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# DECLARATION AND ACCEPTANCE

# OF

# COVENANTS, CONDITIONS, RESTRICTIONS,

# EASEMENTS, AND USES

# FOR

# BIGFORK MARINA

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# DECLARATION AND ACCEPTANCE
# OF
# COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS,
# AND USES
# FOR
# BIGFORK MARINA

This DECLARATION AND ACCEPTANCE OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND USES FOR BIGFORK MARINA (herein "Declaration") is made and entered into as of the date hereinafter set by Reto Barrington, Dennis W. Foster, and Randall L. Gembala (herein, either together or alone, the "Declarant"), and Bigfork Marina Association, Inc., a Montana nonprofit corporation (herein "BMA").

## RECITALS

A. Declarant is the owner of that certain real property situated in Flathead County, State of Montana, which is more particularly described as follows:

> **Lot 2 of Bigfork Waterfront 2007, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana**

(herein the "Marina Property")

B. Declarant has constructed and located upon the Marina Property boat docking facilities with mooring walkways for thirty-six (36) Boat Slips as shown on the Site Plan of Marina Property attached hereto as **Exhibit "A"** (herein the "Site Plan").



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C. BMA is a Montana nonprofit corporation comprised solely of those Owners who have been granted certain rights to Boat Slips. It has been formed to serve as the association of those Boat Slip Owners to administer, manage, operate, repair, maintain, replace, and reconstruct improvements made on the Marina Property, ensure that the terms of this Declaration are abided by, and fulfill easement and other obligations assumed by BMA. At some future time Declarant may, at Declarant's sole option, convey the Marina Property, subject to the terms of this Declaration and rights and obligations set forth herein, to BMA or to some other party or entity.

D. A portion of the Marina Property is often covered by water flowing from Flathead Lake through an engineered navigable canal, which is used as an amenity for the Marina Property. The water flowing upon the Marina Property, if any, is controlled by outside factors beyond the control of Declarant or BMA.

E. In addition to the Boat Slips and other improvements constructed on the Marina Property, Declarant has constructed, on other property currently owned by Declarant lying adjacent to the Marina Property, a six (6) unit condominium development known as Bigfork Marina Condominiums.

F. Declarant, as part of the development of the Marina Property and the Condominium Property, has engineered and constructed on the Marina Property and/or the Condominium Property certain improvements including, but not limited to, storm water improvements, access areas, picnic and landscape areas, a boat ramp for launching and loading watercraft, gas pump and tank(s), lavatory and shower facility, boat docking facilities with a main boardwalk and mooring walkways, vehicle and watercraft trailer driveways and parking areas, recreational areas, area lighting, electrical, water, waste water disposal, telephone and related utilities, lines and facilities necessary to provide services to the Marina Property and Bigfork Marina Condominiums as determined essential by Declarant.

G. Declarant desires to establish, for Declarant's own benefit and for the mutual benefit of all future Owners and Occupants of rights in the Marina Property, certain covenants, conditions, restrictions, easements, uses, rights and privileges, as are more specifically set forth in this Declaration which shall be appurtenant to and run with and burden the Marina Property.

H. Declarant, as the owner of the Marina Property and improvements that comprise such, desires to retain the right to market, sell, transfer, and convey to persons, firms, and entities ownership of perpetual exclusive occupancy and use rights to Boat Slips which have been created and are located on the Marina Property as described herein, together with the right to grant such perpetual non-exclusive easements on and over the Marina Property and the Condominium Property as are necessary to provide access to (via water and land), and use and enjoyment of, the Marina Property and all the amenities appurtenant thereto.

I. Declarant desires to document the respective rights, duties, affirmative obligations, easements, limitations, restrictions, undertakings, covenants, and uses with respect to the Marina Property, and intends that Owners, Occupants, Mortgagees, and all other persons hereinafter acquiring any rights in any portion of the Marina Property, together with all improvements now or hereafter constructed on the Marina Property, shall at all times enjoy the benefits of, and shall hold their interest subject to this Declaration, which is executed and will be recorded in furtherance of establishing a plan of ownership for the Boat Slips, and the use thereof, and use of improvements now or hereafter constructed on the Marina Property; and for establishing rules for the use, occupancy, management, and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability, and attractiveness, of the Marina Property, and the perpetual exclusive occupancy and utilization of the Boat Slips located thereon.

NOW, THEREFORE, Declarant, for the purposes hereinafter set forth, declares as follows:

## ARTICLE I

## DEFINITIONS

As used herein, unless the context otherwise requires, the following terms shall have the following definitions:

**Section 1.1** **"Articles"** shall mean the Articles of Incorporation of Bigfork Marina Association, Inc. as they may be amended from time to time.

**Section 1.2** **"Assessments"** shall mean the charges against Owners of Boat Slips pursuant to Article VI of this Declaration to defray the Common Expenses, to include Regular Assessments, Capital Improvement Assessments, and Special Assessments, all as further provided for in this Declaration.

**Section 1.3** **"Bigfork Marina"** shall mean this recreational marina project located on the Marina Property, containing thirty-six (36) Boat Slips and other marina related improvements, and accompanying rights to usage of Boat Slips and the Marina Property, and easement rights to portions of the common elements of the adjacent Condominium Property as provided herein or granted by separate instrument.

**Section 1.4** **"BMA"** shall mean the Bigfork Marina Association, Inc., a Montana nonprofit corporation, and its successors and assigns, whose membership shall include each owner of rights to a Boat Slip at Bigfork Marina, and whose functions shall be to serve as an association of Boat Slip Owners, to enforce the Bigfork Marina Documents, and to comply with and enforce duties and obligations of BMA undertaken in any easements or other agreements entered into between BMA and BMCA.

**Section 1.5 "Bigfork Marina Condominiums".** See "Condominium Property".

**Section 1.6 "Bigfork Marina Documents"** shall mean the Articles, Declaration, Bylaws, and Rules and Regulations of BMA.

**Section 1.7 "BMCA"** shall mean Bigfork Marina Condominium Association, Inc., a Montana nonprofit corporation, and its successors and assigns, whose membership shall include each owner of a condominium unit in Bigfork Marina Condominiums, and whose functions shall be to serve as the association of unit owners of the condominiums, to enforce those documents under which Bigfork Marina Condominiums operates, to comply with and enforce duties and obligations of BMCA undertaken in any easement or other agreement entered into between BMCA and BMA, to specifically enforce the terms of this Declaration, and to approve or disapprove of any amendment to this Declaration.

**Section 1.8 "Board"** shall mean the Board of Directors of the BMA elected pursuant to the Articles and Bylaws and serving as the governing body of the BMA.

**Section 1.9 "Boat Slip"** shall mean that numbered, identified, and designated space on the water at Bigfork Marina adjacent to a specific mooring walkway, as to which space the Owner thereof has the perpetual, absolute, and exclusive right of use and occupancy together with perpetual non-exclusive appurtenant easements for access thereto and therefrom across the Marina Property land and water flowing thereon.

**Section 1.10 "Bylaws"** shall mean the Bylaws adopted by BMA pursuant to the Articles, and Title 35, Chapter 2, MCA, for the purpose of regulating the affairs of BMA, as the same may be amended from time to time.

**Section 1.11 "Canal"** shall mean the engineered navigable channel, a portion of which is located on and flows over the Marina Property, for travel by water to and from the Boat Slips and Flathead Lake.

**Section 1.12 "Common Expense(s)"** shall mean the actual and estimated costs for: (A) maintenance, management, operation, repair, preservation and replacement of the Marina Property; (B) deficiencies arising by reason of unpaid Assessments; (C) management and administration of BMA, including, but not limited to, compensation paid by BMA to accountants, attorneys, employees, and management companies and agents; (D) utilities, trash pickup and disposal, landscaping and care of ground, snow removal, and other related services; (E) insurance and bonds required by this Declaration or any additional insurance and bonds obtained by the Board in its discretion; (F) the establishment of reasonable reserves as the Board shall deem appropriate in its discretion; (G) BMA's share of costs and expenses assumed pursuant to easements or other agreements entered into with others including, but not limited to,

BMCA; and (H) other miscellaneous charges incurred by BMA or the Board pursuant to this Declaration, the Bylaws, or the Rules and Regulations, as the same may be amended from time to time, in furtherance of the purposes of BMA or in discharge of the duties, obligations, and powers of BMA in regard to the Marina Property and the improvements thereon or appurtenant thereto.

Each Boat Slip Owner will be obligated to pay one thirty-sixth ($1/36^{th}$) of the Common Expenses.

**Section 1.13 "Condominium Property"** shall mean Bigfork Marina Condominiums, the condominium development lying adjacent to the Marina Property consisting of six (6) condominium units and common elements associated therewith.

**Section 1.14 "Declarant"** shall mean Reto Barrington, Dennis W. Foster, and Randall L. Gembala, and their successors and assigns. Any reference to Declarant in this Declaration shall be deemed to mean said three (3) Declarants together or one or more of them. If Declarant wishes to assign its status as "Declarant" under this Declaration, such an assignment shall be in a written document which includes a specific reference to the status of such assignee as "Declarant."

**Section 1.15 "Declaration"** shall mean this Declaration and Acceptance of Covenants, Conditions, Restrictions, Easements and Uses For Bigfork Marina, including **Exhibit "A"** and **Exhibit "B"**, attached hereto, and any and all amendments and supplements thereto, all of which establish and govern the Marina Property and the uses thereof.

**Section 1.16 "Eligible Insurer"** *or* **"Guarantor"** shall mean an insurer or guarantor of a First Mortgage on a Boat Slip which has notified BMA in writing in accordance with this Declaration.

**Section 1.17 "Eligible Mortgage Holder"** shall mean any holder of a First Mortgage on a Boat Slip which has notified BMA in writing in accordance with this Declaration.

**Section 1.18 "Majority"** *or* **"Majority of Boat Slip Owners"** shall mean the Owners of Boat Slips which, when added together, own more than fifty percent (50%) of the Boat Slips. Likewise, any specified percentage of the Members shall mean the Owners of those Boat Slips which, when added together, own that specified percentage of all Boat Slips combined. When *electing Directors, a majority is more than fifty percent (50%) of the votes available at a meeting* having a quorum in person or by proxy.

**Section 1.19 "Marina Property"** shall mean all of the land and the improvements and permanent fixtures of whatever kind situated or located thereon, including walkways, landscaped areas, boardwalks, mooring walkways, pilings, piers, and all easements, rights, and privileges within and made appurtenant to the Marina Property and intended for the mutual use, benefit and



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enjoyment of Owners. Unless the context states otherwise, reference to Marina Property shall include the rights granted to Boat Slips located thereon.

**Section 1.20 "Member"** shall mean an Owner(s) of a Boat Slip at Bigfork Marina. If a Member is a corporation or partnership or other entity, the Member shall be represented by an officer, partner, agent, or employee of such Member.

**Section 1.21 "Mortgage"** shall mean any recorded, filed or otherwise, perfected mortgage, deed of trust or other instrument against a Boat Slip given in good faith and for valuable consideration which is not a fraudulent conveyance under Montana law as security for the performance of an obligation, but does not mean any instrument creating or evidencing solely a security interest arising under the Montana Uniform Commercial Code. "Mortgagee" means a person secured by a Mortgage, including a trustee and beneficiary under a deed of trust; and "Mortgagor" means the party executing a mortgage. "First Mortgagee" means a Mortgage which is the first and most senior of all Mortgages upon the same Boat Slip.

**Section 1.22 "Occupant"** shall mean a person or persons, other than a Member of BMA, in rightful possession of any part of the Marina Property, including, but not limited to agents, servants, family members, lessees, tenants, guests, licensees, invitees, or employees.

Also, as long as Ponderosa Boat Club Owners Association, Inc., a Montana nonprofit corporation, owns one or more Boat Slips within Bigfork Marina, members of said Ponderosa Boat Club Owners Association, Inc., and the agents, servants, family members, lessees, tenants, guests, licensees, invitees, or employees of such members, shall be deemed Occupants. Ponderosa Boat Club Owners Association, Inc. is an association of lot owners in that subdivision located near the Marina Property in Flathead County, Montana, and generally known as Ponderosa Boat Club.

**Section 1.23 "Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of a grant of easement for the perpetual and exclusive possession, control, and use of a specific Boat Slip, together with perpetual non-exclusive appurtenant easements for access thereto and therefrom on and across the Marina Property for the usage of such Boat Slip. Declarant shall be considered the record Owner of any Boat Slip prior to its initial conveyance by Declarant to an owner other than a Declarant. In the case of a Boat Slip the ownership to which is vested in a trustee pursuant to a trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner. "Owner" does not mean persons or entities who hold an interest in a Boat Slip merely as security for the performance of an obligation, specifically including, but not limited to, a person who is selling under a contract for deed or similar document in which the contract or an abstract of the contract is recorded in the Flathead County Clerk and Recorder's Office, in which case the person selling such interest shall be considered a person holding an interest for security and the person buying such interest shall be considered a Member of BMA, unless the contract specifically provides otherwise.



