

BY-LAWS OF THE  
SEAWINDS BOATOWNERS ASSOCIATION, INC.

ARTICLE I

NATURE OF BY-LAWS

1.01. Purpose. These By-Laws are intended to govern the administration of Seawinds Boatowners Association, Inc., a non- profit corporation organized under Title 15A of the New Jersey Statutes Annotated, and to provide for the management, administration, utilization and maintenance of those certain riparian rights and leasehold rights, two (2) floating docks, twenty-two {22} or more finger piers, mooring piles, boat slips, related equipment and machinery, being or constituting the Seawinds Marina, as more particularly shown on that certain survey and site plan dated May 20, 1987, revised October 15, 1987, November 30, 1988, December 9, 1988 and December 16, 1988, prepared by Thomas P. Santry. The leasehold rights of the Association are annexed hereto as Exhibit A, and the plans for the Seawinds Marina are annexed hereto as Exhibit B.

1.02. Definitions. Unless the context clearly indicates otherwise, the words used herein have the following meaning:

"Association" shall mean Seawinds Boatowners Association Inc., a New Jersey non-profit corporation .

"Board" shall mean the Board of Directors of the Association.

"Boat Slip" shall mean and refer to those forty (40) enclosures of space intended for the mooring or anchoring of boats within the Seawinds Marina.

"Certificate of Incorporation" shall mean the Certification of Incorporation of the Association.

"Maintenance Expenses" shall mean all those expenses including reserves incurred or assessed by the Association, or its respective directors, officers, agent or employees, in the lawful performance of their respective duties or powers.

"Marina" shall mean (i) all the lands and premises described in Exhibit "A"; (ii) all improvements now or hereinafter constructed in, upon, over or through such lands and premises; and (iii) all privileges or appurtenances pertaining or belonging to the land described in "Exhibit A".

"Tidelands Lease" shall mean the Lease between the Association and the State of New Jersey, Department of Environmental Protection, Division of Coastal Resources, Bureau of Tidelands, which is Exhibit A2. This Lease grants the right for twenty five (25) years to use certain lands and waters of the Shrewsbury River for the Marina.

"Member" shall mean all those Boat Slip tenants who are members of the Association as provided in Article V of the Certificate of Incorporation .

"Property" shall mean the Dock, Finger Piers, Mooring Piles, land, waters and premises described in Exhibits "A" and "B" and all improvements now

or hereafter constructed in, upon, over or through such land, waters and premises .

"Riparian Rights" means those riparian rights established as part of the common elements of Seawinds, a Condominium, and defined as part of a certain riparian grant from the State of New Jersey to Thomas Patten recorded in Deed Book 436 Page 474, dated September 20, 1988 (which includes other riparian grants) and lease to the Association in the Seawinds Lease.

"Rules and Regulations" shall mean those rules and regulations of the Association that may be promulgated by same, together with all future amendments or supplements thereto.

"Seawinds Lease" means the Lease Agreement entered between Seawinds Townhouse Condominium Association, Inc. and the Association Exhibit A1). This Lease grants the Association the right to construct the Marina upon common elements of Seawinds, a Condominium and to sublease interests therein

1.03. Fiscal Year. The fiscal year of the Association shall be the calendar year.

1.04. Principal Office. The initial principal office of the corporation is located at Patten Avenue, Long Branch, New Jersey. Any subsequent Principal Office shall be located at the principal office of the management organization hired by the Board of Directors.

## ARTICLE II

### MEMBERSHIP AND VOTING RIGHTS

2.01. Members. The initial Members of the Association are set forth on Exhibit A. Each initial member shall receive those shares of stock in the Association shown on Exhibit A. The number of shares of each Member is determined by the number of feet in the boat slip of that Member. No person, firm, association, corporation, or legal entity who holds such title or interest merely as security for the performance of any obligation (including but not limited to mortgagees or trustees under deeds of trust} shall be a Member of the Association. The shares shall be evidenced by a stock certificate which shall be delivered by the Association to the Member.

2.02. Change of Membership. The Association shall maintain a stock transfer ledger or other record of Membership. The transfer of Membership shall be accomplished by delivering to the Association or its designated stock transfer agent, the stock certificate duly executed for cancellation or other evidence of cancellation or assignment satisfactory to the stock transfer agent. Thereupon a new stock certificate shall be issued to the new Member. The Association may establish a reasonable fee for this service. The Membership of the prior Unit Owner shall be thereby terminated.

2.03. Leases of Boat Slips. The Association is the prime lessee under the Tidelands Lease and the Seawinds Lease. The Association shall sublease the leasehold rights established thereunder, together with other rights, by executing and delivering to each Member a Proprietary Lease for Boat Slip for each boat slip

in the Marina. Each Proprietary Lease for Boat Slip shall contain those provisions necessary for the proper administration of the Marina on a cooperative basis. Each Proprietary Lease shall be on a form adopted by the Association for that purpose.

