*When recorded return to:*

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EASEMENT- AGREEMENT by LEO W TRACY
Date 7/12/2007 Time 11:29 AM Page: 1 of 21
Paula Robinson, Flathead County Montana

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# EASEMENT AGREEMENT

This EASEMENT AGREEMENT (herein "Easement Agreement") is hereby made by, between, and among **Reto Barrington, Dennis W. Foster,** and **Randall L. Gembala**, of c/o Reto Barrington, 100 Second St. East, Suite #218, Whitefish, Montana, 59937 (herein "Declarant"); **Bigfork Marina Condominium Association, Inc.**, a Montana nonprofit corporation, of c/o Reto Barrington, 100 Second St. East, Suite #218, Whitefish Montana, 59937 (herein "BMCA"); and **Bigfork Marina Association, Inc.**, a Montana nonprofit corporation, of c/o Reto Barrington, 100 Second St. East, Suite #218, Whitefish Montana, 59937 (herein "BMA"). Declarant, BMCA and BMA may hereinafter be referred to individually as a "Party" and collectively as the "Parties".

## RECITALS

A. Declarant is the owner and developer of that real property located in Flathead County, Montana, described as follows:

> **Lot 1 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 "Condominium Property").

B. Declarant is also the owner and developer of that real property located in Flathead County, Montana, 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").

C. BMCA has been organized to establish, operate, and act as a unit owner's association for the owners of condominium units in Bigfork Marina Condominiums located on the Condominium Property.

D. BMA has been organized to establish, operate, and act as a Boat Slip owner's association for that recreational marina project known as Bigfork Marina located on the Marina Property.

E. The Condominium Property consists of the land, the buildings, the condominium units, the common elements, all improvements and permanent fixtures of whatever kind situated or located thereon, and all easements, rights, and privileges made appurtenant thereto, and intended for the mutual use, benefit, and enjoyment of the owners and occupants of the condominium units on the Condominium Property.

F. The Marina Property consists of the land, and all improvements and permanent fixtures of whatever kind situated or located thereon, including walkways, boardwalks, mooring walkways, pilings, piers, and all easements, rights, and privileges made appurtenant thereto and intended for the mutual use, benefit, and enjoyment of the owners and occupants of the Marina Property and the Boat Slips located thereon.

G. The Marina Property lies adjacent to the Condominium Property. It is desirable that the Parties, living and operating in such close proximity to each other, establish a means and method of cooperation for the benefit of and to more fully enjoy the amenities of the property of both Parties, being mindful also that without certain access on, over and under, and the right to certain usage of, portions of the condominium common elements located on the Condominium Property, BMA members and occupants would be unable to access or have beneficial use and enjoyment of Marina Property.

H. In order for BMA members and occupants to fully use, benefit from, and enjoy the Marina Property, it is desired by the Parties that there be established and made appurtenant to the Marina Property certain easements, rights, and privileges on, over, and under portions of the condominium common elements located on the Condominium Property subject, however, to certain duties, responsibilities, and obligations attendant thereto. It is also desired by the Parties that BMCA members and occupants have an easement right to usage upon a portion of the Boat Slip Property as an amenity to the Condominium Property.

I. Ponderosa Boat Club Owners Association, Inc., a Montana nonprofit corporation (herein "PBCOA"), is an association of owners of lots in that subdivision located near the Condominium Property and Marina Property, generally known as Ponderosa Boat Club. It is the desire, understanding, and intent of the Parties that, as long as PBCOA owns one or more Boat Slips on the Marina Property, the Easement rights to be granted in this Agreement to members

and occupants of the Marina Property include, as occupants of the Marina Property, members of PBCOA, and occupants of lots in Ponderosa Boat Club.

J. The Parties desire that Rules and Regulations be established from time to time by BMCA to govern the orderly interrelationship between owners and occupants of the Marina Property and owners and occupants of the Condominium Property.

