

NOTE: SUBSTANTIAL REWORDING OF ENTIRE BY-LAWS. SEE ENTIRE ORIGINAL BY-LAWS FOR PRESENT TEXT.

EXHIBIT "D"

AMENDED AND RESTATED BY-LAWS

OF

SOUTHWINDS AT THE MOORINGS ASSOCIATION, INC.
(A Corporation not-for-profit under the laws of the State of Florida)

Section 1. GENERAL. These are the Amended and Restated By-Laws of SOUTHWINDS AT THE MOORINGS ASSOCIATION, INC., hereinafter the "Association", a corporation not for profit organized under the laws of Florida.

1.1 Seal. The seal of the Association shall be inscribed with the name of the Association, the year of its organization, and the words "Florida" and "not for profit". The seal may be used by causing it, or a facsimile of it, to be impressed, affixed, reproduced or otherwise placed upon any document or writing of the corporation where a seal may be required.

1.2 Definitions. The definitions set forth in the Amended and Restated Declarations of Condominium of Southwinds A, A Condominium and Southwinds B, A Condominium, and in the Amended and Restated Articles of Incorporation shall apply to terms used in these By-Laws.

Section 2. MEMBERSHIP AND VOTING RIGHTS.

2.1 Qualifications. The members of the Association shall be those record Owners of Units in the Condominiums.

2.2 Change in Membership. A change of membership shall be established and become effective by recording in the public records of the County, a deed or other similar instrument and by delivery to the Association of a copy of such instrument. The failure of a new record owner to deliver a copy of such instrument to the Association shall not deprive the new record owner of membership in the Association.

2.3 Termination of Membership. The termination of membership in the Association does not relieve or release a former member from liability or obligation incurred in, or in any way connected with, the Condominiums during the period of his or her membership, nor does it impair any rights or remedies which the Association may have against any former Owner arising out of, or in any way connected with, such ownership and membership and the covenants and obligations incident to same.

2.4 Voting Interests; Votes. Each Member of the Association is entitled to one (1) vote for each Unit owned by him/her. The vote of a Unit is not divisible. Votes may be cast in person or by proxy, but proxies may not be used for the election of Directors.

2.5 Approval or Disapproval of Matters. Whenever the decision or approval of an Owner is required upon any matter, whether or not the subject of an Association meeting, such decision shall be expressed by the same person who would cast the vote of such Unit if in an Association meeting, unless the joinder of record owners is specifically required.

Section 3. MEMBERS MEETINGS.

3.1 Annual Meeting. The annual meeting shall be held in the County each year in the month of March, at a day, place and time designated by the Board of Directors.

3.2 Election Meeting. The election meeting shall be held in the County each year as part of the annual meeting, for the purpose of electing Directors.

3.3 Special Meeting. Special members meetings must be held whenever called by the president or by a majority of the Board of Directors, and must be promptly called by the president upon the president's or secretary's receipt of a written petition signed and dated by at least one third (1/3) of the voting interests of the membership. Such petition shall state the purpose(s) of the meeting. The business at any special meeting shall be limited to the items specified in the petition, and contained in the notice of meeting.

- A The calling of a special meeting for recall of Directors is governed by Section 4.4.B below and by applicable Administrative Rules, and not by the provisions of this Section 3.3.

- B. The calling of a meeting pursuant to F.S. 718.112(2)(e) requires only the application of 10% of the voting interests of the Members.

3.4 Court-Ordered Meeting. The circuit court of the County may, after notice to the Association, order a meeting of the members to be held:

- A. On application of any member of the Association entitled to vote in an annual meeting if an annual meeting has not been held within any 13-month period; or
- B. On application of a member who signed a demand for a special meeting valid under Section 3.3 above, if:
 - 1. Notice of the special meeting was not given within sixty (60) days after the date the demand was delivered to the Association's secretary or president; or
 - 2. The special meeting was not held in accordance with the notice.

The court may fix the time and place of the meeting, determine the members entitled to participate in the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, and enter other orders as may be appropriate.

3.5 Notice of Members' Meetings.

- A. Election Meeting. Notice of the election meeting shall be as provided for in Section 4.2 below.
- B. Annual and Special Meetings. Notice of all annual and special members meetings must state the time, date, and place of the meeting. Notice of all annual and special meetings shall be sent by first class mail to each Member at his address as it appears on the books of the Association. The officer, manager or other person making such mailing shall provide an affidavit as to the mailing, which

shall be retained as part of the official records of the Association. Notice of an annual or special members meeting may, alternatively, be delivered in person if a written waiver of mailing is obtained. The notice must be mailed or delivered at least fourteen (14) days, but not more than sixty (60) days, prior to the date of the meeting, and must also state the intended agenda for the meeting.

1. Notice of the annual meeting shall be posted in a conspicuous place on the Condominium or Association property at least fourteen (14) continuous days prior to the annual meeting; no such posting is required in connection with special meetings of the membership.