2.04. Rights of Membership. Every Member of the Association, pursuant to the provisions of the Certificate of Incorporation and these By-Laws, shall be privileged to use and enjoy the Boat Slip and the Marina, subject to the rights of other Proprietary Lessees of Boat Slips and subject further to the right of the Association to:

(a) Promulgate rules and regulations governing such use and enjoyment; and

(b) Suspend the use and enjoyment of the Seawinds Marina as provided in Section 2.04 of this Article II.

2.05. Suspension of Rights. Any Membership rights, including voting rights of any Member may be suspended by the Board for any period during which any assessment of the Member remains unpaid; but upon payment of such assessments, and any interest or costs accrued thereon, whether by check or cash, his rights and privileges shall be immediately and automatically restored. If the violation is of a continuing nature, such rights and privileges may be suspended indefinitely until such time as the violation is abated. No such action shall be taken by the Board until the Member is afforded an opportunity for a hearing consistent with the principles of due process of law. The suspension of

Membership privileges may include withholding the right to use the dock, utilities provided at the dock, or any other service that is supported by assessments.

2.06. Restrictions on Membership. The membership of the Association shall be limited to owners of condominium units in Seawinds Townhouse Condominium ("Seawinds") or Seawinds Townhouse Condominium II ("Seawinds II"). Violation of this restriction shall entitle the Association to immediately suspend ownership privileges as defined herein and on the Proprietary Lease for Boat Slip and to take such other actions as may be necessary to enforce this Resolution .

2.07. Votes. Each Member shall be entitled to one vote(s) for each boat slip to which he holds a Proprietary Lease as provided herein . When more than one person holds title, the vote (s) for each boat slip shall be exercised as the Co-Tenants among themselves determine. When one or more Co-Tenants sign a proxy or purports to vote for his or her Co-Tenants, such vote(s) shall be counted unless one or more of the other Co-Tenants is present and objects to such vote{s}; or, if not present, submits a proxy or objects in a writing delivered to the Secretary of the Association before the vote{s} is counted. If Co-Tenants disagree as to the vote(s), the vote shall be split equally among the Co-Tenants.

2.08. Member in Good Standing. A Member shall be deemed to be in good standing and entitled to vote in person or by proxy at any meeting of the Association or in any ballot by mail if he shall have fully paid all installments due for assessments made or levied against him and his boat slip by the Board as hereinafter provided, together with all interest, costs, attorney's fees, penalties and other expenses (if any) properly chargeable to him and to his Boat Slip prior

to such meeting. The Board may waive this good standing requirement in connection with any election or vote in its discretion for good cause.

2.09. Proxies. Proxies, Proxy or mail ballots shall be permitted with respect to all elections of Directors, and all amendments to the Certificate of Incorporation, or these By-laws, or any other matter which properly comes before a meeting or the Membership of the Association. All proxies shall be in writing, signed by all individual Members (or in the case of joint owners by any one of them), or by his or their duly authorized representative(s) and delivered to the Secretary of the Association, or such other person as the President may designate, prior to the commencement of the meeting at which ballots are to be cast. Proxies may be revoked at any time prior to the opening of the polls, and no proxy shall be voted on after eleven (11) months from its date unless said proxy provides for a longer period, not to exceed three (3) years from the date of execution .

### ARTICLE III

#### MEETINGS OF MEMBERS

3.01. Place of Meetings. All meetings of the Members of the Association shall be held at Seawinds, a Condominium or at such other place convenient to the Members as may be designated by the Board.

3.02. Annual Meetings. All annual meetings of the Members of the Association shall be held on the day and month of the year to be established by the Board. At each annual meeting the election of Directors shall take place. If the election of Directors shall not be held at the annual meeting or any

adjournment of such meeting, the Board shall cause the election to be held at a special meeting as soon thereafter as may be convenient. At such special meeting the Members may elect the Directors and transact other business with the same force and effect as at any annual meeting duly called and held. All proxies validly received for the originally scheduled meeting shall remain in full force and effect for any such adjourned meeting or special meeting and new proxies may be received for any such subsequent meeting.

3.03. Special Meetings. Special meetings of Members may be called by the President whenever he deems such a meeting advisable, or shall be called by the Secretary upon the order of the Board or upon the written request of Members representing not less than twenty-five (25%) percent of all votes entitled to be cast at such meeting. Such request shall state the purposes of such meeting and the matters proposed to be acted upon.

3.04. Notice of Meeting. Except as otherwise provided by law or Section 4.03 herein, notice of each meeting of Members, whether annual or special, shall be given not less than ten (10) days, nor more than ninety (90) days before the day on which the meeting is to be held, to each Member at address on the books of the Association, by delivering a written or printed notice thereof or by mailing such notice, postage prepaid to said Member. Every such notice shall state the time, place and purpose (s) of the meeting. Notice of any meeting of Members shall not be required to have been sent to any Members who shall attend such meeting in person or by proxy. Notice of an adjourned meeting of the Members shall not be required to be given unless the time and place to which the meeting is adjourned is not announced at the meeting adjourned. Except where otherwise



expressly required by law, no publication of any notice of a meeting of Members shall be required.