K. The Parties desire to memorialize their agreement with regard to easement establishment and usage of a portion or portions of each other's property, and subject each other to accompanying duties, responsibilities, and obligations with regard to the usage by one Party of another Party's property.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE PARTIES GRANT UNTO EACH OTHER PERPETUAL NON-EXCLUSIVE EASEMENT RIGHTS FOR USAGE OF PORTIONS OF EACH OTHER'S PROPERTY (HEREIN "EASEMENT", OR "EASEMENTS", OR "EASEMENT AREA", OR "EASEMENT AREAS"), AND SUBJECT EACH OTHER TO CERTAIN DUTIES, RESPONSIBILITIES, OBLIGATIONS, TERMS, AND CONDITIONS IN REGARD TO SUCH, USAGE, ALL AS IS HEREINAFTER SET FORTH:

1. **Usage of Easement Areas on Condominium Property Includes BMA Members and Occupants of Marina Property.** The Easement rights herein granted by BMCA to BMA on the Condominium Property include authorization for usage not only by members of BMA, but also non-member occupants of the Marina Property and Boat Slips thereon. Occupants are defined as those persons other than members of BMA who are in rightful possession of any part of the Marina Property and Boat Slips, including, but not limited to, agents, servants, family members, lessees, tenants, guests, licensees, invitees, or employees.

2. **Usage of Easement Areas on Condominium Property Includes Ponderosa Boat Club Owners Association, Inc. (PBCOA) Members and Occupants of Ponderosa Boat Club.** As long as PBCOA owns one or more Boat Slips on the Marina Property, the Easement rights granted herein by BMCA to BMA on the Condominium Property include Easement usage by members of PBCOA and non-member occupants of Ponderosa Boat Club, and their agents, servants, family members, lessees, tenants, guests, licensees, invitees, or employees, all of whom shall be deemed occupants of the Marina Property. However, the Easement rights granted herein to PBCOA members and occupants do not intend or imply that there are any easement rights of any nature in favor of BMA or BMCA within Ponderosa Boat Club, nor is it intended or implied that the obligations of PBCOA or its members or occupants are any greater than are the obligations of any other owner of a Boat Slip on the Marina Property. This Paragraph No. 2 cannot be modified, amended, or revoked without the written consent of PBCOA.

3. **Usage of Easement Areas on Marina Property Includes BMCA Members and Occupants of Condominium Property.** The Easement rights herein granted by BMA to

BMCA on the Marina Property includes authorization for usage not only by members of BMCA, but also by non-member occupants of the Condominium Property. Occupants are defined as those persons other than members of BMCA who are in rightful possession of a condominium unit or the condominium common elements on the Condominium Property including, but not limited to, agents, servants, family members, lessees, tenants, guests, licensees, invitees, or employees.

4. **BMA Easement on Condominium Property for General Access.** This Easement (herein "General Access Easement") is for BMA to have ingress and egress on and over the Condominium Property to access the Marina Property, and for BMA to have that usage of the Condominium Property as reasonably necessary for the use and beneficial enjoyment of all the other more specifically identified Easement rights granted in this Easement Agreement.

One portion of this General Access Easement (for ingress and egress on and over the Condominium Property to access the Marina Property) begins at the main entrance gate to the Condominium Property located near the eastern portion of Park Way Avenue at or near the most northwesterly Condominium Property boundary. It continues onto and through the Condominium Property for pedestrian, bicycle, and vehicular access to and from the Marina Property. This may follow a designated traffic pattern for entering and leaving the Condominium Property, as determined by BMCA.

The other portion of this General Access Easement is to allow BMA to have access and ingress and egress on, over, and under the Condominium Property for use and beneficial enjoyment of all the other specifically identified Easements for usage of the Condominium Property referenced herein, including storm water improvements, parking areas, boat ramp and fuel pump area, picnic area, lavatory and shower facility, utilities, landscape usage, and main boardwalk on Condominium Property.

Attached hereto as **Exhibit "A"** (Page 1 of 2 and Page 2 of 2) is a Site Plan of Easement Areas on Condominium and Marina Properties and Site Plan of Landscaped Easement Areas on Condominium Property. Except for the Storm Water Easement and Utility Easement, **Exhibit "A"** depicts this General Access Easement and the other Easements referenced below.

5. **BMA Easement on the Condominium Property for Storm Water.** Declarant, BMCA, and BMA have entered into and have recorded a Storm Water Agreement in compliance with certain regulatory requirements imposed with regard to storm water, including duties, responsibilities, and obligations of BMCA and BMA in this regard. These include routine inspection, and the cleaning, repair, maintenance, replacement or reconstruction of Storm Water Improvements located upon and under the Condominium Property.

This Easement for the treatment of storm water is for BMA to utilize the storm water improvements, including detention ponds, underground storage chambers, and affiliated cleanouts (herein "storm water improvements") which Declarant has constructed on the

Condominium Property (herein "Storm Water Easement"). Both BMCA and BMA are obligated to abide by the terms of the Storm Water Agreement.

