements which are a part of Common Elements and Limited Common Elements shall be held in the Working Capital Fund.

(b) Owner Accounts. An account for each Owner shall be maintained setting forth the name and address of the Owner, their interest percentage in the Common Elements and Limited Common Elements, if any, the amount of each assessment, the dates and amounts in which the assessments become due, the amounts paid upon the account and the balance due.

Section 2. Budget. Within sixty (60) days prior to the beginning of each calendar year, the Board shall adopt a proposed budget for each calendar year that shall include the estimated funds required to defray the Common Expenses and Limited Common Expenses and to provide and maintain funds for the foregoing accounts and reserves in accordance with good accounting practices. Within thirty (30) days of adoption of the proposed budget, copies of the budget and proposed assessments shall be transmitted to each member of the Association and a date set for a meeting of the Owners to consider ratification of the budget, not less than fourteen (14) days nor more than thirty (30) days after delivery of the budget to the Owners. Unless at the meeting a majority of Owners present in person or by proxy reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the budget for the last year shall continue in effect until such time a new budget is ratified.

Section 3. Assessments. Assessments against the Owners for their shares of the items of the budget shall be made for the calendar year annually in advance on or before December 31 preceding the year for which the assessments are made. Such assessments shall be due in quarterly or monthly installments, as may be determined by the Board of the Association. In the event the annual assessment proves to be insufficient, the budget and assessments may be amended at any time by the Board.

Section 4. Assessments for Emergencies. Assessment for Common Expenses for emergencies that cannot be paid from the annual assessments for Common Expenses shall be made only after notice of the need for such is given to the Owners concerned, and such assessment shall be due thirty (30) days after notice in such manner as the Board may require in the notice of assessment.

Section 5. Audit of Compilation. An audit or compilation of the accounts of the Association shall be made annually by a certified public accountant, and a copy of the audit report shall be made available for review by each Owner.

Section 6. Bonds. Fidelity bonds shall be required by the Board from all persons handling or responsible for Association funds. The amount of such bonds shall be determined by the Board, but shall not be less than three times amount of the total annual assessments against members for Common Expenses and Limited Common Expenses. The premiums for such bonds shall be paid by the Association.

**ARTICLE VII**  
**WAIVER OF NOTICE**

Whenever any notice is required to be given to any member or director of the Association under the provisions of these By-Laws, the Articles, the Declaration, the provisions of the Nonprofit Act, and any act amendatory thereof, supplementary thereto or substituted therefor, the provisions of the Act, and any act amendatory thereof, supplemental thereto or substituted therefor, or the Alabama Constitution, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

**ARTICLE VIII**  
**FISCAL YEAR**

The fiscal year of the Association shall be fixed by resolution of the Board.

**ARTICLE IX**  
**INDEMNIFICATION**

Section 1. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Section 2. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association unless and only to the extent that

the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 1 or 2 of this Article IX, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Any indemnification under Sections 1 or 2 above (unless ordered by a court) shall be made by the Association only authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth above. Such determination shall be made (1) by the Board by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the Owners.

Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article IX.

The indemnification provided by this Article IX shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any agreement, vote of members or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

## **ARTICLE X** **AMENDMENT**

Section 1. Amendment to By-Laws. These By-Laws may be amended, altered or repealed in the following manner:

- (a) By the Developer until such time as Developer relinquishes its control of the Association; or
- (b) By the Owners at any regular or special meeting upon the affirmative vote of the holders of not less than two thirds (2/3) of the outstanding votes.

Section 2. Recordation. No modification or amendment to these By-Laws shall be valid and effective until the President and Secretary of the Association shall certify so to the adoption of such amendment and shall file their certificate setting forth the text of the amendment with the Probate Office.

**ARTICLE XI**  
**MISCELLANEOUS**

Section 1. Construction. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of gender shall be deemed to include all genders.

Section 2. Captions. The captions herein are inserted only as a matter of convenience for all reference, and in no way define, limit or describe the scope of these By-Laws or the intent of any provision hereof.

Section 3. Conflicts. In the event of any conflict between the provisions of the Declaration and the By-Laws, the Declaration prevails, except to the extent the Declaration is inconsistent with the Act.

Section 4. Compliance. These By-Laws are set forth to comply with the requirements of the Nonprofit Act and the Act and shall be considered an appendage to the Declaration filed prior hereto in accordance with said Acts. In case any of these By-Laws conflict with the provisions of said statutes, it is hereby agreed and accepted that the provisions of the Acts will apply.

Section 5. Parliamentary Rules. Roberts Rules of Order (latest edition) shall govern the conduct of Association meetings when not in conflict with the Act, the Declaration, or these By-Laws.