3.6 Waiver of Notice.

- A. A member may waive any notice of a meeting of the members before or after the date and time stated in the notice. The waiver must be in writing, be signed by the member entitled to the notice, and be delivered to the Association for inclusion in the minutes or filing with the corporate records. Neither the business to be transacted at nor the purpose of any regular or special meeting of the members need be specified in any written waiver of notice.
- B. A member's attendance at a meeting, either in person or by proxy:
 1. Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; or
 2. Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

3.7 Members' List for Meeting.

- A. After the mailing of notice of any meeting, the Association shall prepare an alphabetical list of the names and addresses of all its members who were mailed notice of the meeting. This list shall be updated as memberships change up to the date of the meeting.**
- B. The members' list must be available for inspection by any member for a period of ten (10) days prior to the meeting and continuing up to the start of the meeting at the Association's principal office or at a place identified in the meeting notice in the city/town where the meeting will be held. A member or his agent or attorney is entitled on written demand to inspect the list during regular business hours and at his expense, during the period it is available for inspection.**
- C. The Association shall make the members' list available at the meeting, and any member or his agent or attorney is entitled to inspect the list at any time up to the start of the meeting or any adjournment.**
- D. The members' list is prima facie evidence of the identity of members entitled to examine the members' list or to vote at meeting of members.**
- E. If the requirements of this Section 3.7 have not been substantially complied with or if the Association refuses to allow a member or his agent or attorney to inspect the members' list before or at the meeting, the following shall apply: The meeting shall be adjourned until such requirements are complied with on the demand of any member in person or by proxy who failed to get such access, or, if not adjourned upon such demand and such requirements are not complied with, the circuit court of the County on application of the member, may summarily order the inspection or copying at the Association's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.**

- F. Refusal or failure to comply with the requirements of this Section 3.7 shall not affect the validity of any action taken at the meeting.

3.8 Proxies. A proxy may be given by any person entitled to vote, and shall be valid only for the specific meeting for which it was originally given and/or any lawful adjournment of that meeting. No proxy shall be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, and signed by the person authorized to cast the vote for the Unit, and must be delivered to the secretary at or before the adjournment of the particular meeting. The proxy form must conform to any requirements of the Condominium Act and applicable Administrative Rules. An executed original, an executed telegram or cablegram appearing to have been transmitted by the authorized person, or a photographic, photostatic, facsimile or equivalent reproduction of a proxy form are all valid. Holders of proxies need not be members. The holder shall have the right, if the proxy so provides, to substitute another person to hold the proxy. The proxy may name the Board of Directors as the proxy holder, in which case the proxy shall be voted in the manner determined by resolution of the Board. Subject to Section 3.9 of these By-Laws and to any express limitation on the proxy's authority appearing on the face of the proxy form, the Association is entitled to accept the proxy's vote or other action as that of the member appointing the proxy. Notwithstanding the foregoing to the contrary, except as otherwise permitted by the applicable Administrative Rules as to filling of vacancies by the membership after recall, no proxies may be used for the election of Directors.

3.9 Association's Acceptance of Votes.

- A. If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a member, the Association if acting in good faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.
- B. If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of its member, the Association if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member if:

1. The member is an entity and the name signed purports to be that of an officer or agent of the entity;
 2. The name signed purports to be that of an administrator, executor, guardian, personal representative, or conservator representing the member and, if the Association requests, evidence of fiduciary status acceptable to the Association has been presented with respect to the vote, consent, waiver, or proxy appointment;
 3. The name signed purports to be that of a receiver, trustee in bankruptcy, or assignee for the benefit of creditors of the member and, if the Association requests, evidence of this status acceptable to the Association has been presented with respect to the vote, consent, waiver, or proxy appointment;
 4. The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the member and, if the Association requests, evidence acceptable to the Association of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment; or
 5. Two or more persons are the member as cotenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.
- C. The Association is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.
- D. The Association and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in

accordance with the standards of this Section 3.9 are not liable in damages to the member for the consequences of the acceptance or rejection.

- E. Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this Section 3.9 is valid unless a court of competent jurisdiction determines otherwise.

3.10 Vote Required, Membership Participation. If a quorum exists, action on a matter (other than the election of Directors) by the members is approved if approval is received from not less than a majority of those voting interests present in person and by proxy at the meetings, unless the Condominium Documents or applicable law require a greater number of affirmative votes. Any member may speak with reference to all designated agenda items, subject to reasonable written Rules and Regulations adopted by the Board of Directors governing the frequency, duration and manner of members' statements; any of such Rules and Regulations shall yield for a particular meeting to the extent that a majority of the voting interests at the meeting determine so. An Owner shall have the right to tape record or videotape a Members' meeting, subject to any applicable Administrative Rules and written Board rules on the subject. Notwithstanding the foregoing to the contrary, no Owner may videotape or tape record at any Members' meeting unless the Member provides written notice of his or her intention to do so, which notice is received by the Association no later than twenty-four (24) hours prior to the scheduled time and date for the meeting.

3.11 Quorum; Election Ballot Return.

- A. **Annual and Special Members Meetings.** The quorum for the annual and special members' meetings shall be a majority of the voting interests of the entire membership of the Association. After a quorum has been established at a members' meeting, the subsequent withdrawal of members, so as to reduce the number of voting interests entitled to vote at the meeting below the number required for a quorum, shall not affect the validity of any action taken at the meeting or any adjournment.

- B. Election Meeting. Not less than twenty (20%) percent of the eligible voters must cast a ballot in order to have a valid election, even though there might not be a quorum at the annual meeting.

3.12 Adjournment of the Meeting. Any duly called meeting of the members may be adjourned to a later date by the vote required under Section 3.10 of these By-Laws, regardless of whether a quorum has been attained. A new notice of the adjourned meeting shall be given. Any business which might have been conducted at the meeting as originally scheduled may be conducted at the continued meeting.

3.13 Order of Business. The order of business at members meetings shall be substantially as follows:

- A. Call to order by the president (or other officer in the absence of the president)
- B. Appointment of a chairperson, only if the president is absent; otherwise, the president chairs the meeting
- C. Appointment of a parliamentarian, if desired by the membership
- D. Call of the roll or certification of quorum
- E. Proof of notice of meeting or waiver of notice
- F. Minutes of last members meeting - read or waive reading
- G. Reports of officers
- H. Reports of Committees
- I. Election of Directors (where appropriate)
- J. Unfinished business
- K. New business

L. **Adjournment**

3.14 **Minutes of Meetings.** The minutes of all meetings of the membership shall be kept in a book available for inspection by members and/or their authorized representatives at any reasonable time. Member(s) of the Association and their authorized representatives shall have the right to make handwritten notations from the minutes, and to receive photocopies of the Minutes at the cost of the member(s) concerned. The Board of Directors shall establish such cost, not to exceed the limitations imposed by law from time to time. Minutes shall be retained for a period of not less than seven (7) years after the date of the meeting.