3.05. Quorum and Adjourned Meetings. At any meeting of the Members, persons holding twenty-five percent (25%) of the authorized votes present in person or by proxy, shall constitute a quorum for the transaction of business except where otherwise provided by law. In the absence of a quorum, the persons holding votes present in person or by proxy and entitled to vote, may, by majority vote, adjourn the meeting from time to time until a quorum shall be present in person or by proxy. At any such adjourned meeting at which a quorum may be present any business may be transacted which might have been transacted at the meeting originally called.

3.06. Organization. At each meeting of the Association, the President, or, in his absence, the Vice President, or in the absence of both of them, a person chosen by a majority vote of the Members in good standing present in person or represented by proxy, shall act as a chairperson, and the Secretary, or in his absence, a person whom the chairperson shall appoint, shall act as Secretary of the Meeting.

3.07. Voting on Questions. A majority of the votes present in person or by proxy at any duly constituted meeting of the Membership shall be sufficient on those questions submitted to a vote of the Membership. The vote on any question need not be taken by ballot, unless (i) chairperson of the meeting determines a ballot to be advisable, or (ii) a majority of the votes present at the meeting determine that the vote on the question submitted shall be taken by ballot.

3.08. Voting in Elections of Directors. The election of Directors shall be conducted by written ballot. There shall be one ballot, with the persons receiving the highest numbers of votes being elected in order to fill the vacancies on the Board. If ever applicable, candidates polling the highest numbers of votes will be considered elected for the longest period of years.

3.09. Ballot by Mail. The Board, in lieu of calling a Membership meeting may submit any question or election to a vote of the Membership by a ballot by mail. No ballot by mail shall be valid or tabulated unless the signature of the Member (s) submitting the ballot has been verified on the ballot in any reasonable way. The Board shall appoint judges to tabulate the ballot whose report shall be included in the minute book. In order to conduct a ballot by mail for a question submitted to a vote of the Membership, the Board shall serve notice upon all Members in good standing which shall (i) state with specificity in terms of motion(s) the question(s) upon which the vote is to be taken; (ii) state the date by which ballots must be received in order to be counted; (iii) provide an official ballot for the purposes of the vote; and (iv) state the date upon which the action contemplated by the motion(s) shall be effective, which date shall be not less than ten (10) days after the date ballots must be received. No actions contemplated by a question submitted to a ballot by mail shall be taken unless a majority in interest of all Members in good standing submit ballots approving such action.

In order to conduct a ballot by mail for an election of Directors, the Board shall serve a notice upon all Members which shall (i) provide an official ballot for

the purposes of the election; and (ii) state the date by which the ballot must be received in order to be counted.

3.10. Judges. If at any meeting of the Members a vote by ballot shall be taken, the chairperson of such meeting shall appoint one or more persons to act as Judges with respect to the ballots. Each Judge so appointed shall first subscribe an oath to execute faithfully the duties of a Judge with strict impartiality and according to the best of his ability. Such Judges shall decide all questions about the qualifications of voters and shall report the number of votes represented at the meeting and entitled to vote on such question, shall conduct and accept the votes, and when the voting is completed, shall ascertain and report the number of votes respectively for and against the questions; but as to the election of Directors, the number of votes received by each candidate need not be reported. Reports of Judges shall be in writing and subscribed and delivered by them to the Secretary of the meeting. The Judges need not be Members of the Association, and any officer or Director of the Association may be a Judge on any question, other than a vote for or against his election to any position with the Association or any other question in which he may be directly interested.

## ARTICLE IV

### BOARD OF DIRECTORS

4.01. Qualifications. The following criteria shall be qualifications for nomination, appointment or election to a Directorship:

(a) Membership: Membership shall be a qualification of any nominee or appointee to a Directorship.

(b) Representation: Partnerships, corporations or fiduciaries holding Memberships in good standing may designate individuals to be eligible for nomination, appointment, or election as Directors in accordance with the following qualifications:

i) Partnership designees shall be Members, employees, or agents of the partnership;

ii) Corporate designees shall be officers, stockholders, employees or agents of the corporation; and

iii) Fiduciary designees shall be fiduciaries, officers, or employees of the fiduciary.

Co-Tenants holding a Membership in good standing may designate any one of them (but not more than one of them) to be eligible for nomination, appointment, or election as a Director; however, in the case of any disagreement, the express consent of a majority of such Co-Tenants shall be required.

4.02. Number. The Board shall consist of three (3) Directorships.

4.03. Term of Office. Directors B and C elected at the First Election shall serve terms expiring at the annual meeting of the Membership held in the second calendar year following the year in which the First Election is held. Thereafter, Directors B and C shall serve for two year terms .

Director A shall serve a term expiring at the annual meeting of the Membership held in the third calendar year following the year in which the First Election is held. Thereafter, Director A shall serve a two year term. Director A shall be elected by the greatest number of votes in the First Election.

It is the purpose and intent hereof that subsequent to First Election, the election of Directors B and C shall be held in alternate years to the election of Director A.