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**Section 1.24** **"Period of Declarant Control"** shall mean the time period commencing on the date this Declaration is recorded in the official records of the Flathead County Clerk and Recorder's Office, Kalispell, Montana, and thereafter until the end of three (3) years from the date of the recording of this Declaration.

**Section 1.25** **"Person"** shall mean a natural individual, corporation, partnership, trustee or other entity capable of holding title to real property.

**Section 1.26** **"Project"** shall mean Bigfork Marina including, but not limited to, the construction, development, sale, lease, and operation of Bigfork Marina.

**Section 1.27** **"Rules and Regulations"** shall mean and refer to the Rules and Regulations, if any, adopted by the of BMA Board pursuant to this Declaration and in furtherance of the Bylaws.

**Section 1.28** **"Site Plan"** shall mean the Site Plan of Marina Property shown on **Exhibit "A"**.

**Section 1.29** **"Voting Interest"** shall mean the voting interest of a Boat Slip in BMA. Each Boat Slip should have a one thirty-sixth ($1/36^{th}$) vote in BMA.

## ARTICLE II

## SUBMISSION OF THE MARINA PROPERTY TO THE COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, AND USE OF THIS DECLARATION

**Section 2.1** **Submission of the Marina Property**. Declarant hereby submits the Marina Property to this Declaration. The Marina Property and all Boat Slips located thereon shall be owned, leased, sold, conveyed and encumbered, or otherwise held or disposed of, subject to this Declaration.

**Section 2.2** **Rights and Obligations**. Each grantee of Declarant, by the acceptance of a deed to the Marina Property as a whole or the grant and conveyance of the rights to a specific Boat Slip, and each purchaser, at any time, under any agreement for sale of the Marina Property or a Boat Slip, by execution of such an agreement for sale, and each Mortgagee, by the acceptance of any instrument conveying any interest in the Marina Property or a Boat Slip as security for the performance of an obligation, accepts the same subject to this Declaration, and the jurisdiction, rights, obligations, duties and powers created or reserved by this Declaration. All rights, benefits, privileges and easements of every character hereby granted, created, reserved, relocated or declared, and all impositions and obligations hereby imposed, shall be deemed and taken to be covenants running with the land and equitable servitudes and shall be binding upon and shall inure to the benefit of any grantee, purchaser, or any Person having at any time any interest or estate in the Marina Property and a Boat Slip located thereon in like manner as though the



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provisions of this Declaration were recited and stipulated at length in each and every grant of conveyance, purchase contract, or other instrument of transfer, and each such grantee shall be entitled to bring, and shall be subject to, an action for the recovery of damages, or for injunctive relief, or both, resulting from any breach of any such provisions, and each such grantee further acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by BMA, by all Owners, and by BMCA.

## ARTICLE III

## DESCRIPTION OF THE BOAT SLIPS AND THE NATURE AND INCIDENTS OF BOAT SLIP OWNERSHIP

**Section 3.1 Name**. Bigfork Marina is the name of the recreational marina project in regard to which this Declaration applies. It contains thirty-six (36) Boat Slips and other marina related improvements, and accompanying rights of usage of Boat Slips and the Marina Property, and includes various easement rights over portions of the common elements of the adjacent Condominium Property, all as provided for herein or by separate agreement.

**Section 3.2 Estate of Boat Sip Owner.** Certain portions of the Marina Property are hereby divided into numbered, identified, and designated spaces on the water, if any, which flows upon the Marina Property, deemed Boat Slips. Each Boat Slip consists of the exclusive and perpetual possession, control, and right of use and occupancy of that Boat Slip, together with perpetual and non-exclusive easements to the use of certain improvements and amenities located on the Marina Property and on designated portions of the adjacent Condominium Property to which Marina Property and the Owners of Boat Slips located on Marina Property will have certain rights.

**Section 3.3 No Guarantee of Water**. Each Boat Slip includes certain rights to space upon the water, if any, which may flow upon portions of the Marina Property. There is no guarantee or representation made that water will always be available in order to have beneficial use of the Boat Slips. Although the land lying beneath the waters which may run over portions of the Marina Property including the land lying beneath the Boat Slips, is currently owned by Declarant, and may, at Declarant's sole option, be conveyed to BMA, the waters which must flow over the Marina Property and adjacent Canal to form and utilize a Boat Slip, portions of the Marina Property, and the Canal are navigable waters and not owned by Declarant. The availability of water, if any, flowing over and upon the Marina Property and forming Boat Slips and flowing through the Canal depends upon Flathead Lake water levels which are controlled and determined by man-made factors and/or natural factors beyond the control of man, including Declarant and BMA.

**Section 3.4 Title**. *Title by grant and conveyance to the rights to a Boat Slip* may be held or owned by any entity and in any manner in which title to any other perpetual, absolute, and right of use and occupancy of property may be held or owned in the State of Montana, including but



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not limited to, joint tenancy or tenancy in common.

**Section 3.5 Inseparability**. Except as provided in Article XII, no part of a Boat Slip or of the legal rights comprising rights to a Boat Slip may be separated from any other part thereof during the period of ownership prescribed herein, so that each Boat Slip and the rights appurtenant to such Boat Slip shall always be conveyed, devised, encumbered, and otherwise affected only as a complete Boat Slip. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Boat Slip or any part thereof shall be presumed to be a gift, devise, bequest, transfer, encumbrance, or conveyance, respectively, of the entire Boat Slip together with all appurtenant rights created by law, this Declaration, or by separate agreement

**Section 3.6 Boat Slip Location, Identification, and Description**. The location and identification number of the space on the water allocated for each Boat Slip with reference to its location on the Marina Property is set forth on the Site Plan of the Marina Property attached as **Exhibit "A**.

**Section 3.7 Voting Interest and Allocation of Common Expenses for Boat Slips**. Each one of the thirty-six (36) Boat Slips will have one (1) vote on BMA matters regardless of its size. Each one of the thirty-six (36) Boat Slip will be obligated for one thirty-sixth ($1/36^{th}$) of the Common Expenses of BMA regardless of its size.

## ARTICLE IV

## MAINTENANCE

**Section 4.1 Maintenance of Boat Slips.** Each Owner shall furnish and be responsible for, at such Owner's own expense, keeping the area in and around that Boat Slip free of trash and debris, regardless of where such originated, and not cause or leave trash or debris anywhere on the Marina Property. An Owner may not make any structural alterations within such Owner's Boat Slip or on any other area of the Marina Property unless otherwise specifically permitted to do so in writing by the Board and BMCA.

**Section 4.2 Maintenance of Marina Property.** BMA shall furnish and be responsible for, as part of the Common Expenses, the cost of the maintenance, repair and replacement of the improvements located upon the Marina Property. All maintenance, repair and replacement of the improvements located upon the Marina Property by BMA shall be considered a Common Expense unless it is subject to a Capital Improvement Assessment or a Special Assessment in accordance with Sections 6.5 or 6.6 below.

**Section 4.3 Owner Default in Maintenance.** If an Owner fails to so maintain the area in and around such Owner's Boat Slip so that it is free of trash and debris in order to preserve the attractive appearance and protect the value of the Marina Property and that of the adjacent

Condominium Property, or if an Owner shall fail to observe any provision of this Declaration, then the Board shall give written notice to such Owner stating with particularity the nature of the default and the corrective action which the Board determines to be required, and requesting that the same be carried out promptly within such other period as directed by the Board. If such Owner fails to carry out such action promptly or within the period specified by the notice, the Board may cause such action to be taken and shall levy a Special Assessment for the cost thereof against such Owner. Any such Special Assessment shall be due and payable within thirty (30) days after the Board gives written notice thereof. The payment of such shall be secured by the Assessment lien created in Section 6.2.

**Section 4.4 Utilities.** Utility costs will be paid by BMA as a Common Expense.

## ARTICLE V

## ASSOCIATION

**Section 5.1 Association.** BMA has been, or will be formed, and shall have all the powers set forth in the Articles, Bylaws, Declaration, and Rules and Regulations. BMA shall serve as the governing body for all of the Owners, and shall make provisions for the maintenance, repair, replacement, administration and operation and use of the Marina Property and improvements thereon, and shall keep the same in good, clean, attractive and sanitary condition, order and repair, and shall make provisions for assessments of Common Expenses, acquisition of public liability and property coverage (casualty) insurance and disposition of such insurance proceeds, and other matters as provided in this Declaration, Articles, and Bylaws.

**Section 5.2 Membership.** It is mandatory that each Owner of a Boat Slip shall be a member of BMA as soon and so long as he or she shall be an Owner of a Boat Slip. Such membership shall automatically terminate when an Owner ceases for any reason to be an Owner, and the new Owner shall likewise automatically succeed to such membership in BMA. Membership in BMA shall not be transferred, pledged or alienated in any way, except upon the sale of the Boat Slip to which it is appurtenant (and then only to the purchaser involved in such sale) or by intestate succession, testamentary disposition, foreclosure of a Mortgage of record or other legal process transferring the right of perpetual and exclusive occupancy to such Boat Slip (and then only to the Person to whom such Boat Slip right is transferred). Any attempt to make a prohibited transfer of a membership will be void and will not be recognized by or reflected upon the books and records of BMA. BMA shall have the right to enter a transfer upon the books of BMA and issue a new membership to a new purchaser of a Boat Slip, and thereupon the old membership outstanding in the name of the seller shall be null and void.

**Section 5.3 Powers.** *BMA shall have all the powers of a nonprofit corporation organized under* Title 35, chapter 2, MCA, concerning nonprofit corporations, subject only to such limitations on the exercise of such powers as are set forth in the Articles, the Bylaws, this Declaration, and the

Rules and Regulations. BMA shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by BMA under this Declaration, the Articles, and the Bylaws, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of BMA, including, without limitation, the following: (A) commence and maintain actions or restrain and enjoin any actual or threatened breach of this Declaration, and enforce by mandatory injunction or otherwise all of the provisions of this Declaration; (B) pay taxes, Capital Improvement Assessments or Special Assessments and other liabilities which are or would become a lien on any portion of the Marina Property owned or maintained by BMA; (C) levy Assessments and perfect and enforce liens as hereinafter provided; (D) enter into and enforce easement agreements with other entities including, but not limited to, BMCA; (E) enter into contracts including, but not limited to, management contracts; (F) perform the duties set forth herein, including, but not limited to, maintenance and repair of the Marina Property and the obtaining of public liability and property coverage (casualty) insurance; and (G) adopt, amend and repeal Rules and Regulations as it deems reasonable.

**Section 5.4 Personal Liability.** No member of the Board, or any officer of BMA, or any manager, or Declarant (including any and all partners, officers, directors, employees, or authorized agents of Declarant or its partners, affiliates, or parent company or its subsidiaries or affiliated companies), shall be personally liable to any Owner, or to any other party, including BMA, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of any such person or entity if such person or entity has, on the basis of such information as may be possessed by him or it, acted in good faith without willful or intentional misconduct.

**Section 5.5 Voting.** The votes in BMA shall be determined as set forth in Section 1.29 and Section 3.7, and shown on **Exhibit "B"**. When more than one person holds an interest in any Boat Slip, all such persons shall be Members. The voting of such Boat Slip shall be exercised as such persons among themselves determine, or, in the absence of such determination, as determined by the Bylaws, but in no event shall more than one vote be cast with respect to any Boat Slip. If any Owner or Owners cast(s) a vote representing a certain Boat Slip, it will, in the absence of prompt protest from the other Owners of such Boat Slip during the meeting at which such vote is cast, thereafter be conclusively presumed for all purposes that such Owner or Owners were acting with the authority and consent of all other Owners of that Boat Slip.

**Section 5.6 Declarant's Rights.** During the Period of Declarant Control, Declarant shall have the right to appoint and remove the members of the Board and the officers of BMA. Declarant may voluntarily suspend its right to appoint and remove the members of the Board and the officers of BMA before termination of the Period of Declarant Control.

**Section 5.7 Board of Directors.** The governing body of BMA shall be the Board elected pursuant to the Bylaws. Except as otherwise provided in this Declaration, the Bylaws, or the Rules and Regulations, the Board may act in all instances on behalf of BMA. The Board shall



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act to adopt the Bylaws.

**Section 5.8 Qualification of Directors.** Each Director shall be a Member or a spouse of a Member (or if a Member is a legal entity such as a corporation, partnership, limited liability company, limited liability partnership, trust, or other entity, a Director may be an officer, director, employee, authorized agent, partner, member, beneficiary or trustee of such Member) and shall be current in the payment of any BMA Assessment attributable to such Member. If a Director shall cease to meet such qualifications during such Director's term, such Director will thereupon cease to be a Director, and such Director's place on the Board shall be deemed vacant. The requirements of this Section shall not apply to Directors appointed by Declarant, as hereinafter provided.

**Section 5.9 Manager.** The Board may employ a responsible person or entity as manager to manage, operate and maintain the Marina Property, or portions thereof, with all of the administrative functions and such other powers and duties as the Board may delegate from time to time and for such fees as the Board may establish consistent with other provisions of this Declaration. The manager may be the Declarant or an entity related to the Declarant. Board members who are affiliated with Declarant shall disclose their affiliation, but shall thereupon be permitted to consider and vote upon any proposal to engage Declarant or an entity related to Declarant as manager and upon any matters relating to such management by Declarant or an entity related to Declarant.