Section 4. BOARD OF DIRECTORS; COMMITTEES.

The administration of the affairs of the Association shall be by a Board of Directors, with each Director having a fiduciary relationship with the Owners. All powers and duties granted to the Association by law, as modified and explained in the Condominium Documents, shall be exercised by the Board, subject to approval or consent of the Owners only when such is specifically required. An Owner does not have the authority to act for the Association by reason of being an Owner.

4.1 **Number and Terms of Service; Qualifications.**

- A. **Number.** The number of Directors which shall constitute the whole Board of Directors shall be seven (7) persons.

- B. **Term.** To insure continuity of service, a staggered board was previously created, such that three directors shall be elected during even numbered years and four directors during odd numbered years. At all election meetings, a Director elected shall serve for a term of two (2) years until his successor is duly elected, unless he sooner resigns, or is recalled.

- C. **Qualifications.** A Director shall be a member of the Association or his or her spouse; and in the event of a corporate Owner, then any officer or director of the corporate Owner; and in the event of a business named partnership, then any general partner; and in the event of a

trust as Owner, then any trustee or beneficiary; the Association shall be permitted to obtain from a corporate, business named partnership or trust as Owner, reasonable documentation from said Owner indicating that the individual in question has the representative capacity as just stated. To the extent provided by the Condominium Act, as amended from time to time, a person who has been convicted of a felony in the United States and has not had his or her voting rights restored in the jurisdiction of his or her residency is not eligible to serve on the Board of Directors.

4.2 Election of Directors. At each election meeting, the members shall elect as many Directors as there are regular terms of Directors expiring and other vacancies to be filled. Not less than sixty (60) days before the scheduled election meeting, the Association must send notice to each Owner of the date. Not less than forty (40) days prior to the date of the election meeting, eligible candidates must deliver to the Association, written notice of his or her desire to run for the Board of Directors in order to be eligible to be placed on the election ballot. Any candidate may furnish the Association with an information sheet which shall be no larger than 8 ½ inches by 11 inches. The candidate's information sheet, if any, must be received by the Association by no later than thirty-five (35) days prior to the meeting, unless a later date is permitted by the Administrative Rules or Condominium Act as amended from time to time. The Association shall have no liability for the contents of this information sheet prepared by the candidate. In order to reduce costs, the Association may print or duplicate the information sheets on both sides of the paper. The Association shall provide that notice to all Members required by Section 3.5.B above, reminding them of the date, time and place of the election meeting, together with a ballot listing all eligible candidates and any information sheets received from same. No Owner shall permit any other person to cast his ballot, and any such ballots improperly cast shall be deemed invalid. The Association shall follow any Administrative Rules applicable to safeguarding the secrecy of ballots. In the election of Directors, there shall be appurtenant to each Unit as many votes as there are Directors to be elected. No voting representative of any Unit may cast more than one vote for any candidate, it being the intent that casting ballots in the election of Directors shall be non-cumulative. The candidates receiving the highest number of ballots cast shall be declared elected, except that any tie(s) shall be decided as permitted by the applicable Administrative Rules. A newly elected Director shall take office immediately upon the adjournment of the election meeting, provided that the ballot

return in Section 3.11.B above is achieved, and notwithstanding that there may not be a quorum for the annual meeting.

A. Provisos. Notwithstanding the foregoing to the contrary, the following shall apply:

1. An election and balloting are not required unless more candidates file notices of intent to run or are nominated than vacancies exist on the Board to be filled. In that event, the Association shall announce the new Directors at the annual meeting, and all candidates take office as Directors immediately following the adjournment of the annual meeting.
2. In the event that the membership fills vacancies after recall pursuant to Section 4.5.B.2 below, then the election of Directors to fill the vacancies shall be governed by the procedures set forth in the applicable Administrative Rules.
3. In the event that there are an insufficient number of candidates during a particular year to fill all vacancies such that there are fewer than seven (7) Directors on the Board, the shortage in the number of Directors shall be considered a vacancy on the Board, which may be filled by the remaining Directors pursuant to Section 4.5.A below.

4.3 Resignation of Directors. A Director may resign at any time by delivering written notice to the Board of Directors or to the president or secretary. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date, the vacancy may be filled before the effective date if it is provided that the successor does not take office until the effective date. A written resignation once tendered cannot be rescinded. Oral resignations shall not be considered effective.

4.4 Removal of Directors (Recall). Any or all Directors may be removed with or without cause by a majority of the voting interests, either by a written agreement or at any meeting called for that purpose

- A. By Written Agreement. If a proposed recall is sought by written agreement, a separate agreement is required for each member of the Board being recalled. All requirements imposed by the Administrative Rules as amended from time to time shall be followed.
- B. By Special Meeting. A special meeting for the purpose of recall may be called by ten percent (10%) of the voting interests of all Members. The proposed recall of more than one member of the Board shall require a separate vote for each member sought to be recalled. All requirements imposed by the Administrative Rules as amended from time to time shall be followed.
- C. Re-election. Any Director recalled shall not be eligible for re-election until the next regular election meeting.

