

Doc# 1691648
Bk# 2357 Pg# 234

EXHIBIT D
ARTICLES OF INCORPORATION FOR CONDOMINIUM ASSOCIATION

FILED
08 JAN 24 PM 3:00
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

**AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF RAILWAY CONDOMINIUM ASSOCIATION, INC.**

The undersigned, constituting all of the directors of Railway Condominium Association, Inc., and pursuant to the requirements of Section 617.1002, Florida Statutes, hereby amend and restate the Articles of Incorporation as filed with the Secretary of State as Document No. N07000011555 as follows:

**ARTICLE I
NAME**

The name of the corporation shall be Railway Condominium Association, Inc. For convenience, the Corporation shall be referred to in this instrument as "the Association."

**ARTICLE II
PURPOSES AND POWERS**

The Association does not contemplate pecuniary gain or profit to the members thereof. The specific purposes for which it is formed are to provide for maintenance, preservation and architectural control of the condominium units and common elements within that certain Condominium more particularly described in the Declaration of Condominium for Railway Condominium (hereinafter, "the Declaration of Condominium"), and to promote the health, safety and welfare of the residents within the Condominium and any additions. In order to effectuate these purposes, the Association shall have the power to exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Declaration of Condominium, which powers and privileges include but are not limited to the following:

1. to fix, levy, collect and enforce payment by any lawful means all appropriate charges or assessments;
2. to pay all expenses incident to the conduct of the business of the Association, including all licenses, taxes and governmental charges levied or imposed against the Common Elements;
3. to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of the Common Elements on behalf of the membership of the Association;
4. to participate in mergers and consolidations with other non-profit corporations organized for the same purposes; and
5. to have and to exercise any and all powers, rights and privileges which a corporation organized under the Florida Not-for-Profit Corporation Law may now or hereafter have or exercise.

**ARTICLE III
MEMBERSHIP AND VOTING**

- A. Membership. Every person or entity who is a record leasehold owner of any Unit in the Condominium shall be a member of the Association. The foregoing does not include persons or entities who hold an interest merely as security for the performance of an obligation. Change of membership in the Association shall be established by recording in the Public Records of Monroe County, Florida, a Sublease Agreement or other instrument establishing a record title of a leasehold interest to any Unit in a transferee and the delivery to the Association of a certified copy of such instrument. Upon such delivery, the transferee designated by such instrument shall become a member of the Association and the membership of the transferor shall be terminated.
- B. Appurtenance to Unit. The share of a member in the funds and assets of the Association shall not be assigned, hypothecated or transferred in any manner except as an appurtenance to his Unit.
- C. Voting Rights. Each Owner shall be entitled to one vote for each Unit owned. When more than one person holds an interest or interests in any Unit, the vote for such Unit shall be limited to one vote as the Owners among themselves determine. The manner of exercising voting rights shall be determined by the By-Laws of the Association.
- D. Meetings. The By-Laws shall provide for meetings of the members.

**ARTICLE IV
BOARD OF DIRECTORS/ADMINISTRATORS**

- A. Membership of Board. The affairs of this Association shall be managed by a Board consisting of the number of Directors (sometimes referred to as "Administrators") determined by the By-Laws, but not fewer than three (3) Directors.
- B. Election and Removal. Directors shall be elected at the annual meeting of the members in the manner determined by the By-Laws. Directors may be removed and vacancies on the Board shall be filled in the manner provided by the By-Laws.
- C. First Board of Directors/Administrators. The names and addresses of the persons who shall act in the capacity of Directors (Administrators) until their successors shall be elected and qualified are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Edwin O. Swift, III	201 Front Street #224 Key West, Florida 33040
Christopher C. Beland	201 Front Street #224 Key West, Florida 33040
Gerald R. Mosher	201 Front Street #224 Key West, Florida 33040

The Administrators named above shall serve until the first election of Administrators, as determined by the By-Laws and any vacancies in their number occurring before the first election of Administrators shall be filled by act of the remaining Administrators.

ARTICLE V OFFICERS

The affairs of the Association shall be administered by the Officers designated in the By-Laws. After the first election of Administrators, the Officers shall be elected by the Board at the first Board meeting following the annual meeting. Administrators shall serve at the pleasure of the Board. The names and addresses of the officers who shall serve until their successors are designated by the Board are as follows:

Edwin O. Swift, III 201 Front Street #224 Key West, Florida 33040	President;
Christopher C. Beland 201 Front Street #224 Key West, Florida 33040	Vice President;
Christopher C. Beland 201 Front Street #224 Key West, Florida 33040	Secretary;
Gerald R. Mosher 201 Front Street #224 Key West, Florida 33040	Treasurer.

ARTICLE VI INDEMNIFICATION

- A. Indemnities. The Association shall indemnify any person who was or is a party to any proceeding (other than an action by, or in the right of, the Association) by reason of the fact that Indemnitee is or was a director, officer, employee or agent (each, an "Indemnitee") of the Association, against liability incurred in connection with such proceeding, including any appeal thereof, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any proceeding by judgment, order, settlement, or conviction or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal

action or proceeding, had reasonable cause to believe that his conduct was unlawful.