**Section 5.10 Board's Determination Binding.** Subject to the right of an Owner to institute an action at law or in equity, in the event of any dispute or disagreement between or among any Owners, or any question of interpretation or application of the provisions of this Declaration, the Articles, the Bylaws, or the Rules and Regulations, the determination thereof by the Board shall be final and binding on each and all of such Owners.

Disputes or disagreements between Owners must first be submitted to the Marina Property manager or authorized agent of BMA responsible for managing the Marina Property, if any, for resolution by that Person, if possible. The Marina Property manager or authorized agent may take any action, including, but not limited to, contacting security or law enforcement personnel, and any other action authorized by applicable law or this Declaration, Bylaws, or Rules and Regulations. If an Owner is dissatisfied by the Marina Property manager's or the authorized agent's determination or resolution of the dispute or disagreement, the Owner must submit the dispute or disagreement to the Board. The Board may take any action it deems appropriate in its discretion, including, but not limited to, assessing monetary penalties for violation of this Declaration, Bylaws, or Rules and Regulations (which penalties shall become a Special Assessment), suspension of an Owner's voting rights, or initiation of judicial action.

**Section 5.11 Action by Board.** The Board may take all actions authorized by this Declaration, Articles, Bylaws, or Rules and Regulations, but may not act on behalf of BMA to amend or





terminate this Declaration.

**Section 5.12 Annual Meeting.** BMA shall hold an annual meeting as provided in the Bylaws.

**Section 5.13 Right of BMA to Enter Boat Slips and Watercraft.** BMA, acting through the Board or its duly authorized agent, shall have the right at all times upon reasonable notice (and at any time in case of an emergency) to enter upon portions of the Marina Property and any Boat Slip or Watercraft located thereon to abate any infractions, to maintain and make repairs to, or construct or reconstruct improvements on, the Marina Property, or to correct any violation of this Declaration, Bylaws, and Rules and Regulations, and in connection therewith shall have the further right to assess all costs incurred against the Owner, such Assessment to be secured by a lien provided in Section 6.2 of this Declaration.

**Section 5.14 Rules and Regulations.** Only the Board may act to adopt, repeal, amend or modify Rules and Regulations in furtherance of the Bylaws or Declaration. Such, however, must be approved by BMCA. Declarant must also approve of such during the Period of Declarant Control. Any Owner desiring to propose amendments, modifications, new Rules and Regulations, or repeal of existing Rules and Regulations must do so by written submission to the Board for action.

**Section 5.15 Reserve Fund.** BMA shall maintain an adequate reserve fund of a miniumum of two (2) months' estimated Assessments for maintenance, repair and replacement of the Marina Property that must be maintained, repaired or replaced on a periodic basis, and such reserve shall be funded as part of the Regular Assessments.

**Section 5.16 Availability of Boat Slip Documents.** With the exception of records which may be withheld from disclosure pursuant to Montana Law, BMA will maintain current copies of this Declaration, the Articles, the Bylaws, and the Rules and Regulations, and BMA's own books, records, and financial statements available for inspection, upon reasonable notice, during normal business hours by any Owner or Mortgagee (or any Eligible Insurer or Guarantor of a Mortgagee). Copies of this Declaration, the Articles, the Bylaws, and the Rules and Regulations are available for a fee.

**Section 5.17 Action by Owners.** Unless otherwise prohibited by law, all actions required to be taken by the Owner of a Boat Slip shall be taken by BMA acting by and through its directors and officers.

**Section 5.18 Additional Provisions in the Articles, Bylaws, and Rules and Regulations of BMA.** The Articles, Bylaws, or Rules and Regulations may contain any provision not inconsistent with this Declaration relating to the conduct of the affairs of BMA and the rights and powers of its directors, officers, employees, agents, and Members.

**Section 5.19 Personal Property**. BMA may acquire and hold for the benefit of Owners tangible and intangible personal property in conjunction with and for utilization at Bigfork Marina, and may dispose of the same by sale or otherwise. The beneficial interest in any such property shall be deemed to be owned by the Owners upon whose behalf it is acquired and held in the same proportion as the Owner's voting interest and obligation for Common Expenses. Any interest shall not be transferable except with the transfer of a Boat Slip. A transfer of a Boat Slip shall transfer to the transferee the transferor's beneficial interest in such property without any reference thereto.

## ARTICLE VI

## ASSESSMENTS

**Section 6.1 Agreement to Pay Assessments.** Declarant, for each Boat Slip right owned by it, and for and as the Owner of the Marina Property, and every part thereof, hereby covenants, and each Owner of any Boat Slip by the acceptance of a grant and conveyance of a Boat Slip, whether or not it be so expressed in the grant and conveyance, shall be deemed to covenant and agree with each other and with BMA to pay BMA monthly Assessments made by BMA for the purposes provided in this Declaration, and Capital Improvement Assessments and Special Assessments and other matters as provided in this Declaration, including those easement assessments levied by BMCA for BMA's proportionate part of costs and expenses for easements through the adjacent Condominium Property. Such Assessments shall be fixed, established and collected from time to time as provided for in this Article.

**Section 6.2 Creation of Lien and Personal Obligation For Assessments.** Each Owner, including Declarant to the extent Declarant is an Owner as defined herein, of any Boat Slip, by acceptance of a grant and conveyance or other instrument creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such grant and conveyance or other instrument, is deemed to covenant and agree to pay BMA, such Assessments to be fixed, established and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, late charges, attorneys' fees, court costs and all other costs of collection incurred by BMA in collecting or attempting to collect delinquent assessments, whether or not suit is filed, shall be a continuing lien upon the Boat Slip against which each such Assessment is made in favor of BMA. Each such Assessment, together with such interest, late charges, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Boat Slip at the time the Assessment becomes due.

**Section 6.3 Purpose of Assessments.** The Assessments levied by BMA shall be used exclusively for the purposes of promoting the health, safety and welfare of the Owners, the management, maintenance, care, operation, repair, preservation, and replacement of the Marina Property, enhancing the quality of life and the value of the Marina Property including, but not limited to, the improvement and maintenance of the services and facilities devoted to this





purpose and related to the use and enjoyment of Bigfork Marina, or in furtherance of any other duty or power of BMA, including any easement areas on, over, and under the Condominium Property.

**Section 6.4 Regular Assessments.** The Board is hereby expressly authorized to adopt and amend budgets for the administration and operation of the Marina Property and easement areas (including, but not limited to, the management, maintenance, care, operation, repair, preservation, and replacement) without ratification by the Owners, provided, however, the Board shall within thirty (30) days after adoption of any proposed budget for such reasons, provide a summary of the budget to all of the Boat Slip Owners. *No later than thirty (30) days prior to the* beginning of each fiscal year, the Board shall distribute to each Owner a pro forma operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total Common Expenses to be incurred for such fiscal year. The Board shall at that time determine the amount of the Regular Assessment to be paid by each Owner. Each owner shall thereafter pay to BMA such Owner's Regular Assessment in equal monthly installments on the first (1st) day of each month, or in such other manner as the Board may determine. In the event the Board shall determine that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it shall then immediately determine the appropriate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of the Regular Assessment against each Owner, and the date or dates when revised monthly installments of Regular Assessments shall commence.

**Section 6.5 Capital Improvement Assessments.** In addition to Regular Assessments, the Board may levy in any fiscal year a Capital Improvement Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction or replacement (other than due to destruction) of a described capital improvement on the Marina Property and applicable easement areas (which capital improvement may take place over a period of years), including the necessary fixtures and personal property related thereto, or for any other lawful BMA purpose. The Board shall not impose a Capital Improvement Assessment exceeding fifteen percent (15%) of the then estimated annual Common Expenses without the approval of the Owners holding at least seventy-five percent (75%) of the voting interests in BMA who are present and voting in person or by proxy at a meeting duly called for such purpose, or at an Annual Meeting with notice such Assessment will be considered. All amounts collected as Capital Improvement Assessments may only be used for the stated purposes and shall be deposited by the Board in a separate bank account to be held in trust for such purposes and said funds shall not be commingled with any other funds of BMA. Notice in writing of the amount of such Assessments and the time for payment thereof shall be given promptly to the Owners.

**Notwithstanding** anything to the contrary, the requirement for BMA or Boat Slip Owner approval shall not be required in order to approve of Capital Improvement Assessments imposed by BMCA for costs and expenses relating to easements on and over the Condominium Property.

**Section 6.6 Special Assessments.** Special Assessments shall be levied by the Board against a Boat Slip and its Owner for:

A. Costs incurred in bringing an Owner and such Owner's Boat Slip into compliance with the provisions of this Declaration, the Bylaws, or Rules and Regulations, for misconduct, other failure to comply, or as the result of emergency circumstances;

B. Any other charge designated as a Special Assessment in this Declaration, Bylaws, or the Rules and Regulations; and

C. Attorneys' fees, interest and other charges relating thereto as provided in this Declaration.

In the event BMA undertakes to provide materials or services which benefit individual Boat Slips and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof shall be a Special Assessment. Any amounts assessed pursuant hereto against fewer than all of the Owners shall be assessed to such Owners in proportion to their voting interests, excluding the voting interests of Owners who are not to be assessed. Notice in writing of the amount of such Assessments and the time for payment thereof shall be given promptly to the Owners.

**Section 6.7 Date of Commencement of Assessments.** Regular and other Assessments shall commence as to all Boat Slips, on the first (1st) day of the month following the conveyance of the first Boat Slip by Declarant to an Owner other than Declarant, unless written notice to the contrary is given to the Owners. Until BMA makes an Assessment, the Declarant shall pay all Common Expenses of the Marina Property.

**Section 6.8 Apportionment of Monthly Assessments.** All Assessments (other than Capital Improvement Assessments or Special Assessments) shall be fixed at an equal amount for each Boat Slip.

**Section 6.9 Assessments Payable by Declarant.** Declarant shall pay the full amount of Assessments for each Boat Slip it owns.

**Section 6.10 Reduction or Abatement of Regular Assessments.** In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may either reduce the amount of the Regular Assessments or may abate collection of Regular Assessments as it deems appropriate.

**Section 6.11 No Offsets.** All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including,



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without limitation, a claim that BMA or BMCA is not properly exercising its duties and powers as provided in this Declaration or any easement agreement, or a claim that an Owner does not use that Owner's Boat Slip or exercise other usage rights on, or easement rights to, the Marina Property.

**Section 6.12 Statement of Payment.** BMA shall, upon demand, furnish to any Owner liable for Assessments a statement in writing signed by an officer or authorized agent of BMA setting forth whether the Assessments relating to a specified Boat Slip have been paid and the amount of delinquency, if any. A reasonable charge, of not less than twenty dollars ($20.00, as may be adjusted for inflation) shall be collected by the Board for the issuance of each such statement. Each statement shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

**Section 6.13 Initial Working Capital Fund.** In connection with the closing of the initial sale of each Boat Slip to an Owner other than one of Declarants, such Owner shall pay BMA an amount equal to two (2) months' Regular Assessments to be used as an initial working capital fund, and an amount equal to one (1) month's Regular Assessment for payment of the first month's Regular Assessment. All amounts received by BMA relative to the initial working capital fund shall be deposited by BMA in a segregated fund. Under no circumstances shall any amounts contributed to BMA for the initial working capital fund be deemed to be advance payments of Assessments or otherwise creditable or reimbursable to any Owner, but such working capital funds shall be used by BMA as BMA, in its prudent discretion, may determine. The initial working capital payment is not refundable to the Owner who made the payment when the Owner resells the Boat Slip. No working capital fund payment is required on any resale of a particular Boat Slip.

**Section 6.14 BMA Participation in Certain BMCA Easement Assessments.** Under easement or other agreements to be entered into by and between BMA and BMCA, the Board of BMCA, as part of its budgeting process for the administration and operation of portions of the Condominium Property common elements, will make assessments to BMA for BMA's portion of Easement Assessments for which BMA and its Members are obligated.

## ARTICLE VII

## EFFECT OF NONPAYMENT OF ASSESSMENTS AND REMEDIES

**Section 7.1 Delinquency.** Any Assessment which is not paid when due is delinquent. Whenever an Assessment is delinquent, the Board may at its option invoke any or all of the sanctions provided for herein, or as may be provided for in any easement agreement entered into between BMA and BMCA, and any other remedy authorized by applicable law. If the Board shall fail or neglect to invoke any or all of the sanctions provided for herein as they relate to costs and expenses due under any easement agreement entered into between BMA and BMCA,



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then, except for the provisions for Suspension of Votes set forth in Section 7.7 below, BMCA may also, on its own accord if BMA refuses or neglects to do so, invoke the sanctions and actions provided for herein, and any other remedy authorized by applicable law.

**Section 7.2 Late Charge.** If any Assessment is not paid within fifteen (15) days after the date when it becomes due and payable, the Owner shall be obligated to pay a late charge in an amount established by the Board. The amount of such late charge until paid shall constitute part of the Assessment lien as provided for in Section 6.2 of this Declaration.