4.04.        Removal of Members of the Board. At any duly held and constituted regular or special meeting of the Members, any one or more Directors may be removed with or without cause by vote of the Members present, and a successor may then and there be appointed by a majority of the remaining Directors to fill the vacancy thus created. Each person so appointed shall be a Director for the remainder of the term of the Director whose term he is filling and until his successor is duly elected and qualified. Any Director whose removal has been proposed shall be given an opportunity to be heard at the meeting.

4.05.        Vacancies. Vacancies on the Board caused by any reason other than the removal of a Director by a vote of the Members shall be filled by a vote of a majority of the remaining Directors at a special meeting of the Board held for that purpose promptly after the occurrence of any such vacancy. Each person so appointed shall be a Director for the remainder of the term of the Director whose term he is filling and until his successor shall have been duly elected and qualified.

ARTICLE V  
TRANSACTION OF BUSINESS BY THE  
BOARD OF DIRECTORS

5.01. Express and Implied Powers and Duties. The property, affairs and business of the Association shall be managed by the Board of Directors, which shall have all those powers granted to it by the Certificate of Incorporation, the Leases, these By-Laws, and by law.

5.02. Meeting of the Board; Notices: Waiver of Notice. The first meeting of the Board shall be held within ten (10) days after the first annual meeting of the Members and at such time and place as shall be fixed by a majority of the Board, and no notice shall be necessary. Thereafter, regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Board, but at least two meetings shall be held each year. Notice of regular meetings of the Board shall be given to each Director by telephone, mail, e-mail or telegram at least three (3) days prior to the day of the meeting. Special meetings of the Board may be called by the President on three (3) days notice to each Director given by telephone, mail e-mail or telegram, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board shall be called by the President or the Secretary in like manner and on like notice on the written request of at least three (3) Directors. Any Director may, at any time, waive notice of any meeting of the Board in writing and such waiver shall be deemed equivalent to the giving of notice. Actual attendance by Directors at any meeting of the Board shall constitute a waiver of

notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting. In the discretion of the Board, meetings of the Board or portions thereof, may be open to Members of the Association or other persons for observation or participation in such manner and to the extent as the Board may deem appropriate.

5.03. Quorum and Adjourned Meetings. At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business and the votes of a majority of the Directors present and voting at a meeting at which a quorum is present shall constitute a valid decision. If at any meeting of the Board there shall be less than a quorum present, the majority of those present shall adjourn the meeting to a new date. At any such adjourned meeting at which a quorum is present, any business which may have been transacted at the original meeting may be transacted without further notice. The vote of a majority of those present at a Board meeting at which a quorum is present shall be necessary for valid action by the Board on any matter.

5.04. Joinder in Meetings by Approval of Minutes. The transaction of any business at any meeting of the Board, however called and noticed, or wherever held, shall be as valid as if transacted at a meeting duly held after regular call and notice, if (i) a quorum is present; and (ii) either before or after the meeting, each Director signs a written waiver of notice, or a consent to the holding of the meeting, or an approval of the minutes thereof or of the resolution or act adopted at such meeting. All such waivers, consents or approval, shall be in

writing and filed with the Secretary and made a part of the minutes of the meeting even though filed subsequent thereto.

5.05. Non-Waiver. All the rights, duties and privileges of the Board shall be deemed to be continuing and shall not be exhausted by any single act or series of acts. To the same extent, the failure to use or employ any remedy or right hereunder or hereafter granted shall not preclude its exercise in the future nor shall any custom bind the Board.

5.06. Consent in Lieu of Meeting and Vote. Anything to the contrary in these By-Laws, the Certificate of Incorporation or the Master Deed notwithstanding, the entire Board of Directors shall have the power to take action on any matter on which it is authorized to act, without the necessity of a formal meeting and vote of the entire Board, or all the Directors empowered to act, whichever the case may be, shall consent in writing to such action.

## ARTICLE VI

### POWERS AND DUTIES OF BOARD OF DIRECTORS

6.01. General Powers and Privileges. The Board shall have those powers, which include but which are not necessarily limited to the following, together with such other powers as may be provided herein or in the Leases , or By-Laws, or which may be implied.

(a) To do all that the Association is legally entitled to do under the laws applicable to its form of organization; and



(b) To execute, reexecute, deliver and redeliver Proprietary Leases for each Boat Slip in the Marina in a form acceptable to the Board, provided that all such Proprietary Leases shall be subject to the Tidelands Lease and the Seawinds Lease; and

(c) To employ, by contract or otherwise, a manager, managing agent or an independent contractor, to oversee, supervise and carry out the responsibilities of the Board. Said manager or said independent contractor shall be compensated upon such terms as the Board deems necessary and proper; and

(d) To employ any person, firm or corporation to repair, maintain or renovate the Leasehold property; to put up docks, piers, or moorings; to construct or reconstruct the Marina, or any part thereof; and

(e) To employ professional counsel and to obtain advice from persons, firms or corporations such as, but not limited to, architects, engineers, lawyers and accountants; and