- B. Indemnification. The Association shall indemnify any person, who was or is a party to any proceeding by or in the right of the Association to procure a judgment in its favor by reason of the fact that Indemnitee is or was a director, officer, employee, or agent of the Association against expenses and amounts paid in settlement not exceeding, in the judgment of the board of directors, the estimated expense of litigating the proceeding to conclusion, actually and reasonably incurred in connection with the defense or settlement of such proceeding, including any appeal thereof. Such indemnification shall be authorized if such person acted in good faith and in a manner Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Association, except that no indemnification shall be made under this subsection in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable unless, and only to the extent that, the court in which such proceeding was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.
- C. Indemnification for Expenses. To the extent that a director, officer, employee, or agent of the Association has been successful on the merits or otherwise in defense of any proceeding referred to in subsection A or B, or in defense of any claim, issue, or manner therein, Indemnitee shall be indemnified against expenses actually and reasonably incurred by him in connection therewith.
- D. Determination of Applicability. My indemnification under subsection A or subsection B, unless pursuant to a determination by a court, shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper under the circumstances because Indemnitee has met the applicable standard of conduct set forth in subsection A or subsection B. Such determination shall be made:
1. By the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such proceeding;
 2. If such a quorum is not obtainable or, even if obtainable, by majority vote of a Committee duly designated by the Board of Directors (in which Directors who are parties may participate) consisting solely of two or more Directors not at the time parties to the proceeding;
 3. By independent legal counsel:
 - (a) Selected by the non-party Board of Directors or committee prescribed above; or
 - (b) If a quorum of the non-party Directors cannot be obtained and the non-party Committee cannot be designated as provided above (in which Directors who are parties may participate); or
 4. By a majority of the voting interests of the members of the Association who were not parties to such proceeding.
- E. Determination Regarding Expenses. Evaluation of the reasonableness of expenses and authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible however, if the determination of permissibility is made by independent legal counsel, persons specified by paragraph D.1 shall evaluate the reasonableness of expenses and may authorize indemnification.
- F. Advancing Expenses. Expenses incurred by an officer or director in defending a civil or criminal proceeding may be paid by the Association in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if Indemnitee is ultimately found not to be entitled to indemnification by the Association pursuant to this section. Expenses incurred by other employees and agents may be paid in advance upon such terms or conditions that the Board of Directors deems appropriate.
- G. Exclusivity: Exclusions. The indemnification and advancement of expenses provided pursuant to this section are not exclusive, and the Association may make any other or further indemnification or advancement of expenses of any of its directors, officers, employees, or agents, under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. However, indemnification or advancement of expenses shall not be made to or on behalf of any director, officer, employee, or agent if a judgment or other final adjudication establishes that his actions, or omissions to act, were material to the cause of action so adjudicated and constitute:

1. A violation of the criminal law, unless the director, officer, employee, or agent had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful;
 2. A transaction from which the director, officer, employee, or agent derived an improper personal benefit; or
 3. 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 in a proceeding by or in the right of the members of the Association.
- H. Continuing Effect. Indemnification and advancement of expenses as provided in this section shall continue as, unless otherwise provided when authorized or ratified, to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person, unless otherwise provided when authorized or ratified.
- I. Application to Court. Notwithstanding the failure of the Association to provide indemnification, and despite any contrary determination of the Board or of the members in the specific case, a director, officer, employee, or agent of the Association who is or was a party to a proceeding may apply for indemnification or advancement of expenses, or both, to the court conducting the proceeding, to the circuit court, or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice that it considers necessary, may order indemnification and advancement of expenses, including expenses incurred in seeking court-ordered indemnification or advancement of expenses, if it determines that:
1. The director, officer, employee, or agent is entitled to mandatory indemnification under subsection C, in which case the court shall also order the Association to pay the director reasonable expenses incurred in obtaining court-ordered indemnification or advancement of expenses;
 2. The director, officer, employee, or agent is entitled to indemnification or advancement of expenses, or both, by virtue of the exercise by the Association of its power pursuant to subsection G; or
 3. The director, officer, employee, or agent is fairly and reasonably entitled to indemnification or advancement of expenses, or both, in view of all the relevant circumstances, regardless of whether such person met the standard of conduct set forth in subsection A, subsection B, or subsection G, unless (a) a court of competent jurisdiction determines, after all available appeals have been exhausted or not pursued by the proposed indemnitee, that Indemnitee did not act in good faith or acted in a manner Indemnitee reasonably believed to be not in, or opposed to, the best interest of the Association, and, with respect to any criminal action or proceeding, that Indemnitee had reasonable cause to believe his conduct was unlawful, and (b) such court further specifically determines that indemnification should be denied. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith or did act in a manner which Indemnitee reasonably believed to be not in, or opposed to, the best interest of the Association, and, with respect to any criminal action or proceeding, that Indemnitee had reasonable cause to believe that his conduct was unlawful.
- J. Definitions. For purposes of this Article, the term "expenses" shall be deemed to include attorneys' fees, including those for any appeals; the term "liability" shall be deemed to include obligations to pay a judgment, settlement, penalty, fine, and expenses actually and reasonably incurred with respect to a proceeding; the term "proceeding" shall be deemed to include any threatened, pending, or completed action, suit, or other type of proceeding, whether civil, criminal administrative or investigative, and whether formal or informal; and the term "agent" shall be deemed to include a volunteer, the term "serving at the request of the Association" shall be deemed to include any service as a director, officer, employee or agent of the Association that imposes duties on such persons.
- K. Amendment. Anything to the contrary herein notwithstanding, no amendment to the provisions of this Article VI shall be applicable as to any party eligible for indemnification hereunder who has not given his prior written consent to such amendment.