**Section 7.3 Interest.** If any Assessment is not paid within thirty (30) days after it becomes due and payable, interest at the lesser of (1) the rate of fifteen percent (15%) per annum or (2) the maximum rate allowed by law in effect at that time, may be assessed by the Board on the amount owing from the date due until such time as it is paid.

**Section 7.4 Action at Law.** BMA shall have the right, at its option, to enforce collection of any delinquent Assessments in any manner allowed by law. BMA may bring an action to recover a delinquent Assessment personally against the Owner obligated to pay same or to foreclose the Assessment Lien in the manner provided by law for foreclosure of a realty mortgage; provided, however, that BMA's choice of one remedy shall not prejudice or constitute a waiver of BMA's right to exercise the other. All costs of collection, whether or not a lawsuit is commenced, including the costs of preparing and filing the complaint, shall be assessed against the delinquent Owner and such Owner's Boat Slip and reasonable attorneys' fees, court costs and collection costs will thereafter be added to the amount in delinquency (plus interest and/or late charges, if appropriate). Each Owner vests in BMA or its assigns the right and power to bring actions at law and/or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.

**Section 7.5 Notice of Lien.** The recording of this Declaration constitutes record notice and perfection of the Assessment lien which is a continuing lien upon the Boat Slip against which the Assessment is made as provided for in the Bylaws and this Declaration. BMA may, at its option, record a notice of such Assessment lien. BMA shall first make written demand on the Owner for payment of all delinquent Assessments and related charges secured by the Assessment lien. If not paid within ten (10) days of the date of the demand, BMA may proceed with recording a notice of such Assessment lien and may charge the Owner of the applicable Boat Slip a lien fee in an amount established or approved by the Board.

**Section 7.6 Foreclosure Sale.** Any foreclosure and sale provided for in this Declaration is to be conducted in accordance with applicable provisions relating to the foreclosure of realty mortgages in the State of Montana.

**Section 7.7 Suspension of Votes.** The Board shall suspend for the entire period during which an Assessment remains delinquent the obligated Owner's right to vote on any matter at Regular or Special Meetings of BMA.

**Section 7.8 Personal Liability of Purchaser for Assessments.** A purchaser of a Boat Slip shall be jointly and severally liable with the seller for all unpaid Assessments against the Boat Slip up to the time of the grant or conveyance, without prejudice to purchaser's rights to recover from the seller the amount paid by the purchaser for such Assessments.

**Section 7.9 Construction Lien Rights.** No labor performed or materials furnished for use in connection with any Boat Slip with the consent or at the request of an Owner or his agent or subcontractor shall create any rights to file a statement of construction lien against the Boat Slip of any other Owner not expressly consenting to or requesting the same, or against any interest in the Marina Property except as to rights appurtenant to that particular Boat Slip and the rights of usage therein appurtenant to that Boat Slip of the Owner for whom such labor shall have been performed and such materials shall have been furnished. Each Owner shall indemnify and hold harmless each of the other Owners and Declarant or BMA, as may be applicable, from and against liability or loss arising from the claim of any lien against the Boat Slip, or any part thereof, or any other Owner or the Marina Property, for labor performed or for materials furnished in work on the Owner's Boat Slip. At the written request of any Owner, BMA shall enforce such indemnity by collecting from the Owner of the Boat Slip on which the labor was performed and materials furnished the amount necessary to discharge any such lien, including all costs incidental thereto, and obtaining discharge of the lien. Such collection shall be made by a Special Assessment pursuant to Article VI.

## ARTICLE VIII

## EASEMENTS

**Section 8.1 Use of Marina Property.** Upon the recording of this Declaration there shall be appurtenant to the rights to each Boat Slip a non-exclusive and perpetual right and easement to use the Marina Property (exclusive of any other Boat Slip) in common with all other persons entitled to use the Marina Property, including easements appurtenant thereto (except as otherwise provide herein), and as may be required for the purposes of access, ingress and egress to and from the Marina Property through the portions of the adjacent Condominium Property, and the use, occupancy and enjoyment of the Boat Slips for their intended purposes as provided herein. Such right and easement shall extend to each Owner or Occupant.

Notwithstanding anything herein to the contrary, however, such right and easement within the Marina Property and on, over, and through the Condominium Property, shall be subject, however, at all times to such limitations, restrictions, and Rules and Regulations as may from time to time be promulgated by the Board or BMCA including, but by no means limited to,

the right of the Board to suspend any right of any Owner or Occupant and the agents, servants, family members, tenants, guests, licensees, invitees or employees of any Owner or Occupant to usage of the boat ramp or fuel services for any period during which Common Expenses attributable to such Owner's Boat Slip remain unpaid, or, for a period not to exceed sixty (60) days during time periods established by the Board for any violation of Rules and Regulations adopted and published by the Board or BMCA. Such right and easement shall be subject to and governed by the provisions of this Declaration, the Articles, and Bylaws.

So long as Declarant approves during the Period of Declarant Control, the Board shall have authority to lease, convey easements or grant concessions consistent with the overall character and use of the Marina Property, subject to the provisions of this Declaration, the Articles, and the Bylaws, and each Owner in accepting the grant and conveyance or other instrument creating in such Owner the interest required to be deemed an Owner, whether or not it be so expressed in the grant and conveyance or other instrument, expressly consents to such easements and rights-of-way and authorizes and appoints BMA as attorney-in-fact of such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Notwithstanding anything contained herein to the contrary, Declarant shall be entitled to nonexclusive access to and occupancy of all or any portion of the Marina Property and any Boat Slip (exclusive of Boat Slips already sold by Declarant to third parties) until such time as the Marina Property and all Boat Slips have been conveyed by Declarant. Notwithstanding anything contained herein to the contrary, there shall be no restriction upon any Owner's right of ingress and egress to or from such Owner's Boat Slip, which rights shall be perpetual and appurtenant to the ownership of such Owner's Boat Slip.

**Section 8.2 Public Utilities.** Easements and rights in, on, over, across, under or through the Marina Property for the installation, repair, and maintenance, or replacement of such systems that provide utilities servicing the Marina Property including lines, cables, wires, conduits, pipes or other devices for electricity, power, telephone, storm water drains, water systems, sprinkling systems, sanitary sewer, drainage facilities, gas, and any similar public or quasi-public improvements, facility or other public utilities needed to serve the Marina Property or the adjacent Condominium Property, including such other rights as may be further set forth in easements, reciprocal or otherwise, defining rights, duties, and obligations for access and usage of the Marina Property and Condominium Property, are hereby reserved by Declarant, together with the right to grant and transfer the same.

So long as Declarant approves during the Period of Declarant Control, BMA shall have the power to grant and convey to any other Person easements and rights-of-way in, on, over, across, under or through the Marina Property for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits, or other devices for electricity, power, telephone, storm water drains, water systems, sprinkling systems, gas, and any similar public or quasi-public improvements, facility or other public utilities needed to serve the Marina Property and the adjacent Condominium Property, and each Owner in accepting the grant and conveyance or



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other instrument creating in such Owner the interest required to be deemed an Owner, whether or not it be so expressed in the grant and conveyance or other instrument, expressly consents to such easements and rights-of-way, and BMA, without the permission or consent of any Owner, may execute any and all instruments conveying or creating such easements or rights-of-way.

**Section 8.3 Easements for Encroachments.** If any Boat Slip now encroaches or shall hereafter encroach upon any other Boat Slip or any other part of the Marina Property, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances on the Boat Slips. Encroachments referred to herein include, but are not limited to, encroachments as a result of the manner in which the Boat Slips have been constructed, settling, shifting, alteration, replacement, repair, or restoration of the Marina Property or any part thereof.

**Section 8.4 Owners' Right to Ingress and Egress on Marina Property.** Each Owner shall have the right to ingress and egress over, upon and across the Marina Property and portions of the Condominium Property necessary for access to and from that Owner's Boat Slip via land and water and such rights shall be appurtenant to and pass with the grant and conveyance of each Boat Slip. However, such right and easement within the Marina Property on, over, and through the Condominium Property shall be subject at all times to such limitation, restrictions, and Rules and Regulations set by the Board or BMCA.

**Section 8.5 Easements for Condominium Property.** A perpetual easement is hereby reserved and granted and shall and does exist in, on, over, across, under or through the Marina Property in favor of Declarant and BMCA, and its successors and assigns for the operation, modification, repair, maintenance, and control of the Condominium Property as now existing or as it may exist in the future, including, but not limited to, all those activities associated with such usage, including, but not limited to construction, reconstruction, modification, facility and equipment repair and maintenance, landscaping, or any other condominium use activities or activities, noise, sound, lighting, dust, or other effects of such activities, by or on behalf of Declarant or BMCA and agents, servants, tenants, guests, licenses, invitees, lessees, employees, successors or assigns.

**Section 8.6 Development Easements for Declarant.** Until all Boat Slips have been sold by Declarant, there are hereby reserved to Declarant, together with the right to grant and transfer the same to others, including Declarant's sales agents, representatives and assigns, easements and rights upon, across, over, under and through the Marina Property for construction, display (including the use of the Boat Slips as models), maintenance, sales and exhibit purposes (including the use of signs and other advertising devices) in connection with the sale or lease of Boat Slips within the Marina Property, or within the Condominium Property, provided, however, that no such use by Declarant or its agents shall otherwise restrict Owners or Occupants in the reasonable use and enjoyment of their Boat Slips. Notwithstanding the foregoing, normal



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construction and reconstruction and maintenance and repair activities, including, but not limited to, related noise and dust, shall not be deemed a restriction on the use of any Boat Slip.

**Section 8.7 Easement Agreement.** Declarant, BMA, and BMCA will enter into easement agreement(s) more specifically setting forth easement rights and obligations related thereto by and between the Marina Property and Condominium Property.

**Section 8.8 Easements For Owners.** Each Owner of a Boat Slip shall have non-exclusive perpetual easements for ingress to and egress from that Boat Slip, across the waters upon, and on the lands of, the Marina Property.

## ARTICLE IX

## USE RESTRICTIONS

**Section 9.1 Violation of Declaration/Covenants, Conditions and Restrictions.** No person shall use or cause to be used any Boat Slip or any other potion of the Marina Property in any manner which would violate any of the terms set forth in this Declaration. Any person owning, using or having an interest in any Boat Slip shall comply with all the conditions on use of the Marina Property set forth in this Declaration or other easement agreement to which BMA is a party or which otherwise obligates BMA. Any Owner and BMA and BMCA shall have the right to enforce any and all provisions of this Declaration. In addition, Declarant (during the period of Declarant Control), and BMCA shall have the right to enforce any and all provisions of this Declaration.

**Section 9.2 Recreational Use of Boat Slips.** All Boat Slips and the Marina Property shall be used exclusively for recreational boating purposes only. The commercial usage, such as, but not limited to, taking and discharging passengers for hire, public or private freight carrying, charter or commercial fishing, or the demonstration of watercraft is strictly prohibited. Lease or rental of a Boat Slip for recreational use purposes shall not be considered a violation of this covenant.

**Section 9.3 Use of Marina Property.** There shall be no obstruction of or to any portion of the Marina Property, nor shall anything be stored on any part of the Marina Property without the prior written consent of BMA and BMCA, except as specifically provided herein. No part of the Marina Property nor any improvements thereon shall be altered, constructed on, or removed from the Marina Property without the prior written consent of BMA and BMCA.

**Section 9.4 Boat Slip Usage Limited to Daylight Hours Only. The Marina Property and the Boat Slips located thereon may be utilized only during daylight hours. Any usage of a Boat Slip and the Marina Property except during daylight hours is strictly prohibited. In addition to or in lieu of BMA, BMCA may establish and enforce Rules and Regulations in this regard.**



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**Section 9.5 Signs.** No sign of any nature whatsoever shall be displayed or placed in any Boat Slip, or on any other part of the Marina Property. No "For Sale" or "For Rent" signs of any nature whatsoever shall be permitted on any part of the Marina Property without the prior written consent of the Board and BMCA. A master "for sale" sign may be placed on the Marina Property by the Board with the approval of BMCA with the telephone number to call for information. The provisions of this Section relating to signs shall not apply to the Declarant during the Period of Declarant Control, and in connection therewith, nothing herein shall prevent Declarant and its agents and assigns from utilizing reasonable signs, flags, markers, and sales devices in furtherance of sales activities.

**Section 9.6 Prohibition of Certain Activities.** Nothing shall be done or kept in or on any Boat Slip or in or on any other part of the Marina Property which would result in the cancellation of the insurance on the Marina Property. No damage to, or waste of, the Marina Property or any part thereof shall be committed by any Owner or any Occupant, and each Owner shall indemnify and hold BMA and the other Owners harmless against all loss resulting from any such damage or waste. No Owner or Occupant shall engage in activity within the Marina Property in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body. Nothing herein shall be construed to prevent Declarant and its agents from engaging in all forms of construction and sales activities until all Boat Slips and units on the adjacent Condominium Property have been sold by Declarant.