4.5 Vacancies on the Board.

- A. A Vacancy Other than in Connection with Recall. If the office of any Director or Directors becomes vacant for any reason, other than recall as provided for in Section 4.4.A or 4.4.B above, a majority of the remaining Directors, though less than a quorum, shall choose a successor or successors who shall hold office for the unexpired term of his predecessor in office. A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date) may be filled before the vacancy occurs but the new Director may not take office until the vacancy occurs.
- B. Vacancy In Connection with Recall.
 - 1. If a vacancy occurs on the Board as a result of a recall and less than a majority of the existing Board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining Directors, for such term as mandated by applicable law as amended from time to time.

2. If vacancies occur on the Board as a result of a recall and a majority or more of the existing Board members are removed, the vacancies shall be filled in accordance with applicable Administrative Rules, for such term as mandated by applicable law as amended from time to time.
3. The term "existing Board members" refers to those existing on the date of the recall meeting or date of certification of a recall by written agreement, as applicable.
4. The conduct of the recall election as well as the operation of the Association during the period after a recall but prior to the recall election, shall be as set forth in applicable Administrative Rules.

4.6 Meetings of the Board of Directors.

- A. Organizational Meeting. The organizational meeting of a new Board of Directors shall be held within ten (10) days after the election of new Directors, at such place and time as may be fixed by the Directors at the annual meeting at which they were elected.
- B. 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 a majority of the Directors.
- C. Special Meetings. Special meetings of the Directors may be called by the president, and must be called by the president or secretary at the written request of a majority of the Directors.
- D. Adjourned Meetings. Any duly called meeting of the Board of Directors may be adjourned to a later date by a vote of the majority of the Directors present, regardless of whether a quorum has been attained. No notice of adjournment is required to be given to any Director who was not present at the time of adjournment. Any

business which might have been conducted at the originally scheduled meeting may be conducted at its continuance.

- E. Telephone Conference. The Board of Directors may permit any or all Directors to participate in a regular or special meeting by, or conduct the meetings through the use of a telephone conference so long as it complies with the requirements of the applicable Administrative Rules, as amended from time to time. A Director participating in a meeting by this means is deemed to be present in person at the meeting.

4.7 Notice of Board Meetings; Agenda.

- A. Notice to Directors. Notice of the time and place of meetings shall be given to each Directors, personally or by mail, telephone or telegraph, and shall be transmitted three (3) days prior to the meeting; notwithstanding the foregoing to the contrary, no notice need be given to Directors of a meeting if it is a regular meeting which is held on the same date of each month. Notice of all meetings shall state the agenda for the meeting, including any details of any (annual or special) assessment which will be discussed, considered or approved.
- B. Waiver of Notice by Directors. Notice of a meeting of the Board of Directors need not be given to any Director who signs a waiver of notice either before or after the meeting. Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting and a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened; except when a Director states, at the beginning of the meeting or promptly upon arrival at the meeting, any objection to the transaction of business because the meeting is not lawfully called or convened.
- C. Notice to Members.

1. **Posting.** Notices of all Board meetings shall be posted conspicuously on the Condominium or Association property at least forty-eight (48) continuous hours in advance, except in an emergency.
 2. **Mail or Delivery.** Written notice of any Board meeting at which non-emergency special assessments, or at which Rules and Regulations regarding use of the Units will be proposed, discussed or approved shall be mailed or delivered to the Members and posted conspicuously on the Condominium or Association property not less than fourteen (14) days prior to the Board meeting. Evidence of compliance with this fourteen (14) day notice requirement shall be made by an affidavit executed by those persons specified in the Condominium Act as amended from time to time, and filed among the official records of the Association.
- D. **Agenda.** The notice of any Board meeting shall identify all agenda items and when the annual assessment shall be considered, the notice must state that the annual assessment will be considered.

4.8 **Quorum and Voting.**

- A. **Quorum.** A quorum at a Board meeting shall be attained by the presence in person of a majority of the entire Board of Directors.
- B. **Vote Required.** The acts approved by a majority of those Directors present and voting at a meeting at which a quorum has been attained shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the Condominium Documents or by applicable statutes. Directors may not vote by proxy or by secret ballot at Board meetings, except that Directors may vote by secret ballot for the election of officers. So long as required by the Condominium Act as amended from time to time, a vote or abstention for each Board member present shall be recorded in the minutes of the Board meeting.

- C. **Presumption of Assent.** A Director who is present at a meeting of the Board, inclusive of the president, shall be deemed to have voted in favor of any action taken, unless:
1. He objects at the beginning of the meeting (or promptly upon his arrival) to holding it or transacting specified business at the meeting; or
 2. He votes against or abstains from the action taken due to an asserted conflict of interest. An abstention for any other reason shall be considered an affirmative vote.
- D. **Agenda.** No item not on the posted agenda may be taken up by the Board at a Board meeting unless same is an emergency item and the necessary vote is obtained as set forth in the Condominium Act and Administrative Rules as amended from time to time. Such vote must be ratified by the Board as provided for in the Condominium Act and Administrative Rules as amended from time to time.

4.9 **Members Participation at Board Meetings.** Meetings of the Board of Directors shall be open to all Members to attend and observe. The right to attend Board meetings includes the right to speak with reference to all designated agenda items, subject to reasonable written Rules and Regulations adopted by the Board of Directors governing the frequency, duration and manner of Members' statements. Any Member may tape record or videotape meetings of the Board of Directors, subject to any applicable Administrative Rules, and written Rules and Regulations adopted by the Board of Directors. Notwithstanding the foregoing to the contrary, no Member may videotape or tape record at any Board meeting unless the Member provides written notice of his or her intention to do so, which notice is received by the Association no later than twenty-four (24) hours prior to the scheduled time and date for the meeting.

4.10 **The Presiding Officer.** Except as otherwise provided for by the Administrative Rules regarding a meeting for the recall of Directors, the president of the Association, or in his absence, the vice-president, shall be the presiding officer at all meetings of the Board of Directors. If neither is present, the presiding officer shall be selected by majority vote of those Directors present.