ARTICLE VII BY-LAWS

The first By-Laws of the Association shall be adopted by the Board and may be thereafter altered, amended or rescinded in the manner provided in such By-Laws.

ARTICLE VIII
AMENDMENTS

Amendments to the Articles of Incorporation may be considered at any regular or special meeting of the members and may be adopted in the following manner:

1. Notice of the subject matter of a proposed amendment and of the meeting at which a proposed amendment is considered, and said notice shall be made as required by the By-Laws.
2. A resolution for the adoption of a proposed amendment may be proposed either by the Board or by a majority of the voting members. Administrators and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the Secretary at or prior to the meeting. Such amendments must be approved by not less than sixty-seven (67%) percent of the votes of the voting members.

ARTICLE IX
TERM

The term of the Association shall be perpetual.

ARTICLE X
DISSOLUTION

The Association may be dissolved with the assent given in writing and signed by not less than seventy-five percent (75%) of the voting members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which the Association was created. In the event that such dedication shall be refused acceptance, such assets shall be granted, conveyed and assigned to any Florida profit or Florida non-profit corporation to be devoted to such similar purposes.

ARTICLE XI
MISCELLANEOUS

- A. Developer's Rights. No amendment of these Articles of Incorporation or the By-Laws shall change Developer's rights and privileges as set forth in the Declaration of Condominium without Developer's prior written approval so long as Developer owns any Unit.
- B. Stock. The Association shall issue no shares of stock of any kind or nature whatsoever.
- C. Severability. Invalidation of any one or more of the provisions hereof shall in no way affect any other provisions, which shall remain in full force and effect.
- D. Principal Office, Registered Office and Registered Agent. The initial principal office shall be 201 Front Street #224, Key West, Florida 33040. The initial registered office of the Association shall be 201 Front Street #224, Key West, Florida 33040. The initial registered agent at that address shall be Edwin O. Swift, III.

IN WITNESS WHEREOF, the directors have affixed their signatures this 11 day of January, 2008.

Edwin O. Swift III

Christopher C. Beland

Gerald R. Mosher

STATE OF FLORIDA)
) SS.
COUNTY OF MONROE)

BEFORE ME, the undersigned authority, a notary public, authorized to administer oaths in the State of Florida, personally appeared Edwin O. Swift, III, Christopher C. Beland and Gerald R. Mosher, who are personally known to me to be the individual described in and they did not take an oath.

SWORN and subscribed to before me this 11 day of January, 2008.



NOTARY PUBLIC, State of Florida
at Large

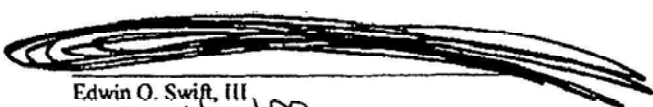
My Commission Expires: 6/6/10



Nancy C. Amorim
Commission # DD560988
Expires June 6, 2010
Bonded Troy Fair - Insurance, Inc. 800-365-7019

ACKNOWLEDGMENT:

Having been named to accept service of process for the above-named corporation at the place designated in these Articles, I hereby agree to act in such capacity and agree to comply with the provisions of all applicable statutes concerning the proper and complete performance of my duties.


Edwin O. Swift, III
Dated: 1/11/08

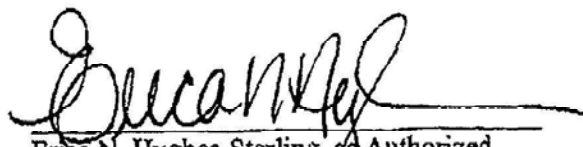
Doc# 1691648
Bk# 2357 Pg# 240

**AMENDED ARTICLES OF INCORPORATION
OF
RAILWAY CONDOMINIUM ASSOCIATION, INC.**

Document Number: N07000011555

There are no members or members entitled to vote on the amendment. The amendment was adopted by the Board of Directors.

Dated: January 24, 2008


Erica N. Hughes-Sterling, as Authorized
Representative of the Board of Directors
Of Railway Condominium Association, Inc.

**Doc# 1691648
Bk# 2357 Pg# 241**