**Section 9.7 Temporary Structures.** No structure or building of a temporary character, including a tent or shack, shall be placed upon the Marina Property or used therein. Nothing herein shall be construed as preventing Declarant from using temporary structures or trailers for construction and/or sales purposes or engaging in all forms of construction and sales activities within the Marina Property and on the adjacent Condominium Property.

**Section 9.8 Parking and Vehicles.**

A. Unless otherwise permitted by the Board and BMCA, no motor vehicle (including a motorcycle or golf card), recreational vehicle, watercraft, trailer, camper, boat or similar item, and no bicycle, shall be permitted to remain upon the Marina Property or adjacent Condominium Property unless parked or placed within spaces designated for such use. Temporary parking of motor vehicles, including those towing or carrying watercraft utilizing the Marina Property shall be permitted in spaces, and for time periods specifically designed for such use as set forth in Rules and Regulations established by BMCA. For purposes hereof, "temporary parking" shall include parking of vehicles and watercraft trailers belonging to Owners and Occupants, parking of delivery trucks, service vehicles and other commercial vehicles being used for the furnishing of goods and services to BMA or to the Owners and Occupants, and for loading and unloading purposes. Except for such temporary parking pursuant to Rules and Regulations established from time to time by BMCA, no mobile homes, travel trailers, tent trailers, trailers, camper





shells, detached campers, recreational vehicles, boats, boat trailers or trucks designed for commercial purposes shall be maintained or parked upon the Marina Property or Condominium Property.

B. The Board or BMCA may adopt Rules and Regulations relating to the admission and temporary parking of vehicles within the Marina Property, and the adjacent Condominium Property, including the assessment of charges to Owners and Occupants who violate such Rules and Regulations. Any charges so assessed shall be Special Assessments. Nothing herein shall be construed as preventing Declarant from using temporary structures or trailers for construction and/or sales purposes or engaging in all forms of construction and sales activities within the Marina Property and the adjacent Condominium Property.

C. The Board or BMCA shall have the right to tow any motor vehicle, trailer, or any other equipment or similar item parked, kept, maintained, constructed, reconstructed or repaired in violation of this Declaration, Bylaws, or Rules and Regulations, or any other agreements made between BMA and BMCA, at the sole expense of the owner of the vehicle or equipment.

D. Nothing herein shall be construed as preventing Declarant or its agents, servants, tenants, guests, licensees, invitees, lessees, or employees from using temporary parking and admission in connection with their authorized activities within the Marina Property and adjacent Condominium Property.

**Section 9.9 External Fixtures.** Subject to Section 9.5 relating to signs, no external items such as, but not limited to, awnings, antenna, satellite dishes, flag poles, clotheslines, wiring, fences, ornamental screens, sunshades, walls, landscaping and planting, other than those provided in connection with the construction and development of the Marina Property, and any replacements thereof, and other than those approved by the Board and BMCA, and any replacements thereof, shall be constructed, erected or maintained on the Marina Property. The foregoing notwithstanding, nothing herein shall be construed as to prevent Declarant and its agents and assigns from engaging in all forms of construction and sales activities within the Marina Property and the adjacent Condominium Property.

**Section 9.10 External Laundering.** External laundering and drying of clothing and other items is prohibited.

**Section 9.11 Outside Speakers and Amplifiers.** No radio, stereo, broadcast or loudspeaker units and no amplifiers of any kind shall be placed upon or outside, or directed to the outside of, any watercraft or Boat Slip or any other portion of the Marina Property without the prior written approval of the Board and BMCA.



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**Section 9.12 Repairs.** No repairs of any detached machinery, equipment or fixtures, including, but not limited to, motor vehicles, motorcycles, watercraft, trailers, or snowmobiles, shall be made upon the Marina Property.

**Section 9.13 Unsightly Items and Trash.** The Marina Property shall at all times be kept compatible with the setting and amenities of the adjacent Condominium Property. All trash, rubbish, debris or unsightly materials or objects of any kind shall be regularly removed from Boat Slips and any other part of the Marina Property and shall not be allowed to accumulate therein or thereon. No fish innards shall be dumped in or on any part of the Marina Property or the waters running over such. Refuse containers and machinery and equipment not provided as part of the development and construction of the Marina Property or otherwise approved in writing by BMA and BMCA shall be prohibited upon any Boat Slip or any other part of the Marina Property. Trash and garbage shall be placed in containers for removal from the Marina Property in accordance with Rules and Regulations applicable thereto adopted by the Board and approved by BMCA. The Board may adopt rules applicable to the provisions of this Section and their enforcement, including the assessment of charges to Owners and Occupants who violate such rules. Any charges so assessed shall be Special Assessments. The foregoing notwithstanding, nothing herein shall be construed as preventing Declarant and its agents, successors and assigns from engaging in all forms of construction and sales activities within the Marina Property.

**Section 9.14 Animals.** Subject to Rules and Regulations of the Board, and approved by BMCA, pets, defined as only dogs and cats, and no other animals, may be allowed on the Marina Property and watercraft located thereon, however, any pet must at all times be kept under such care, control, and restraint as not to be bothersome and obnoxious on account of noise, odor, or unsanitary conditions. No animal shall be permitted to run loose upon the Marina Property or the adjacent Condominium Property. Rules and Regulations adopted may provide for their enforcement, including the assessment of fines and charges to Owners and Occupants who violate such rules. Any charges or fines so assessed for violations of Rules and Regulations in regard to pets shall be Special Assessments.

Each Owner and Occupant has an affirmative duty to control in an orderly fashion any pet owned by the Owner or Occupant. Those pets which are otherwise permitted will be prohibited if, in a particular case, the Board determines an animal to have become a nuisance. The Board may assess, by providing for such in the Rules and Regulations, appropriate fines for free roaming pets and for other nuisances caused by pets, such as but not limited to, barking of dogs.

**Section 9.15 Leases.** Any Owner who shall lease his or her Boat Slip shall be responsible for assuring compliance by the Occupant with this Declaration, the Bylaws, and the Rules and Regulations. Failure by an Owner to take legal action, including the institution of a forcible entry and detainer proceeding against his, her, or its Occupant who is in violation of this

Declaration, the Bylaws or the Rules and Regulations after receipt of written demand so to do from the Board, shall entitle BMA or BMCA to take any and all such action including the institution of proceedings, including forcible entry and detainer, on behalf of such Owner against his Occupant, and the Owner hereby assigns his rights as a landlord to enforce such defaults. Any expenses incurred by BMA or BMCA, including attorney's fees and costs of suit, shall be repaid to it by such Owner. Failure by such Owner to make such repayment within ten (10) days after receipt of a written demand therefore shall entitle the Board to levy a Special Assessment against such Owner and Owner's Boat Slip for all such expenses incurred by BMA and BMCA. In the event such Special Assessment is not paid within thirty (30) days of its due date, the Board may resort to all remedies for the collection thereof.

**Section 9.16 Alterations, Additions or Improvements.** Notwithstanding anything contained in this Declaration to the contrary, no Owner shall install any canopy or cover or screening to said Owner's Boat Slip, or make any alterations of any Boat Slip or the Marina Property, or any additions or improvements thereto, except Declarant as to those Boat Slips owned by Declarant, without the prior written approval of the Board and BMCA.

**Section 9.17 Display of Articles.** No Owner shall display, have, or store any clothing, sheets, blankets, laundry or other articles outside any watercraft, or which may be visible from the outside of the watercraft other than draperies, curtains, or blinds of a customary nature.

**Section 9.18 Maintenance of Boat Slip Area.** Each Owner shall keep his/her Boat Slip and the areas surrounding it in a clean, sanitary, and attractive condition.

**Section 9.19 Damage to Marina Property.** BMA shall repair promptly all damage to the Marina Property and improvements thereon of which BMA is made aware or has notice in writing, provided, however, that the cost of repairing damage to any portion of the Marina Property and improvements thereon due to the willful or negligent act of an Owner or Occupant or other person for whom such Owner may be responsible shall be the obligation of such Owner. Any charges so assessed shall be Special Assessments.

**Section 9.20 Size Restrictions For Watercraft.** No Owner shall use or maintain a watercraft so that the bow, bow pulpit, stern, or any attachment extends more than **five (5) feet** beyond the length of a Boat Slip as shown on **Exhibit "A"**, or beyond the Marina Property boundary, whichever distance is less. Also, except for lines attached to mooring walkways as reasonably necessary to secure a watercraft in its Boat Slip, no watercraft or the bow, bow pulpit, stern, or any attachment to the boat shall extend onto or over any mooring walkway or the main boardwalk or encroach upon any other Boat Slip's exclusive space.

**Section 9.21 Nuisance.** No immoral, improper, unlawful, or offensive activity shall be carried on in any Boat Slip or watercraft located thereon or on any other part of the Marina Property, nor shall anything be done which may be or become an annoyance or a nuisance to any Owner or

Occupant of a Boat Slip, or anyone utilizing the Condominium Property, or reduce the value of a Boat Slip or the Condominium Property. No Owner shall do or permit anything to be done or kept or permit to be kept in said Owner's Boat Slip or elsewhere on the Marina Property anything which will increase the rate of premiums on insurance coverages on and with respect to the Marina Property.

## ARTICLE X

## INSURANCE

**Section 10.1 Insurance Requirements Generally.** Prior to the first conveyance of a Boat Slip to an Owner other than Declarant, and at all times thereafter, BMA shall have the authority to and shall obtain and maintain in full force and effect certain public liability and property coverage (casualty) insurance as hereinafter provided. All such insurance shall be obtained from responsible companies duly authorized to transact insurance business in the State of Montana with no less than an "A" financial category rating in Best's Key Rating Guide (or any comparable rating in any comparable publication). All such insurance shall name BMA or its authorized representative or trustee as the insured in its individual capacity for the benefit of the Owners. The Board shall review all such insurance at least annually and shall increase the amounts thereof as it deems necessary or appropriate. All such insurance shall:

A. Contain an endorsement providing for a waiver of subrogation by the insurer as to claims against BMA, its directors, officers, employees and agents and against each Owner and each Owner's employees, agents and invitees, and against each Mortgagee of all or any part of the Marina Property or of any Boat Slip, and any other person for whom BMA, any Owner, or Mortgagee may be responsible, and shall provide for recognition of any authorized representative or trustee of BMA, if applicable;

B. Provide that any "other insurance" clauses in the insurance policy shall exclude any policies of insurance maintained by any Owner or Mortgagee of the Marina Property or any Boat Slip and that the insurance policy shall not be brought into contribution with insurance maintained by the Owner or Mortgagee of the Marina Property or any Boat Slip;

C. Contain a standard without contribution mortgagee clause endorsement in favor of the Mortgagee, its successors and assigns, of any Boat Slip or any part of the Marina Property;

D. Contain a "replacement cost" and "Inflation guard" endorsement, if available;

E. Contain an endorsement or provision for replacement value of the Marina Property, or any Boat Slip, as applicable;

F. Provide that the policy of insurance shall not be terminated, canceled, or reduced in coverage without at least thirty (30) days' prior written consent to BMA and to each Owner and to each Mortgagee covered by any standard mortgagee clause endorsement;

G. Provide that the insurer shall not have the option to restore the Marina Property if Boat Slip ownership on the Marina Property is to be terminated or the Boat Slips and the rest of the Marina Property is to be sold as an entirety in accordance with Article XI of this Declaration; and,

H. Contain a "severability of interest endorsement" which shall preclude the insurer from denying the claim of any Owner or BMA due to the negligent acts of BMA or any Owner(s).

Under no circumstances shall any policies of insurance be obtained where: (1) under the terms of the insurance carrier's charter, bylaws or policy, contributions or assessments may be made against BMA, any Owner or any Mortgagee; or (2) under the terms of the insurance carrier's charter, bylaws or policy, loss payments are contingent upon action by the insurance carrier's board of directors, policy holders or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent BMA, any Owner, or any Mortgagee from collecting insurance proceeds.

Such public liability and property coverage (casualty) insurance may provide for coverage of any cross liability claims of Owners against BMA or other Owners and of BMA against Owners without right of subrogation. Any insurance policy may contain such deductible provisions as BMA deems consistent with good business practice.

Certificates of insurance coverage or copies of insurance policies shall be issued to and at the expense of each Owner and each Mortgagee who makes or on whose behalf written request is made to BMA for any such certificate or copy.

The cost and expense of all insurance obtained by BMA, except other insurance obtained at the request of and specifically benefiting any particular Owner, shall be a Common Expense.

**Section 10.2 Property Coverage (Casualty) Insurance.** BMA shall obtain and maintain a master policy or policies of property coverage (casualty) insurance covering all parts of the Marina Property, including each Boat Slip, exclusive of the personal property contained thereon, and all other fixtures and improvements and service equipment to the extent such is a part of the Marina Property insuring against loss or damage by fire, vandalism, malicious mischief and such other hazards as are covered under standard extended coverage policies, for not less than one hundred percent (100%) of the replacement cost of the Marina Property, including each Boat Slip (exclusive of the land and other items normally excluded from coverage). Such master policy or policies of property coverage (casualty) insurance shall, to the extent available, contain

a standard special form or all risk endorsement and shall insure against all other perils which are customarily covered with respect to recreational marina projects which are similar in construction, location and use.