(f) To employ or contract for water and sewer, electricity or other forms of utilities; and

(g) To adopt, amend, and publish rules and regulations covering the details of the operation and use of the Marina and the boat slips therein; and

(h) To secure full performance by Tenants or occupants of all items of maintenance for which they are responsible; and

(i) To arrange for security protection as necessary; and

(j) To enforce obligations of the Members and do anything and everything else necessary and proper for the sound management of the Marina, including the right to bring or defend lawsuits to enforce the terms, conditions and restrictions contained in the Leases, these By-Laws, or any rules and regulations; and

(k) To borrow and repay monies giving notes, mortgages or other security upon such term or terms as it deems necessary; and

(l) To invest and reinvest monies, sue and be sued, collect interest, dividends, and capital gains; exercise rights; pay taxes; make and enter into contracts; enter into leases or concessions; make and execute any and all proper affidavits for various purposes; compromise any action without leave of court; and all other powers contained herein, and those necessary and incidental thereto; and

(m) To transfer, execute, obtain or renew easements, licenses and other property rights with respect to the Marina; and

(n) To purchase or lease or otherwise acquire in the name of the Association or its designees, corporate or otherwise, on behalf of all Members, shares, leases or boat slips offered for sale or lease or surrendered by their Owners to the Board; and

(o) To purchase shares or leases within the Marina at foreclosure or other judicial sales in the name of the Association or its designees, corporate or otherwise, on behalf of all Members; and

(p) To sell, lease, mortgage (but not vote the votes appurtenant thereto) or otherwise deal with shares and leases acquired by the Association, and sublease any such boat slips obtained by the Association or its designees, on behalf of all Members; and

(q) To bring and defend actions by or against more Members which are pertinent to the operation of the Marina, the health, safety or general welfare of the Members, or any other legal action to which the Members may consent in accordance with these By-Laws; and

(r) To appoint an Insurance Trustee, who shall not be a Member of the Association, or the manager, who shall discharge his duties in accordance with these By-Laws. In the absence of such an appointment, the Board shall be responsible for the disposition of all insurance proceeds; and

(s) To create, appoint Members to and disband such committees as shall from time to time be deemed appropriate or necessary to aid the Board in the discharge of its duties, functions and powers.

6.02. Duties and Responsibilities. It shall be the affirmative and perpetual obligation and duty of the Board to perform the following:

(a) To main stock transfer ledgers or other books and records in order to keep an accurate list of the Member s of the Association; and

(b) To cause the Marina to be maintained according to accepted standards and as set forth in the Leases, including, but not limited to such maintenance, painting, replacement and repair work as may be necessary. All

repairs and replacements shall be substantially similar to the original application and installation and shall be of first class quality; and

(c) To investigate, hire, pay, supervise and discharge the personnel necessary to be employed, and provide the equipment and materials necessary. Compensation for the services of such employees (as evidenced by certified payroll) shall be considered an operating expense of the Association; and

(d) To cause to be kept a reasonable record of all its acts and corporate affairs and to present a summary report thereof to the Members at the annual meeting or at any special meeting when requested in writing at least twenty-one (21) days in advance by Members entitled to cast at least twenty-five (25) percent of the total votes of the Association; and

(e) To allocate common surplus or make repairs, additions, improvements to, or restoration of the dock, pilings, moorings or related equipment in accordance with the provisions of these By-Laws and the Leases after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings; and

(f) To take such action as may be necessary to comply promptly with any and all orders or requirements affecting the Marina placed thereon by any federal, state, county or municipal authority having jurisdiction thereover, or order of the Board of Fire Underwriters or other similar bodies or requirement of a Lessor; and

(g) To manage the fiscal affairs of the Association as hereinafter provided in Article VII; and

(h) To place and keep in force all insurance coverages required to be maintained by the Association, applicable to its property and Members including, but not limited to:

(i) Physical Damage Insurance. To the extent available in the normal commercial marketplace, broad form insurance against loss by fire, ice, lightning, windstorm and other risks normally included within all risk extended coverage, including vandalism and malicious mischief, insuring the Marina together with all service machinery appurtenant thereto, and covering the interest of the Association, the Board, all Tenants and any Lender who has requested the Association in writing to be named as loss payee, as their respective interests may appear, in an amount equal to the reasonable replacement value of the Marina without deduction for depreciation. Each policy shall contain a standard mortgagee clause in favor of each applicable lender, which shall provide that the loss, if any, thereunder, shall be payable to each applicable lender as its interest may appear, subject to the loss payment provisions set forth herein . The Board shall review such limits once a year.

(ii) Public Liability Insurance. To the extent obtainable in the normal commercial marketplace, public liability insurance for personal injury and death from accidents occurring in or on the Marina (and any other areas which the Board may deem advisable), and the defense of any actions brought for injury or death of a person or damage to property, occurring within the Marina. Said insurance shall be in such limits as the Board may, from time to time, determine, covering each Member of the Board, the managing agent, the manager, and each one insured against another. The Board shall review such limits once a year.