4.11 Order of Business. The order of business at meetings of the Directors, as appropriate, shall be:

- A. Calling of roll
- B. Proof of notice of meeting or waiver of notice
- C. Reading and disposal of any unapproved minutes of Board meetings
- D. Reports of officers and committees
- E. Election of officers (if any)
- F. Unfinished business
- G. New business
- H. Adjournment

4.12 Joinder in Meeting by Approval of Minutes. A Director may join in the action of a meeting by signing and concurring in the minutes of that meeting. That concurrence, however, shall not constitute the presence of that Director for the purpose of determining a quorum.

4.13 Minutes of Meeting. The minutes of all meetings of the Board of Directors shall be kept in a book available for inspection by members of the Association and/or their authorized representative(s) at any reasonable time. These individuals shall have the right to make written notations from the minutes, and to receive photocopies thereof at the cost of the member concerned. The Board of Directors shall establish such cost, not to exceed the limitations imposed by law from time to time. Minutes shall be retained for a period of not less than seven (7) years after the date of the meeting.

4.14 Failure to Elect Director Quorum. If the Association or the Board of Directors fails to fill vacancies on the Board of Directors sufficient to constitute a quorum, any member of the Association may apply to the circuit court of the County for the appointment of a receiver to manage the affairs of the Association. At least thirty (30) days prior to applying to the circuit court, the member shall mail to the Association and post conspicuously on the Condominium property, a notice describing the intended action, giving the Association time to fill the vacancies. If during such time the Association fails to fill the vacancies, the Member may proceed with the petition. If a receiver is appointed, the Association shall be responsible for the salary of the receiver and reasonable court costs and reasonable attorneys' fees incurred by the petitioner(s). The receiver shall have

all the powers and duties of a duly constituted Board of Directors and shall serve as such until the Association fills vacancies on the Board sufficient to constitute a quorum.

4.15 Committees. The notice, conduct and participation in voting, and keeping and maintenance of minutes of Committees as defined by the Condominium Act as amended from time to time, shall be governed by the provisions contained in the Condominium Act and Administrative Rules as amended from time to time. Meetings of Committees which do not take final action on behalf of the Board or do not make recommendations to the Board regarding the annual budget are exempt from compliance with F.S.718.112(2)(c).

Section 5. OFFICERS.

5.1 Officers - Required; Appointment; Removal; Resignation; Vacancies. The executive officers of the Association shall be a president, and a vice-president, who shall be Directors, and a treasurer and a secretary, who need not be Directors, all of whom shall be elected annually by a majority vote of the entire Board. The Board of Directors may, from time to time, appoint such other officers, and designate their powers and duties, as the Board shall find to be required to manage the affairs of the Association. If the Board so determines, there may be more than one vice-president. Any officer may be removed with or without cause by vote of a majority of the entire Board at any Board meeting. An officer may resign at any time by delivering notice to the Association. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the Association accepts the future effective date, the Board of Directors may fill the pending vacancy before the effective date if the Board of Directors provides that the successor does not take office until the effective date.

5.2 President. The president shall be the chief executive officer of the Association. He shall preside at all meetings of the members and Directors, shall have general and active management of the business of the Association, and shall see that all orders and resolutions of the Board are carried into effect. He shall give, or cause to be given, notice of all meetings of the members and of the Board of Directors. He shall execute bonds, mortgages, and other contracts requiring seal of the Association, except where such are permitted by law to be otherwise signed and executed, and the power to

execute is delegated by the Board of Directors to some other officer or agent of the Association.

5.3 Vice-Presidents. The vice-presidents, in the order of their seniority shall, in the absence or disability of the president, perform the duties and exercise the power of the president, and shall perform such other duties as the Board of Directors may prescribe. "Absence" or "disability" shall be viewed on a case by case, duty by duty basis, and as used herein, shall mean incapability of the president to effect a particular duty under question, incident to the office of the president.

5.4 Secretary. The secretary shall attend all meetings of the Board of Directors and all meetings of the members and shall cause all votes and the minutes of all proceedings to be recorded in a book or books to be kept for the purpose, and shall perform like duties for the standing committees and Executive Committee when required. He shall maintain an accurate and up-to-date roster of Owners and their addresses. He shall keep in safe custody the seal of the Association and, when authorized by the Board, affix the seal to any instrument requiring it. The secretary shall be responsible for the proper recording of all duly adopted amendments to the Condominium Documents. Any of the foregoing duties may be performed by the Assistant secretary, if one has been designated.

5.5 Treasurer. The treasurer shall have responsibility for the custody of Association funds and securities and the keeping of full and accurate accounts of receipts and disbursements in books belonging to the Association. He shall cause all monies and other valuable effects to be deposited in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. He shall oversee disbursement of the funds of the Association, making proper vouchers for such disbursements, and shall render to the president and Directors, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as treasurer and of the financial condition of the Association. Any of the foregoing duties may be performed by an assistant treasurer, if any has been designated.

5.6 Special Duty. The Board shall from time to time delegate to one of its officers, the responsibility for preparing minutes of Directors' and members' meetings and for authenticating records of the Association. Should or to the extent that the Board shall fail to delegate same, the responsibility shall lie with the secretary.

Section 6. COMPENSATION OF DIRECTORS, OFFICERS AND COMMITTEE MEMBERS. Neither Directors, officers, nor (statutory and non-statutory) committee members shall receive compensation for their services as Directors, officer or committee member (as applicable). Directors, officers and committee members shall be entitled to reimbursement for all actual and proper out-of-pocket expenses, relating to the proper discharge of their respective duties.