**Section 10.3 Public Liability and Property Damage Insurance.** BMA shall obtain and maintain comprehensive common area public liability and property damage insurance covering liability for bodily injury, including death, and liability for property damage occurring in, upon or about the Marina Property. Each Owner and BMA shall be insured with respect to such liability arising out of the ownership, maintenance, repair, or operation of the Marina Property. The limits of liability for such coverage shall not be less than One Million Dollars ($1,000,000.00) for each occurrence with respect to bodily injury, death or property damage, with a Two Million Dollars ($2,000,000.00) policy aggregate. Consideration shall be given to adjusting the limits to account for inflation. Said policy shall be endorsed to name BMCA as an additional named insured thereunder and state that the insurance company will give thirty (30) days' prior written notice to BMCA of any cancellation or reduction of the insurance under said policy. A copy of evidence of this insurance shall be provided to BMCA annually.

**Section 10.4 Workers' Compensation and Employer's Liability Insurance.** BMA shall obtain and maintain workers' compensation and employer's liability insurance as may be necessary to comply with applicable law.

**Section 10.5 Fidelity Bonds.** BMA shall obtain and maintain bonds or comparable insurance covering, or require bonds or comparable insurance coverage by, all persons or entities which handle funds of BMA including, without limitation, any professional manager employed by BMA and any of such professional manager's employees, in amounts not less than the maximum funds that will at any time be in the possession of BMA or any professional manager employed by BMA but, in no event, less than the total of: (A) assessments for a three (3) month period with respect to all Boat Slips; and (B) all reserve funds maintained by BMA or, in the alternative, the bond coverage limit as determined by the Board. With the exception of a fidelity bond obtained by a professional manager covering such professional manager's employees, all fidelity bonds or comparable insurance coverage shall name BMA as an obligee or insured. In addition, all such bonds or insurance shall provide that the same shall not be terminated, canceled, or substantially modified without at least thirty (30) days' prior written notice to BMA.

**Section 10.6 Insurance by Owners.** Insurance coverage on the personal property belonging to an Owner and located within that Owner's Boat Slip or elsewhere on the Marina Property, and property coverage (casualty), and public liability and property damage insurance coverage for occurrences within the Owner's Boat Slip and watercraft, or elsewhere on the Marina Property or on the Condominium Property, and matters in regard to such, shall be the responsibility of the respective Boat Slip Owners, and BMA shall have absolutely no responsibility for obtaining such coverage. Each Owner shall be free to obtain such additional or other insurance as he deems desirable, covering personal property and personal liability of such Owner and his employees,

agents and invitees and any other persons for whom such Owner may be responsible. Any insurance policy obtained by an Owner, however, must not diminish or adversely affect or invalidate any insurance or insurance recovery under policies carried by BMA and must, to the extent possible, contain a wavier of the rights of subrogation by the insurer as to any claims against BMA, its officers, directors, agents and employees and against other Owners and their employees, agents and invitees and against any Mortgagee of all or any Boat Slip or any other part of the Marina Property, or other person for which BMA or any such Owner or Mortgagee may be responsible. If any Owner is unable to obtain such waiver of subrogation in its insurance policy then such owner shall indemnify, defend, and hold harmless BMA and other Owners from any such claim made by an insurer of such Owner against BMA or other Owners.

**Section 10.7 Receipt and Application of Insurance Proceeds.** Except in a case where a Mortgagee or any other person shall have the legal right to receive insurance proceeds directly, all insurance proceeds and recoveries under policies maintained by BMA shall be paid to and received by BMA or its designated representative, to be held in trust for the benefit of BMA, and all Owners and all Mortgagees of any Boat Slip or all or any part of the Marina Property as their respective interests may appear. Subject to the rights of any Mortgagee, BMA shall have the right, acting alone, to adjust or settle any claim by it under any insurance maintained by it. Such funds shall be disbursed in accordance with the following priorities, subject to such evidence of application as BMA shall require, and shall be applied by BMA as follows: first, as expressly provided in Article XI hereof; second, to the Owners or persons whom BMA determines are legally or equitably entitled thereto; and, third, the balance, if any, to the Owners in proportion to their respective interests in the Boat Slips. Notwithstanding any provision contained herein to contrary, the rights of and lien priority of any First Mortgagee shall not be affected by any loss, damage or destruction and shall continue in any insurance proceeds payable with respect to the Boat Slip subject to such Mortgage in accordance with the provisions of such Mortgage.

**Section 10.8 Other Insurance by BMA.** BMA shall have the power and authority to obtain and maintain other and additional insurance coverage, including, but not limited to, property coverage (casualty) insurance covering personal property of BMA, fidelity bonds or insurance covering employees and agents of BMA and insurance indemnifying officers, directors, employees, and agents of BMA. Notwithstanding any other provisions of this Declaration, BMA shall continuously maintain in effect such property coverage (casualty) and liability insurance and fidelity bonds or comparable insurance in order to conform this Declaration to the requirements of a mortgage lender or any federal, state, or local governmental agency whose approval of the project, the survey, Site Plan, or the Bigfork Marina Documents is required by law or requested by Declarant, so long as any of such mortgage lender is a Mortgagee or Owner of a Boat Slip or any other part of the Marina Property, except to the extent that such coverage is not available or has been waived in writing by such entities.

## ARTICLE XI

## DESTRUCTION, CONDEMNATION, OBSOLESCENCE, AND RESTORATION OR SALE OF PROPERTY

**Section 11.1 Usage Rights on Marina Property.** The grant and conveyance of each Boat Slip is hereby made subject to the terms and conditions hereof, which bind Declarant, BMA, and subsequent Owners of an interest in the Marina Property, whether or not it be so expressed in the grant and conveyance by which any Owner acquires his Boat Slip or other instrument creating in Owner the interest required to be deemed an Owner.

**Section 11.2 Definitions.** As used herein, the following terms shall have the following definitions:

A. "Substantial Destruction" shall exist whenever the Board determines that, as a result of any casualty, damage to or destruction of the Marina Property or any part thereof, the excess of estimated costs of Restoration (as herein defined) over Available Funds (as herein defined) is fifty percent (50%) or more of the estimated Restored Value of the Marina Property (as herein defined). "Partial Destruction" shall mean any other casualty, damage to or destruction of the Marina Property or any part thereof.

B. "Substantial Condemnation" shall exist whenever the Board determines that a complete taking of the Marina Property has occurred or that a taking of part of the Marina Property by condemnation or eminent domain or by grant or conveyance in lieu of condemnation or eminent domain has occurred, and that the excess of the estimated costs of Restoration over Available Funds is fifty percent (50%) or more of the estimated Restored Value of the Marina Property. "Partial Condemnation" shall mean any other such taking by eminent domain or by grant or conveyance in lieu of eminent domain.

C. "Substantial Obsolescence" shall exist whenever the Owners of Boat Slips having eighty percent (80%) of the voting interest in the Marina Property, determine that the Marina Property or any part thereof has reached an undesirable state of obsolescence or disrepair if approved by Declarant during the Period of Declarant Control. "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

D. "Restoration" in the case of any casualty, damage, or destruction, shall mean restoration of the Marina Property to a condition the same or substantially the same as the condition in which the Marina Property existed prior to the casualty, damage, or destruction; in the case of condemnation, shall mean restoration of the remaining portion of the Marina Property to an attractive, sound, and desirable condition; and, in the case of obsolescence, shall mean restoration of the Marina Property to an attractive, sound, and desirable condition.



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E. "Restored Value of the Marina Property" shall mean the value of the Marina Property or portion thereof, as applicable, after Restoration as determined by the Board.

F. "Available Funds" shall mean any proceeds of insurance or condemnation awards or payment sin lieu of condemnation received by BMA and any uncommitted reserves of BMA other than amounts derived through Assessments or Special Assessments. Available Funds shall not include that portion of insurance proceeds or condemnation awards or payments in lieu of condemnation legally required to be paid to any party other than BMA, including a Mortgagee of all or any part of the Marina Property or of any Boat Slip, or that portion of any condemnation award or payment in lieu of condemnation paid to the Owner of a Boat Slip on the Marina Property for the condemnation or taking of that Owner's Boat Slip rights on and to the Marina Property.

**Section 11.3 Restoration of the Marina Property.** Restoration of the Marina Property shall be undertaken by BMA without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence, and shall be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the Owners of Boat Slips having eighty percent (80%) of the voting interests in the Marina Property consent to termination of Boat Slip ownership on the Marina Property. Any such termination must be approved by Declarant during the Period of Declarant Control. Such restoration shall be performed substantially in accordance with this Declaration and the original plans and specifications for the Boat Slips and the Marina Property.

**Section 11.4 Sale of the Marina Property.** In the event of Substantial Destruction, Substantial Destruction, Substantial Condemnation or Substantial Obsolescence, and the Owners of Boat Slips having eighty percent (80%) of the voting interests in the Marina Property consent to termination of ownership of the Boat Slips on the Marina Property, BMA shall cause a termination agreement and notice of intent to sell the Marina Property to be prepared and recorded and the real estate shall be sold. Such termination agreement shall contain the ratification of the Owners of Boat Slips having eighty percent (80%) of the voting interests in the Marina Property. It shall also specify a date after which the agreement will be void unless it is recorded before that date. It shall also specify a statement that the real estate shall be sold and the minimum terms of the sale. Any such termination and sale must be approved by Declarant during the Period of Declarant Control. In the event of such sale, Boat Slip ownership under this Declaration shall terminate and the proceeds of sale and any insurance proceeds, condemnation awards, or payments in lieu of condemnation shall be distributed by BMA pro rata to each Owner according to the percentage voting interest of each Boat Slip Owner in BMA pursuant to this Declaration. Such payment shall be made to Owners or, as to Boat Slips which are subject to a Mortgage of record at the time of such payment, jointly to such Owner and such Mortgagee as their interests may appear.





**Section 11.5 Special Assessments for Restoration.** Whenever Restoration is to be undertaken, BMA may levy and collect Assessments from each Owner in proportion to each Owner's voting interest in the BMA, payable over such period as BMA may determine, to cover the costs and expenses of Restoration to the extent not covered by the Available Funds.

**Section 11.6 Receipt and Application of Condemnation Funds.** Except in a case where a Mortgagee or any other person shall have the legal right to receive condemnation awards or payments in lieu of condemnation or eminent domain directly, all compensation, damages or other proceeds constituting awards for condemnation or eminent domain, or payments in lieu of condemnation or eminent domain shall be paid or, if received by BMA, shall be turned over promptly in the identical form received without commingling with any asset or property of BMA, to an independent financial institution or title company selected by BMA and authorized to act as escrow agent for the benefit of BMA, and all Owners and all Mortgagees of any Boat Slip or all or any part of the Marina Property as their respective interests may appear. BMA shall have the right, acting alone, to adjust or settle any condemnation award or payment in lieu of condemnation or eminent domain payable to it. Such funds shall be disbursed by said escrow agent in accordance with the following priorities:

A. The amount thereof equitably allocable as compensation for the taking of or injury to a particular Boat Slip shall be apportioned and paid to the Owner of such Boat Slip or, as to Boat Slips which are subject to a Mortgage of record at the time of such payment, jointly to such Owner and such Mortgagee as their interests may appear.

B. The balance of such funds shall be applied to costs and expenses of Restoration, if undertaken, and, to the extent not so applied, shall be apportioned among all Owners of the Boat Slips according to each Owner's voting interest in BMA. The lien property of any First Mortgage shall not be disturbed by any condemnation proceeding and shall continue in the proceeds of any condemnation award attributable to the mortgaged Boat Slip and Property in accordance with the provisions of this Section.

**Section 11.7 Reorganization in the Event of Condemnation.** In the event all or substantially all of a Boat Slip is taken by condemnation or eminent domain, such Boat Slip shall, upon payment of compensation as hereinabove provided, cease to be a part of the Marina Property, the Owner thereof shall cease to be a member of BMA, and the vote and obligation for Common Expenses and easements in regard to the Marina Property appurtenant to that Boat Slip shall become reallocated to each of the remaining Boat Slips in that ratio that such Owner's or Mortgagee's Boat Slip bears to all Boat Slips in Bigfork Marina determined in a similar manner to the way in which the voting interests in BMA set forth on **Exhibit "B"** are determined. In such event, BMA shall promptly prepare, execute, and record an amendment to this Declaration reflecting the reallocations. Any remnant of a Boat Slip remaining after part of a Boat Slip is taken by condemnation or eminent domain shall become a part of the Marina Property without a Boat Slip thereon.



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**Section 11.8 Rights of Owners in any Distributions.** In the event that any Owner or Mortgagee is entitled to receive any distribution of money, property, or other things from BMA for any reason, including, without limitation, the sale or other disposition of all or any part of the Marina Property or the cessation or termination of Bigfork Marina created hereby, for any reason, such distribution shall be according to the percentage voting interest in BMA created pursuant to this Declaration, except as may be specifically provided to the contrary in Articles X or XI hereof.