(iii) Workers Compensation Insurance. Workers compensation and New Jersey disability benefits insurance as may be required by law.

(iv) Other Insurance. Such other insurance as the Board may determine to be appropriate, including Directors and Officers Liability Insurance.

All policies shall: (i) provide that adjustment of loss shall be made by the Board of Directors with the approval of the Insurance Trustee, if any, and that the net proceeds thereof, if \$50,000.00 or less shall be payable to the Board, and if more than \$50,000.00 shall be payable to the Insurance Trustee if any; (ii) require that the proceeds of physical damage insurance be applied to the restoration of the Marina, the structural portions and service machinery; (iii) to the extent obtainable contain agreed amount and inflation guard endorsements; (iv) provide that the insurance will not be prejudiced by any act or omission of individual Members that are not under the control of the Association; (v) provide that the policy will be primary, even if insurance covering the same loss is held by any Member(s); (vi) to the extent obtainable contain waivers of subrogation and waivers of any defense based on co-insurance or of invalidity arising from any acts of the insured; and (vii) provide that such policies may not be cancelled without at least thirty (30) days prior written notice to all of the named insureds.

Any insurance maintained by the Board may provide for such deductible amount as the Board may determine. Notwithstanding any other provisions of this subparagraph, the Association shall not be required to provide any type or amount of insurance not commonly available in the normal commercial marketplace.

Members shall not be prohibited from carrying insurance for their own benefit provided that all such policies shall contain waivers of subrogation; and, further provided that the liability of the carriers issuing insurance obtained by the Board shall not be affected or diminished by reason of any such additional insurance carried by any Member.

## ARTICLE VII

### FISCAL MANAGEMENT

7.01. Annual Maintenance Assessments. The Board shall have the duty to collect from each Member, his heirs, administrators, successors and assigns, as "Maintenance Assessments," ("Assessments") the proportionate part of the Common Maintenance assessed against such Member as provided in these By-Laws. The Common Maintenance shall be payable monthly or quarterly as determined by the Board. Each member shall pay that proportion of the Common Maintenance as his shares bear to the total shares issued and outstanding.

7.02. Determination of Common Maintenance. The amount of monies for Common Maintenance deemed necessary by the Board and the manner of expenditure thereof, including but not limited to, the allocation thereof, shall be a matter for the sole discretion of the Board. The Board shall prepare and adopt annually a budget for the Marina. The budget shall estimate the expenses of operating the Marina for the next fiscal year, by line items, including without limitation, administration, lease payments, maintenance, taxes, insurance,

utilities charges, professional fees, and reasonable reserves as hereinafter defined.

7.03 Special Assessments. The Board shall have the authority to adopt and approve special assessments to pay for any nonrecurring expense, budget deficiency, or capital improvement in its discretion; provided however, that if the special assessment exceeds \$10,000, it shall be approved by a vote of a majority of the members, except in the event of an emergency. Any special assessment shall be paid in the same manner as annual assessments, provided that the Board shall determine the appropriate payment schedule.

7.04. Disbursements. The Board shall take and hold the funds and shall disburse the same for the purposes and in the manner set forth herein and as required by the Master Deed, Certificate of Incorporation, and applicable law.

7.05. Depositories. The depository of the Association shall be such a bank or banks as shall be designated from time to time by the Board and in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such parties as are authorized by the Board, provided that a management agreement may include among its provisions authority for the manager to sign checks on behalf of the Association for payment of the obligations of the Association.

7.06. Accounts. The receipts and expenditures of the Association shall be Maintenance Assessments and Common Maintenance respectively, and shall be credited and charged to accounts under the following classifications as the Board shall deem appropriate, all of which expenditures shall be Common Maintenance:



(a) Current expenses, which shall include expenditures within the year for which the budget is made, which may include reasonable allowances for contingencies. Current expenses shall not include expenditures chargeable to reserves. At the end of each year, the unexpended amount remaining in this account shall be applied to reduce the assessments for current expenses for the succeeding year, or may be distributed to the current Membership in the same manner as assessed, as the Board shall determine.

(b) Reserve for deferred maintenance, which shall include funds for maintenance items that occur less frequently than annually.

(c) Reserve for replacement, which shall include funds for reasonable repair or replacement of the dock, pilings, moorings and those related items for which repair or replacement is required because of damage, depreciation or obsolescence.

(d) Operations, which shall include all funds from the use of the Marina or from any other sources. Only the additional direct expense required by any revenue producing operation will be charged to this account, and any surplus from any operation or otherwise shall be used to reduce the assessments for current expenses for the succeeding year, or at the discretion of the Board, distributed to the current Membership in the same manner as assessed. Losses from operations or otherwise shall be met by special assessments against Members, which assessments may be made in advance in order to provide a working fund.

The Board shall not be required to physically segregate the funds held in the above accounts except for reserves for replacement and repair, which funds must be maintained in a separate account(s). The Board may, in its sole discretion, maintain the remaining funds in one or more consolidated accounts. As to each consolidated account, the division into the various accounts set forth above need be made only on the Association's records.