Section 7. FISCAL MATTERS. The provisions for fiscal management of the Association set forth in Section 10 of the Declaration shall be supplemented by the following provisions:

7.1 Annual Budget.

- A. The Board of Directors shall adopt an annual budget for common expenses for each budget year, which shall run from January 1st through December 31st of each year, unless the Board votes otherwise. A copy of the proposed budget and a notice stating the date, time and place of the Board meeting shall be mailed to or served on the Owner of each Unit not less than fourteen (14) days prior to the date of that meeting. The proposed budget shall be detailed and shall show the amounts budgeted by accounts and expense classifications. The annual budget shall include all estimated expenses or expenditures including the categories set forth in F.S. 718.504(20)(c), only if applicable, as more fully set forth in the Administrative Rules as amended from time to time. All common expenses related to Association property, and to the manager's apartment and gatehouse, and to Properties situated outside of the Condominium buildings, including outside of the courtyard walls and fences within Southwinds B, shall be shared equally by each Unit and its Owners in both Condominiums (that is, 1/96 for each Unit). The failure of the Association to adopt a budget prior to the commencement of the new budget year shall not invalidate the budget or the annual assessments due pursuant to the untimely adopted budget. The Board of Directors further has the power to amend (increase) the annual budget should

same be necessary to pay for valid common expenses, or to amend (decrease) the annual budget should same be warranted, all in the discretion of the Board of Directors. All members of the Association are deemed to have use rights with respect to the properties for which expenses are shared on the basis of 1/96 per Unit, which expenses also provide tangible economic benefits to all members of the Association.

- B. If an adopted budget requires assessments against the Owners in any budget year which exceed 115% of the assessments for the preceding year, the Board, upon written application of ten percent (10%) of the voting interests to the Board, shall call a special meeting of the Owners within thirty (30) days upon not less than ten (10) days written notice to each Owner. At the special meeting, the Owners shall consider and enact a budget, provided that not less than a majority of the voting interests of the entire membership vote to do so. If a quorum is not attained at the special meeting or a substitute budget is not adopted by the Owners at the special meeting by the majority vote just mentioned, the budget adopted by the Board of Directors shall go into effect as scheduled. In determining whether assessments exceed 115% of similar assessments in prior years, any authorized provisions for reasonable reserves for repair or replacement of the property in the Condominiums, anticipated expenses by the Association which are not anticipated to be incurred on a regular or annual basis, or assessments for betterment to the Properties shall be excluded from the computation.

7.2 Reserves.

- A. Statutory Reserves for Capital Expenditures and Deferred Maintenance. In addition to annual operating expenses, the proposed budget must include reserve accounts for capital expenditures and deferred maintenance and shall list the information as required by the Condominium Act and applicable Administrative Rules as amended from time to time. These accounts shall include, but are not limited to, roof replacement, building painting and

pavement resurfacing, and all other building components required by the Condominium Act and applicable Administrative Rules as amended from time to time. The amount to be reserved shall be computed by a formula based upon the estimated life and replacement cost of each item, in the manner required by any applicable Administrative Rules as amended from time to time. These reserves shall be fully funded unless a majority of the voting interests of those Members (in the Condominium affected, if applicable, who are) present in person and by proxy at a Members' meeting (which would consist of only Members of a particular Condominium if only the Condominium's reserves are involved) vote to fund no reserves or less than adequate reserves for a budget year. The vote to waive or reduce reserves, if any is taken, may be taken only after the proposed budget has been mailed to the Members as required in 7.1 above. Reserves funded under this Section 7.2 and any interest accruing thereon shall be used only for the purposes for which they were reserved, unless their use for other purposes is first approved by the same vote of voting interests mentioned in this section above, or unless their use is otherwise permitted by the Condominium Act and Administrative Rules as amended from time to time. Such reserves shall be segregated from operating funds of the Association to the extent required by the Condominium Act and Administrative Rules as amended from time to time.

- B. Other Reserves. In addition to the statutory reserves provided in 7.2.A above, or in place of them if the members so vote, the Board may establish one or more additional reserve accounts for contingencies, operating expenses, repairs, permitted improvements or deferred maintenance. The purpose of the reserves is to provide financial stability and to avoid or minimize the need for special assessments. The amounts proposed to be so reserved shall be shown in the proposed annual budget each year, subject to advice from the Association's accountant as to tax consequences of same. Any reserves which are not to be restricted must be shown in the operating portion of the budget.

7.3 Annual Assessments. Annual assessments based on the adopted budget shall be paid in four (4) quarterly installments, in advance, due on or before January 1, April 1, July 1 and October 1 of each and every year, unless otherwise specified by the Board of Directors. One written notice of the annual assessment shall be provided to all members, prior to the start of the particular budget year; no other notices need be given by the Association. Failure to send or receive such notice shall not excuse the obligation to pay. If an annual budget for a new budget year has not been adopted at the time the first installment for that year is due, it shall be presumed that the amount of such installment is the same as the previous installment, and shall be continued at such rate until a budget is adopted and pro rata assessments are calculated, at which time any overage or shortage calculated shall be added or subtracted from each Unit's next due installment. In the event that the annual budget is amended, the overage or shortage calculated shall be added or subtracted equally over the balance of the annual assessment installments due for the year.

7.4 Special Assessments. Special assessments may be imposed by the Board of Directors when needed to meet any proper common expense(s) for which there is/are not sufficient funds in the annual budget and annual assessments. Special assessments are due on the date(s) specified in the resolution of the Board approving such assessment. The applicable provisions of Section 4.7.C.2 above shall apply. The funds collected pursuant to a special assessment shall be used only for the specific purpose or purposes set forth in the notice of the special assessment. In the event that the funds are used for the specific purpose or purposes, and excess funds remain, the excess funds will be retained by the Association as part of the common surplus, and may, at the discretion of the Board, be returned to the Owners or applied as a credit toward future assessments.