## ARTICLE XII

## DECLARANT

**Section 12.1 Exemption of Declarant from Restrictions, and Reservation of Special Declarant Rights.** Notwithstanding anything contained in this Declaration to the contrary, none of the Covenants, Conditions and Restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any act of Declarant (including any and all partners, officers, directors, employees, or authorized agents of Declarant or its partners, affiliates, or parent company or its subsidiaries or affiliated companies), its subcontractors, or parties designated by it in connection with any construction, completion, sale or leasing of any portion of the Marina Property. In addition to the foregoing, and as may also be provided for herein, Declarant expressly reserves the following Special Declarant Rights and the right to transfer such rights:

A. The right to construct any improvement as provided herein;

B. The right to exercise any Other Right as more fully set forth in Section 12.2 hereof;

C. The right to maintain sales offices, management offices, signs advertising Boat Slips within the Marina Property until the last Boat Slip is sold to an Owner other than Declarant;

D. The right to use any easements reserved or granted in this Declaration;

E. The right to appoint or remove any officer of BMA or any Board member during the Period of Declarant Control; and,

F. The right to grant easement rights to BMCA to use certain areas of the Marina Property, but not the Boat Slips themselves, in conjunction with the use of the Condominium Property, including the right to make amendments to such easements as may be reasonably necessary to ensure that the owners of the Marina Property and the owners of the Condominium Property may enjoy their respective property interests.

**Section 12.2 Reservation of Other Rights.** Declarant hereby expressly reserves the following other rights and the right to exercise such rights without the consent of any Owner or any Mortgagee, except as otherwise provided in Section 13.4 of this Declaration:

A. To grant, create, reserve or relocate easements, and Boat Slips within any portion of the Marina Property during the Period of Declarant Control;

B. To combine physically the area or space or a portion of one Boat Slip with the area or space or portion thereof of another Boat Slip. Such a combination of Boat Slips or a portion thereof shall not be considered to materially affect substantial rights of an Owner and shall not adversely diminish the percentage interest of each Boat Slip. Alterations to main boardwalks, mooring walkways, pilings, or other structural separations shall not alter the bearing capabilities of such structures;

C. To withdraw Boat Slips from the Marina Property prior to such Boat Slips or Property being sold by Declarant; and

D. During the Period of Declarant Control, to unilaterally amend this Declaration (1) if such amendment is solely to comply with applicable law or correct a technical or typographical error, (2) if such amendment does not adversely alter any substantial rights of any Owner or Mortgagee, or (3) in order to meet requirements of the guidelines or regulations of a mortgagor or insurer. Such amendments shall not require approval of any Owners or Eligible Mortgage Holders and Eligible Insurers or Guarantors.

## ARTICLE XIII

## RIGHTS OF ELIGIBLE MORTGAGE HOLDERS

**Section 13.1 Notice of Eligible Mortgage Holders.** An Eligible Mortgage Holder or Eligible Insurer or Guarantor shall not be entitled to receive any notice which this Declaration requires BMA to deliver to Eligible Mortgage Holders unless and until such Eligible Mortgage Holder or Eligible Insurer or Guarantor, has delivered to the Board a written notice stating that such Eligible Mortgage Holder or Eligible Insurer or Guarantor is the holder (or insurer or guarantor) of a Mortgage encumbering a Boat Slip. Notwithstanding the foregoing, if any right of an Eligible Mortgage Holder under this Declaration is conditioned on a specific written request to BMA, in addition to having delivered the notice provided in this Section, an Eligible Mortgage Holder must also make such request in writing delivered to BMA. Except as provided in this Section, an Eligible Mortgage Holder's rights pursuant to this Declaration, including, without limitation, the priority of any Mortgage lien over the lien of Assessments levied by BMA hereunder shall not be affected by the failure to deliver a notice or request to the Board.

**Section 13.2 Priority of Eligible Mortgage Holders.** No breach of this Declaration, nor the enforcement of any lien provision herein, shall affect, impair, defeat or render invalid the lien or charge of any Eligible Mortgage holder made in good faith and for value encumbering any Boat Slip, but all of the terms of this Declaration shall be binding upon and effective against any Owner whose title to a Boat Slip is derived through foreclosure or trustee's sale, or otherwise.

**Section 13.3 Relationship with Assessment Liens.**

A. The lien provided for in this Declaration for the payment of Assessments, and any lien provided for in any easement agreement between BMA and BMCA to secure the payment of Assessments, shall be subordinate to the lien of any Eligible Mortgage Holder which was recorded prior to the date any such Assessment becomes due;

B. If the Marina Property or any Boat Slip located thereon which is subject to a monetary lien created by this Declaration is also subject to the lien of an Eligible Mortgage Holder, then: (1) the foreclosure of any lien created by this Declaration shall not operate to affect or impair the lien of such Eligible Mortgage Holder; and (2) the foreclosure of the lien of an Eligible Mortgage Holder or the sale under a power of sale included in a Mortgage or deed of trust shall not operate to affect or impair the lien hereof, except that any Person who obtains an interest thereafter shall take title free of any lien created by this Declaration or any personal obligation for said charges as shall have accrued up to the time of any foreclosure, but subject to the lien hereof for all said charges that shall accrue subsequent to such foreclosure;

C. Without limiting the provisions of subsection (B) of this Section 13.3, any Eligible Mortgage Holder who obtains title to the Marina Property or a Boat Slip located thereon by reason of any foreclosure, or deed or assignment in lieu of foreclosure, or any Person who obtains title at a private or judicial foreclosure sale, shall take title to such Boat Slip free of any claim for unpaid Assessments against such Boat Slip which accrued prior to the time such Eligible Mortgage Holder or purchaser takes title to such Boat Slip, except for liens or claim for a share of such Assessments resulting from a pro rata reallocation of such Assessments to all Boat Slips within the Marina Property; and

D. Nothing in this Section shall be construed as releasing any Person from the personal obligation to pay for any Assessments levied pursuant to the Declaration during the period such Person was an Owner.

**Section 13.4 Required Eligible Mortgage Holder Approval.** Any Eligible Mortgage Holder who receives a written request to approve additions or amendments to this Declaration, Articles, or Bylaws, which additions or amendments are not material, who does not deliver or mail to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request. Any addition or amendment to this Declaration, Articles, or Bylaws shall not be considered material if it is for the purpose of correcting technical errors or for clarification only.



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The approvals required by this Section shall not apply to amendments that may be executed by Declarant in the exercise of its rights or reservations pursuant to this Declaration.

**Section 13.5 Other Rights of Eligible Mortgage Holders.** Any Eligible Mortgage Holder (and such Eligible Mortgage Holder's Insurer or Guarantor) shall, upon written request to BMA, be entitled:

A. To inspect current copies of this Declaration (and any amendments), BMA Articles, Bylaws, Rules and Regulations, and other books and records of BMA during normal business hours; and

B. To receive an annual financial statement of BMA (as audited or reviewed by a certified public accountant) within one hundred twenty (120) days following the end of BMA's fiscal year.

**Section 13.6 Notices of Action.** Upon written request to BMA identifying the name and address of the Eligible Mortgage Holder (and the name and address of the Eligible Mortgage Holder's Insurer or Guarantor, if desired) and the Boat Slip number or address, any such Eligible Mortgage Holder (or any such Insurer or Guarantor) will be entitled to timely written notice of:

A. Any condemnation or casualty loss which affects a material portion of any Boat Slip or any other portion of the Marina Property on which there is a first lien held by such Eligible Mortgage Holder;

B. Any delinquency in the payment of Assessments or charges owed by an Owner of a Boat Slip subject to the lien of an Eligible Mortgage Holder, which remains uncured for a period of sixty (60) days; and

C. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by BMA.

## ARTICLE XIV

## MISCELLANEOUS

**Section 14.1 Enforcement.** BMA, Declarant, any Owner, or BMCA shall have the right to enforce, by proceedings at law or in equity, all Covenants, Conditions, and Restrictions and other provisions now or hereafter imposed by this Declaration, or any amendments thereto, including the right to prevent the violation of this Declaration, and the right to recover damages and other sums for such violations. BMA, Declarant, any Owner, or BMCA shall also have the right to



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enforce by proceedings at law or in equity the provisions of the Bylaws and Rules and Regulations and any respective amendments thereto.

**Section 14.2 No Waiver.** Failure by BMA, Declarant, any Owner, or BMCA to enforce any provisions contained herein, or contained in the Bylaws or Rules and Regulations, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other provision contained herein.

**Section 14.3 Cumulative Remedies.** All rights, options and remedies of BMA, Declarant, the Owners or the Eligible Mortgage Holders, or BMCA, under this Declaration are cumulative, and no one of them shall be exclusive of any other, and Declarant, and BMA, Declarant, the Owners and the Eligible Mortgage Holders, and BMCA shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Declaration.

**Section 14.4 Severability.** If any provision of this Declaration, or any paragraph, sentence, clause, phrase or word or application thereof to any person or circumstance is invalidated by a court of competent jurisdiction, such invalidity does not affect the validity of the remainder of this Declaration, and the application of any provision, paragraph, sentence, clause, phrase or word to any person or other circumstance shall not be affected thereby, and the same shall remain in full force and effect.

**Section 14.5 Covenants to Run with the Land; Term; Termination of Boat Slip Ownership.** The provisions of this Declaration shall run with and bind the Marina Property and the Boat Slips as covenants running with the land and shall inure to the benefit of and be enforceable by BMA, Declarant, any Owner, or BMCA, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date the Declaration is recorded, after which time this Declaration and other provisions shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed and acknowledged by Owners of Boat Slips of at least eighty percent (80%) of the voting interests in BMA, has been recorded agreeing to termination of ownership of the Bigfork Marina during the initial or any subsequent term. Notwithstanding anything in this Section 14.5, or anything in this Declaration to the contrary, no termination, alteration, modification or addition to this Declaration shall be valid or have any force and effect without the approval of BMCA and, during the Period of Declarant Control, of Declarant.

**Section 14.6 Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a recreational marina and for the maintenance of the Marina Property. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.



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**Section 14.7 Gender and Number.** Whenever the context of this Declaration requires, the singular shall include the plural, and vice-versa, and the masculine shall include the feminine and the neuter, and vice-versa.

**Section 14.8 Nuisance.** The result of every act or omission whereby any provision contained in this Declaration or any provision contained in the Bylaws or Rules and Regulations is violated in whole or in part is hereby declared to be and shall constitute a nuisance, and every remedy allowed at law or in equity against a nuisance, either public or private, shall be applicable with respect to the abatement thereof and may be exercised by BMA, any Owner, or BMCA. Such remedy shall be deemed cumulative to all other remedies set forth in this Declaration and shall not be deemed exclusive.

**Section 14.9 Attorney Fees.** In the event any action is instituted to enforce any of the provisions contained in this Declaration, Bylaws, or Rules and Regulations, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment reasonable attorney fees and costs of suit.

**Section 14.10 Notices.** Any notice to be given to an Owner, an Eligible Mortgage Holder, and Eligible Insurer or Guarantor, Declarant, BMA, or BMCA under the provisions of this Declaration shall be in writing and shall be delivered as follows:

A. Notice to an Owner shall be delivered personally or sent by overnight delivery service, or by mailing first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Board for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner shown on the assessment records of Flathead County, Montana, if any, or by telecopy or by electronic transmission in accordance with the Montana Uniform Electronic Transmission Act at the most recent address for purposes of giving notice furnished in writing by the Owner to BMA. Any notice shall be deemed to have been given and received as follows: (a) if sent by registered or certified mail, as of the close of the third (3rd) business day following the date of mailing postmark; (b) if personally delivered, on the date delivered; (c) if sent by telecopy or electronic transmission on a business day, then on the date sent, or if the date sent is not a business day, then on the first business day after the date sent; and, (d) on the next business day after the date sent in all other cases.

B. Notice to an Eligible Mortgage Holder or Eligible Insurer or Guarantor shall be delivered by first class Untied States mail, postage prepaid, to the most recent address furnished by such an Eligible Mortgage Holder or Eligible Insurer or Guarantor in writing to the Board for the purpose of notice or, if no such address shall have been furnished, to any office of the Eligible Mortgage Holder in Flathead County, Montana, or if no such office is located in Flathead County, to any office of such an Eligible Mortgage holder or Eligible Insurer or

Guarantor. Any notice so deposited in the mail shall be deemed delivered as of the close of the third (3rd) business day following the date of mailing postmark.

C. The declaration of an officer or authorized agent of BMA declaring under penalty or perjury that a notice has been mailed to any Owner or Owners, or to any Eligible Mortgage Holder, or Eligible Insurer or Guarantor or Eligible Mortgage Holders or Eligible Insurers or Guarantors, to the address or addresses for the giving of notice pursuant to this Section, shall be deemed conclusive proof of such mailing.

D. Notices to BMA shall be delivered by registered or certified United States mail, postage prepaid, return receipt requested, addressed to the office of the statutory agent or managing agent of BMA, and, during the Period of Declarant Control, to Declarant as follows:

Reto Barrington
100 Second Street East, Suite #218
Whitefish, MT 59937

Any notice so deposited in the mail to BMA shall be deemed delivered upon the date of receipt.