7.07. Reserves. The Board shall not be obligated to expend all of the revenues collected in any accounting period, and must maintain reasonable reserves for, among other things, repairs and replacements to major structural elements of the Marina. The amounts assessed and collected for the reserves shall be kept in one or more interest-bearing savings accounts, certificates of deposit or other reasonable and prudent investment and shall not be utilized for any purpose other than that which was contemplated at the time of the assessment. Interest accruing in such accounts shall be deemed part of the reserve fund. The foregoing shall not be construed to mean that the Board shall not be permitted to keep additional cash on hand, in a checking or petty cash account, for the necessary discharge of its functions.

7.08. Notice. The Board shall give written notice to each Member of the amount estimated by the Board for Common Maintenance for the management and operation of the Association for the next ensuing budget period, directed to the Member at his last known address by ordinary mail, or by hand delivery. In the event the Annual Maintenance Assessment proves to be insufficient, the budget and assessments may be amended at any time by the Board and nothing herein shall serve to prohibit or prevent the Board from

imposing an Emergency Assessment in the case of any immediate need or emergency which cannot be met by reserve funds allocated for such contingency.

7.09. Remedies Upon Default. If a Member shall be in default in the payment of an installment upon any type of Assessment, the Association shall have all those remedies established in the Proprietary Lease of Boat Slip, including but not limited to the following remedies:

(a) the Board may notify the delinquent Member that the remaining installments of the assessment shall be accelerated, and the Board may accelerate the remaining installments of the assessment;

(b) payment of such assessments shall be and constitute a lien or security interest upon the shares prior and superior to any other lien or security interest whatsoever, and the Board may exercise all remedies relating thereto as may exist under law and the Uniform Commercial Code;

(c) each default shall constitute a default under each Proprietary Lease for Boat Slip, entitling the Association to immediate termination of the Lease and possession of the boat slip, by action for summary dispossession;

(d) the Association may suspend all membership privileges including without limitation the right to the use and enjoyment of the common dock, utilities, or any other equipment of the Association;

(e) in the event that any boat slip is subleased by each Member hereby assigns to the Association such sublease and the rents accruing thereunder, so that the Association shall have the right to enter upon the boat slip and collect in the Member 's name and stead, all unpaid and accruing rent or

other charges and to keep and apply same against such default. Payment of such sums by a subtenant shall fully discharge any and all obligations under his lease with Member .

(f) the Association may take any and all other actions as are available to collect unpaid assessments; and

(g) all costs of such actions including all attorney's fees shall be collected from and paid by the delinquent Member. The Board may also notify any holder of any mortgage or similar interest encumbering the shares or lease affected by such default or publish appropriate notice of such delinquency to the Membership of the Association. Notwithstanding anything to the contrary hereinabove, in the event of the bankruptcy of any Member, the lease shall automatically be cancelled and the shares shall automatically revert to the Association, and the Member shall be disposed from the boat slip without the necessity of any further action by the Association .

7.10. Interest and Counsel Fees. The Board at its option shall have the right in connection with the collection of any type of Assessment, or other charge, to impose a late charge of any reasonable amount but at least \$10 per month, and/or interest at the legal maximum rate permitted by law for the payment of delinquent real estate taxes, if such payment is made after a date certain stated in such notice. In the event that the Board shall effectuate collection of said assessments or charges by resort to counsel, the Board may add to the aforesaid Assessments or charges all attorneys' fees incurred, plus the reasonable costs for title search, filing and discharge of the lien, in addition to such other costs as may be allowable by law.

7.11. Annual Financial Statement. The Board in its discretion shall submit annually the books, records, and memoranda of the Association to an independent public accountant who shall render a report thereon in writing to the Board.

7.12. Examination of Books. Each Member shall be permitted to examine the books of account of the Board by appointment at a reasonable time on business days; provided, however, that the Treasurer has been given at least 2 days prior written notice of the Member's desire to make such an examination.

## ARTICLE VIII

### OFFICERS

8.01. Designation. The principal officers of the Association shall be a President, a Vice-President, both of whom shall be Members of the Board, a Secretary and a Treasurer. The Board may also appoint such other Assistant Treasurers and Assistant Secretaries as in its judgment may be necessary. Any two (2) offices, except that of President and Vice-President, may be held by one person .

8.02. Election of Officers. The officers of the Association shall be elected annually by the Board at the first Board of Directors meeting following each annual meeting and such officers shall hold office at the pleasure of the Board.

8.03. Removal of Officers. Upon an affirmative vote of a majority of the full number of Directors, any officer may be removed, either with or without

cause, after opportunity for a hearing, and his successor elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose.

8.04. Duties and Responsibilities of Officers.

(a) The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board. He shall have all of the general powers and duties which are usually vested in the office of President of an Association.

(b) The Vice-President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice- President is able to act, the Board shall appoint some other Director to so do on an interim basis. The Vice-President shall also perform such other duties as shall from time to time be imposed upon him by the Board.

(c) The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Members of the Association ; he shall have charge of such books and papers as the Board may direct; and he shall, in general, perform all the duties incident to the office of the Secretary.