7.5 Acceleration of Assessments. If any annual or special assessment installment as to a Unit becomes more than thirty (30) days past due, the Association shall have the right to accelerate the due date of the entire unpaid balance of the Unit's annual assessment for that fiscal year and/or special assessment, as applicable. The accelerated assessment shall be due and payable on the date on which the claim of lien is recorded. Once the claim of lien is recorded, the Association shall send the delinquent owner a notice that the right of acceleration has been exercised, which notice may be given as part of the notice of intent to foreclose as required by F.S. 718.116, or may be sent separately.

7.6 Depository. The Association shall maintain its accounts in such financial institutions or funds as shall be designated from time to time by the Board. Withdrawal of monies from such accounts shall be only by such person(s) as are authorized by the Board. The Board may invest Association funds in interest-bearing accounts, money market funds, certificates of deposit, U.S. Government securities, and other similar investment vehicles.

A. Proviso. Notwithstanding the foregoing to the contrary, statutory reserve funds shall be maintained differently if so required by the Condominium Act or Administrative Rules as amended from time to time.

7.7 Financial Reporting. The Board of Directors shall have performed and shall provide such form of accounting as required by applicable provisions of the Condominium Act and Administrative Rules as amended from time to time. The Board of Directors shall mail or hand deliver the form of accounting to each Owner as required by the Condominium Act and Administrative Rules as amended from time to time.

7.8 Fiscal Year. The fiscal year for the Association shall be from January 1st through December 31st, unless otherwise voted by the Board of Directors from time to time.

7.9 Annual Election of Income Reporting Method. Based on competent advice, the Board of Directors shall make a determination annually of the method by which the Association's income shall be reported to the Internal Revenue Service, based upon the method which yields the lowest tax liability.

Section 8. SYSTEM OF FINES FOR NON-COMPLIANCE.

8.1 Authority and Scope. The Committee referenced below may impose fines on any Owner and Unit for any violations of the Declaration, By-Laws and Rules and Regulations; as amended from time to time; and/or violations of the law: by Owners or the Owners' tenant(s); and/or their family members, agent(s), guest(s), visitor(s), servant(s), etc.

8.2 Owner is Liable. Each and every such violation shall be the responsibility of and attributed to the Owner (and his Unit) regardless of whether the offending party is in fact the Owner or the Owner's tenant(s), or their family, agent(s), guest(s), visitor(s), servant(s), etc. As such, the Owner is responsible for the actions of the Owner's tenant(s) and family, agent(s), guest(s), visitor(s), servant(s), etc.

8.3 Written Notice Required: Contents. No fine shall be imposed against an Owner for any violation unless and until the offending party or parties (which always shall include the Owner) has/have been given not less than fourteen (14) days written notice of the following:

- A. The Owner responsible for the violation(s).
- B. The nature of the violation and the name(s) of the violator(s), if known.
- C. The maximum amount of fine for each violation of the particular provision of the Condominium Documents, and/or Rules and Regulations and/or law.
- D. The date, time and place of a meeting, at which meeting the Committee referred to in Section 8.6 below shall determine whether the Owner (for himself/herself, family guests, servants, agents, etc., or other occupants of the Unit) and his Unit, is guilty of the violation, and if so, shall impose a fine for the violation.
- E. The Association shall be permitted to include in the Committee meeting notice, information that each day that the violation continues shall constitute a separate violation resulting in a separate fine.

8.4 Level of Fines. A fine for each violation shall be in amount(s) as set by the Committee not to exceed the maximum amount permitted by the Condominium Act as amended from time to time. This fine may be levied at the particular rate for each day or other period that the violation occurs, on a running per day/periodic basis, so long as the Committee's notice informs the offending party or parties of this possibility. The maximum total fine shall be as provided for in the Condominium Act as amended from time to time.

8.5 Record Keeping. The Association shall maintain a file of all notices issued and findings of the Committee in order that a record of offenses and offenders may be kept.

8.6 Hearing Before Committee of Owners.

- A. A party against whom the fine may be levied shall have a reasonable opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved, to have counsel present, and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Association.
- B. Failure of the Owner and the violator in question to appear at the scheduled hearing may result in the automatic vote by the Committee that the Owner is in violation, whereupon the fine may be levied without further advance warning.
- C. The Committee shall be comprised of such members as provided for in the Condominium Act and Administrative Rules, as amended from time to time and in the absence of such provision, then as selected by the Board of Directors.

8.7 Collection of the Fine. Once a fine is deemed to be due and owing, the Association shall provide written notice to the Owner of the fine due and owing, with due date for payment.

8.8 Concurrent Remedies. The fine system may be invoked independently of or concurrently with any other remedies provided for in the Condominium Documents or Law. As such, the fine system is not a condition precedent to the Association's pursuit of other remedies available to it under the Condominium Documents or under the law. Also, the fact that a fine is levied and/or paid does not constitute compliance with the Condominium Documents, Rules and Regulations and law, if in fact the violation(s) remain(s).

8.9 Late Fees. The imposition of late fees shall not be subject to the notice and procedural provisions of this Section 8.

Section 9. PARLIAMENTARY RULES. ROBERTS' RULES OF ORDER (latest edition) shall govern the conduct of meetings of the membership and Board of Directors when not in conflict with the Condominium Documents or applicable Law.

Section 10. EMERGENCY BY-LAWS. The following shall apply to the extent not prohibited by the Condominium Act.