E. Notices to BMCA shall be delivered by registered or certified United States mail, postage prepaid, return, receipt requested, addressed to the office of the statutory agent or managing agent of BMCA, and, during the Period of Declarant Control, to Declarant as follows:

Reto Barrington
100 Second Street East, Suite #218
Whitefish, MT 59937

Any notices so deposited in the mail to BMCA shall be deemed delivered upon the date of receipt.

**Section 14.11 Effect of Declaration.** This Declaration is made for the purposes set forth in the recitals in this Declaration, and Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. Declarant shall have no liability whatsoever if any of the provisions of this Declaration, Articles, Bylaws, or Rules and Regulations are determined to be unenforceable in whole or in part or under certain circumstances.

**Section 14.12 Personal Covenant.** To the extent the acceptance of a grant and conveyance of a Boat Slip creates a personal covenant between the Owner of such Boat Slip and Declarant, other Owners, BMA, or BMCA, such personal covenant shall terminate and be of no further force or effect from and after the date when a Person ceases to be an Owner except to the extent this



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Declaration provides for personal liability with respect to the Assessments incurred during the period a Person is an Owner, and except with respect to acts and omissions taking place prior to the time the Person ceases to be an Owner.

**Section 14.13 Nonliability of Officials.** To the fullest extent permitted by law, neither the Board nor any officer of BMA or BMCA shall be liable to any Owner or BMA for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error, or negligence if such Board member or officer acted in good faith within the scope of his or their duties.

**Section 14.14 Real Property Taxes.** Unless, or until, any property taxes, if any, have been assessed and segregated by the County Assessor of Flathead County for the interests in Boat Slips, such taxes shall be paid by BMA through assessments made to Owners. If real property taxes are imposed on the Marina Property as a whole rather than against any Boat Slip rights individually, the proportionate share of such tax or installment thereof for a particular Boat Slip shall be assessed so that each Boat Slip pays one thirty-sixth ($1/36^{th}$) of it. BMA may levy a Special Assessment against any Owner who fails to pay his or her share of any allocable taxes pursuant to this Section. In the event such Special Assessment is not paid within thirty (30) days of its due date, the Board may resort to all remedies of BMA for the collection thereof.

**Section 14.15 Use of Funds collected by BMA.** All funds collected by BMA, including Assessments and contributions to BMA paid by Owners, if any, shall be held by BMA in a fiduciary capacity to be expended in their entirety for nonprofit purposes of BMA in managing, maintaining, caring for, operating, repairing, preserving and replacing the Marina Property, including easement interests appurtenant thereto, and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of BMA managing, maintaining, caring for, operating, repairing, preserving and replacing the Marina Property and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).

**Section 14.16 Notification of Sale or Transfer.** Concurrently with the consummation of the conveyance or other transfer of any Boat Slip, or within fourteen (14) days after the dates of such transfer, the transferee shall notify BMA in writing of such transfer. The written notice shall set forth the name of the transferee and his transferor, the number of the Boat Slip purchased or acquired by the transferee, the transferee's mailing address, the date of the sale or transfer, and the name and address and telephone and facsimile numbers of the transferee's Lender, if any. Prior to the receipt of such written notice, all notices required or permitted to be given by BMA to the Owner shall be deemed to be duly made or given to the transferee if duly and timely made and given to the transferee's predecessor in interest.

**Section 14.17 Owner Liability and Indemnification.** Each Owner shall be liable to the remaining Owners and to BMA for any damage to the Marina Property that may be sustained by

reason of the negligence of that Owner or any Occupant of that Owner's Boat Slip and the agents, servants, family members, tenants, guests, licensees, invitees or employees of such Owner or Occupant, but only to the extent that any such damage is not covered by property coverage (casualty) insurance in favor of BMA. Each Owner, by acceptance of a grant and conveyance for a Boat Slip, agrees personally and for that Owner or any Occupant of that Owner's Boat Slip and the agents, servants, family members, tenants, guests, licensees, invitees or employees of such Owner or Occupant, to indemnify BMA and, as may be applicable, each and every other Owner, and to hold BMA and such other Owners harmless from, and to defend BMA and such Owners against, any claim of any person for personal injury or property damage so occurring, except to the extent: (A) that such injury or damage is covered by liability insurance in favor of BMA or any other Owner, or (B) the injury or damage occurred by reason of the willful or negligent act or omission of BMA or other Owner or Occupant.

**Section 14.18 Conflicting Provisions.** In the case of any conflict between this Declaration, Articles, Bylaws, or Rules and Regulations, this Declaration shall control.

**Section 14.19 Amendments.** Subject to the other provisions of this Declaration, this Declaration may be amended as follows:

A. Prior to the grant and conveyance of an interest in the first Boat Slip to an Owner other than a Declarant, this Declaration and any amendments thereto may be amended by the execution by Declarant of an instrument amending the same.

B. Except as otherwise provided in this Declaration, subsequent to the grant and conveyance of the first Boat Slip to an Owner other than Declarant, this Declaration may be amended at an Annual or Special Meeting of the Members, by a vote of the Owners having seventy-five percent (75%) of the voting interests in BMA, and whether present in person or by proxy, so long as notice of such meeting states that such amendment, alteration or repeal is to be considered; provided, however, that as to particular matters as set forth in this Declaration, the percentage of the voting interests necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that particular clause or provision. Nothing to the contrary withstanding, no amendment of this Declaration shall be effective unless approved by BMCA and, during the Period of Declarant Control, by Declarant. Within thirty (30) days of such action to amend, alter or repeal this Declaration, notice shall be given to the membership of BMA and to BMCA by mail of such action.

C. An amendment which only requires the execution of an instrument by Declarant as hereinabove provided shall be effective when executed by Declarant and when recorded in the office of the Flathead County Clerk and Recorder, Kalispell, Montana. An amendment which requires the affirmative written assent or vote of the Owners as hereinabove provided shall be effective when executed by the President and Secretary of BMA and the President and Secretary

of BMCA who shall certify that the amendment has been so approved, and when the amendment has been recorded in the office of the Flathead County Clerk and Recorder, Kalispell, Montana.

D. Any provision of this Declaration, the Articles, Bylaws or Rules and Regulations which expressly requires the approval of a specified percentage or specified percentage of the voting power of BMA or Eligible Mortgage Holders and Eligible Insurers or Guarantors for action to be taken under said provision can be amended only with the affirmative written assent or vote of not less than the same percentage or percentages of the voting power of BMA and/or Eligible Mortgage Holders and Eligible Insurers or Guarantors.

E. Notwithstanding anything herein to the contrary, during the Period of Declarant Control, Declarant shall have the unilateral right to amend this Declaration after this Declaration is recorded without obtaining the approval of the Owners, BMA, existing Mortgagees, or BMCA (1) if such amendment is solely to comply with applicable law or correct a technical or typographical error, (2) if such amendment does not adversely alter any substantial rights of any Owner or Mortgagee, or (3) in order to meet the guidelines or regulations of a mortgagor or insurer. Such amendments shall not require approval of any Owners or Eligible Mortgage Holders and Eligible Insurers or Guarantors or any other entity.

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IN WITNESS WHEREOF, the Declarant has executed this Declaration dated this 10th day of July, 2007.

DECLARANT:

Reto Barrington

Dennis W. Foster

Randall L. Gembala

STATE OF MONTANA )
:ss
County of Flathead )

This instrument was signed and acknowledged before me on the 10th day of July, 2007, by Reto Barrington, Dennis W. Foster, and Randall L. Gembala.

JO GRAY (SEAL) NOTARIAL SEAL STATE OF MONTANA

NOTARY PUBLIC for the State of Montana
Printed Name: Jo Gray
Residing at Whitefish, Montana
My Commission Expires: September 8, 2007



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## ACCEPTANCE

By executing this Declaration, BMA, on behalf of itself and all future Boat Slip Owners, hereby accepts and agrees to all of the above and foregoing terms and conditions set forth in this Declaration, and assumes and undertakes the performance of all of the obligations and duties hereof made applicable to BMA.

BIGFORK MARINA BOAT SLIP OWNERS ASSOCIATION, INC.

BOARD OF DIRECTORS:

Reto Barrington

Dennis W. Foster

Randall L. Gembala

STATE OF MONTANA )
:ss
County of Flathead )

This instrument was signed and acknowledged before me on the 10th day of July, 2007, by Reto Barrington, Dennis W. Foster, and Randall L. Gembala in their capacity as the Board of Directors.

JO GRAY (SEAL) NOTARIAL SEAL STATE OF MONTANA

NOTARY PUBLIC for the State of Montana
Printed Name: Jo Gray
Residing at Whitefish, Montana
My Commission Expires: September 8, 2007



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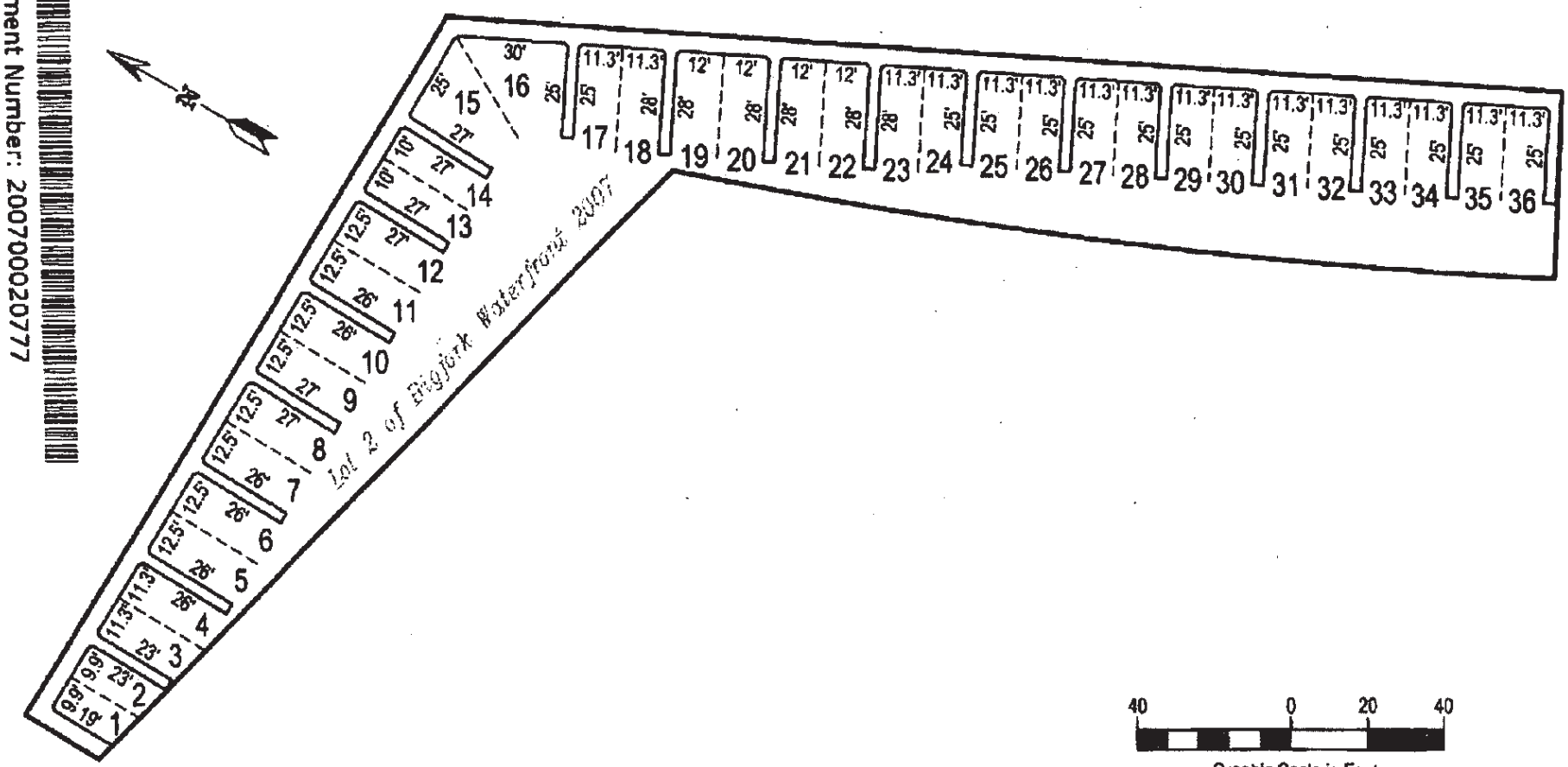
# EXHIBIT A

## Declaration and Acceptance of Covenants, Conditions, Restrictions, Easements, and Uses for Bigfork Marina

## Site Plan of Marina Property

Lot 2 of Bigfork Waterfront 2007
Section 36, Township 27 North,Range 20 West,
Principal Meridian, Flathead County, Montana

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# EXHIBIT "B"

Bigfork Marina – Allocation of Voting Interests and Common Expenses

| Boat Slip No. | Voting Interest and Common Expense Obligations |
|---|---|
| Nos. 1 - 36 | Each Boat Slip, regardless of size, will have one (1) vote in BMA matters, and each Boat Slip, regardless of size, is obligated for a 1/36$^{th}$ share of the Common Expenses. |