(d) The Treasurer shall have the responsibility for the custody of Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all monies and other

valuable effects in the name, and to the credit of the Association in such depositories as may from time to time be authorized by the Board.

8.05. Other Duties and Powers. The Officers shall have such other duties, powers and responsibilities as shall, from time to time, be authorized by the Board.

8.06. Eligibility of Directors. Nothing herein contained shall prohibit a Director from being an Officer.

## ARTICLE IX

### COMPENSATION, INDEMNIFICATION AND

### EXCULPABILITY OF OFFICERS, DIRECTORS,

### AND COMMITTEE MEMBERS

9.01. Compensation. No compensation shall be paid to the President or the Vice-President or any Director, or Committee Member for acting as such Officer, Director or Committee Member. The Secretary and/or Treasurer may be compensated for their services if the Board determines that such compensation is appropriate. Nothing herein stated shall prevent any Officer, Director, or Committee Member from being reimbursed for out-of-pocket expenses or compensated for services rendered in any other capacity to or for the Association, provided, however, that any such expenses incurred or services rendered shall have been authorized in advance by the Board.

9.02. Indemnification. Each Director, Officer or Committee Member of the Association shall be indemnified by the Association against the actual amount of net loss including counsel fees, reasonably incurred by or imposed upon him in connection with any action, suit or proceeding to which he may be a party by reason of his being or having been a Director, Officer, or Committee Member of the Association, except as to matters for which he shall be ultimately found in such action to be liable for gross negligence or willful misconduct. In the event of a settlement of any such case, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Association is advised by counsel that the person to be indemnified had not been guilty of gross negligence or willful misconduct.

9.03. Exculpability. Unless acting in bad faith, neither the Board as a body nor any Director, Officer, or Committee Member shall be personally liable to any Member in any respect for any action or lack of action arising out of the execution of his office. Each Member shall be bound by the good faith actions of the Board, Officers and Committee Members of the Association, in the execution of the duties of said Directors, Officers and Committee Members.

## ARTICLE X

### ENFORCEMENT

10.01. Enforcement. The Board shall have the power, at its sole option, to enforce the terms of this instrument or any rule or regulation promulgated pursuant thereto, by any or all of the following: self-help; sending notice to the



offending party to cause certain things to be done or undone; restoring the Association to its original position and charging the breaching party with the entire cost or any part thereof which shall be considered a common expense and may be charged as an added assessment against the Member; complaint to the duly constituted authorities; or by taking any other action before any court, summary or otherwise, as may be provided by law.

10.02. Fines. The Board shall have the power to levy fines against any Member(s) for violation(s) of any rule or regulation of the Association or of any covenants or restrictions contained in the By-Laws, except that no fine may be levied for more than \$25.00 for any one violation; provided, however, that for each day a violation continues after notice it shall be considered a separate violation. Collection of the fines may be enforced against any Member involved as if the fine were a Common Expense owed by the particular Member. Notwithstanding the foregoing, before any fine is imposed by the Board, the Member involved shall be given reasonable prior written notice and afforded an opportunity to be heard, with or without counsel, with respect to the violation(s) asserted.

10.3. Waiver. No restriction, condition, obligation or covenant contained in these By-Laws shall be deemed to have been abrogated or waived by reason of the failure to enforce the same irrespective of the number of violations or breaches thereof which may occur.

## ARTICLE XI

### AMENDMENTS

Subject to the restrictions in Section 7.07 of Article VII hereof, these By-Laws, or any of them, may be altered or repealed, or new By-Laws may be made, at any meeting of the Association duly held for such purpose, and previous to which written notice to Members of the exact language of the amendment or of the repeal shall have been sent, a quorum being present, by an affirmative vote of 51% or greater of the votes entitled to be cast in person or by proxy.

## ARTICLE XII

### CONFLICT; INVALIDITY

12.01. Conflict. Anything to the contrary herein notwithstanding, if any provision of these By-Laws is in conflict with or contradiction of the Leases, then the requirements of said Leases shall be deemed controlling.

12.02. Invalidity. The invalidity of any part of these By-Laws shall not impair or affect in any manner the enforceability or affect the remaining provisions of the By-Laws.

## ARTICLE XIII

### NOTICE

Any notice required to be sent to any Member or any Eligible Lender under the provisions of the Leases or Certificate of Incorporation or these By-Laws shall

be deemed to have been properly sent and notice thereby given, when mailed, by regular post with postage prepaid, addressed to the Member at the last known post office address of the person who appears as a Member on the records of the Association at the time of such mailing. Notice to one of two or more Co-Tenants of a boat slip shall constitute notice to all Co-Tenants. It shall be the obligation of every Member to immediately notify the Secretary of the Association in writing of any change of address. Valid notice may also be given to Members by (i) personal delivery to any occupant of said Unit over 14 years of age or (ii) by affixing said notice to or sliding same under the front door of their home.

#### ARTICLE XIV

##### CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words "Seawinds Boatowners Association, Inc."