10.1 The Board of Directors may adopt By-Laws to be effective only in an emergency defined in Section 10.5 below. The emergency By-Laws, which are subject to amendment or repeal by the members, may make all provisions necessary for managing the Association during an emergency, including:

- A. Procedures for calling a meeting of the Board of Directors;**
- B. Quorum requirements for the Meeting; and**
- C. Designation of additional or substitute Directors.**

10.2 The Board of Directors, either before or during any such emergency, may provide, and from time to time modify, lines of succession in the event that during such emergency any or all officers or agents of the Association are for any reason rendered incapable of discharging their duties.

10.3 All provisions of the regular By-Laws consistent with the emergency By-Laws remain effective during the emergency. The emergency By-Laws are not effective after the emergency ends.

10.4 Corporate action taken in good faith in accordance with the emergency By-Laws:

- A. Binds the Association; and**
- B. May not be used to impose liability on a Director, officer, employee, or agent of the Association.**

10.5 An emergency exists for purposes of this Section 10 if a quorum of the Association's Directors cannot readily be assembled because of some catastrophic event.

Section 11. AMENDMENT OF THE BY-LAWS. All amendments to the By-Laws shall be proposed and adopted in the following manner:

11.1 Proposal. Amendments to this Declaration may be proposed by a majority of the entire membership of the Board of Directors or by written petition signed by at least twenty-five percent (25%) of the voting interests of the members of the Association. Only one co-owner of a Unit need sign the petition for that Unit.

11.2 Procedure: Notice and Format. In the event that any amendment is proposed by the Board of Directors, (then the Board may propose the amendment to be considered at the annual or a special members' meeting. In the event that any amendment was proposed by written petition of the members, then the Board shall have forty (40) days from its receipt of the petition or ten (10) days after its next regular meeting, whichever time period is greater, to certify that the proper number of owners executed the petition. Once certified, the Board shall call a meeting of the members to vote on the amendments within sixty (60) days after certification of the signatures. An amendment may be considered at the annual or a special members' meeting. The full text of any amendment to the By-Laws shall be included in the notice of the members' meeting of which a proposed amendment is considered by the members. New words shall be inserted in the text by underlining and words to be deleted shall be lined through with hyphens; however, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of By-Laws. See provision _____ for present text."

11.3 Vote Required. Except as otherwise provided by Florida law, or by specific provision in these By-Laws, these By-Laws may be amended by concurrence of not less than a majority of the entire membership of the Board of Directors and not less than a majority of the voting interests of the entire membership of the Association. If the amendments were proposed by a written petition signed by the members pursuant to Section 11.1 above, then the concurrence of the Board of Directors shall not be required.

11.4 Certificate; Recording; Effective Date. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the By-Laws, which certificate shall be in the form required by law and shall be executed by any officer of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the public records of the County. The Certificate of Amendment shall, on the first page, state the book and page of the public records where the Declaration is recorded.

11.5 Provisos. Notwithstanding any provision in these By-Laws to the contrary:

- A. No amendment shall operate to unlawfully discriminate against any Owner or Unit or class or group of Units.
- B. An Amendment to these By-Laws that adds, changes, or deletes a greater or lesser quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.
- C. Any emergency By-Laws adopted pursuant to Article 10 of these By-Laws may be adopted or amended by the vote of a majority of the entire Board of Directors at the time there is no emergency, or by a lesser vote as determined by the Board in the event of an emergency; such By-Laws need not be recorded, and shall become effective as resolved by the Board of Directors. This Section 11.5.C of the By-Laws shall not preclude the members from amending or repealing such emergency By-Laws as provided in Sections 11.1 through 11.4 above. No emergency By-Laws amended or repealed by the members shall be amended by the Board of Directors, without following the procedures set forth in Sections 11.1 through 11.4 above.

Section 12. INDEMNIFICATION.

12.1 To the fullest extent permitted by Florida law, the Association shall indemnify and hold harmless every Director, every officer, and every member of a committee of the

Association against all expenses and liabilities, including attorneys' fees, actually and reasonably incurred by or imposed on him/her in connection with any legal proceeding for settlement or appeal of such proceeding (and including administrative proceeding) to which he/she may be a party because of his/her being or having been a Director, officer or member of a committee of the Association. Indemnification of Directors and Officers shall also be that provided for in Section 617.028, Florida Statutes, as amended from time to time. Indemnification shall include an advance of the Director's, officer's or committee member's attorneys' fees and defense costs, provided that the Director or officer provides the undertaking assurance required by F.S. 607.0850(6); the foregoing is conditioned upon the Director, officer or committee member agreeing to use counsel of the Association's choosing, if the Association so conditions. In the event of a conflict between this Section 12 and said statute, the conflict shall be resolved in favor of providing the broadest protection possible to Directors, officers and committee members. The foregoing right of indemnification shall not be available if a judgment or other final adjudication establishes that his/her actions or omissions to act were material to the cause adjudicated and involved:

- A. Willful misconduct or a conscious disregard for the best interests of the Association, in a proceeding by or in the right of the Association to procure a judgment in its favor; or
- B. A violation of criminal law, unless the Director, officer or committee member had no reasonable cause to believe his/her action was unlawful or had a reasonable cause to believe his action was lawful; or
- C. A transaction from which the Director, officer or committee member derived an improper personal benefit.

In the event of a settlement, the right to indemnification shall not apply unless the Board of Directors approves such settlement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which a Director or officer may be entitled.

12.2 Insurance. The Association is empowered to purchase directors, officers and other insurance to provide protection to persons covered by this Section 12.

DATED THIS 3rd DAY OF August, 2001.

SOUTHWINDS AT THE MOORINGS
ASSOCIATION, INC.

By: *David H. Sandy*

President

By: *William J. Manning*

Secretary

SOUTHWINDS AMENDED BY LAWS