6. **BMA Easement on Condominium Property for Parking.** This Easement on the Condominium Property is for BMA to park motor vehicles and watercraft trailers, and to load and unload materials, supplies, passengers, watercraft, and watercraft trailers (herein "Parking Easement"). Although this Parking Easement is intended to allow parking by both BMCA and BMA, the underlying philosophy in regard to parking, particularly during the Marina Property seasonal operation, is to facilitate the use of the Marina Property by BMA, yet bearing in mind that the Parking Easement is non-exclusive.

7. **BMA Easement on Condominium Property for Boat Ramp and Fuel Pump Usage.** This Easement is for BMA usage of portions of the Condominium Property for watercraft put in and take out, and fueling from the fuel pump (herein "Boat Ramp and Fuel Pump Easement").

The boat ramp consists partially of a space on the Condominium Property to access the water which flows on the Condominium Property, Marina Property, and the canal which accesses Flathead Lake. There is no warranty, guarantee, or representation made by Declarant or BMCA that water will always be available for beneficial use of the boat ramp and fuel pump. The availability of water flowing on the Condominium Property and/or the Marina Property depends upon Flathead Lake water levels which are controlled and determined by man made and/or natural factors beyond the control of man.

BMCA, at its sole discretion, may place the boat ramp and fuel pump under the operational and managerial control of an outside party not party to this Easement Agreement. Unless and until BMCA enters into such an operational and managerial agreement with a third party, BMCA will have full control over any and all aspects of the boat ramp and fuel pump. BMCA or, as may be applicable, such operational and managerial party will be entitled to any and all fees generated from the boat ramp and fuel pump operation. As part of any agreement for the operation and management of the boat ramp and fuel pump operation, BMCA may, at its sole option, require that appropriate liability insurance be carried by such operational and managerial entity naming BMCA and BMA as additional named insureds on any such policy.

This Easement will be subject, however, to the payment of such reasonable fees and charges for fuel and boat ramp usage as may be set from time to time by BMCA or that outside party having operational and managerial control of the boat ramp and fuel pump concession.

8. **BMA Easement on the Condominium Property for Picnic Area.** This Easement is for BMA usage of the picnic area located on the Condominium Property westerly of the boat ramp (herein "Picnic Area Easement").

9. **BMA Easement on Condominium Property for Lavatory and Shower Facility Usage.** This Easement is for BMA usage of both portions of the lavatory and shower facility located on the Condominium Property (herein "Lavatory and Shower Easement").

10. **BMA Easement on Condominium Property for Utilities.** This Easement on the Condominium Property is for the installation, reinstallation, use, repair, and maintenance of lines, water, power, cables, wires, conduits, pipes or other devices for water, electricity, power, and any similar public or quasi-public improvements, facility, or such public utilities necessary to serve the Marina Property (herein "Utility Easement").

11. **BMA Easement on Condominium Property for Landscape Usage.** This Easement is for BMA usage of landscaped areas located on the Condominium Property (herein "Landscape Easement"). However, the landscape area between the grass pave surface and the building on the Condominium Property shown on **Exhibit "A"** is not included in the Landscape Easement.

12. **BMA Easement on Condominium Property for Main Boardwalk Usage.** This Easement is for pedestrian usage by BMA of those portions of the main boardwalk located on the Condominium Property (herein "Marina Boardwalk Easement on Condominium Property").

13. **BMCA Easement on Marina Property for Main Boardwalk Usage.** This Easement is for the pedestrian usage by BMCA of those portions of the main boardwalk located on the Marina Property (herein "Main Boardwalk Easement on Marina Property"). This Main Boardwalk Easement on Marina Property does not include any right of usage, express or implied, by BMCA of the mooring walkways which run parallel to the Boat Slips or any other portion of the Marina Property. This is not intended to exclude, nor does it exclude, BMCA members and occupants from swimming on the navigable waters flowing over the Marina Property.

14. **Reservations by the BMCA and BMA.** The Easements granted herein, although perpetual, are by no means exclusive. BMCA and BMA, each for themselves, specifically reserves the right to use the Easement Areas granted from one Party to the other Party in such manner as does not unreasonably interfere with intended use of an Easement granted to the other Party, **provided, however,** that the usage of Easement Areas on the Condominium Property are subject to such Rules and Regulations as are established from time to time by BMCA, and the usage of the Easement Area on the Marina Property is subject to such Rules and Regulations as are established from time to time by BMA.

15. **General Conditions for Usage of Easements; Restrictions on Structures.** The Parties shall use the easements described herein solely for the specific purposes set forth herein, and no Party shall use such on, or in relation to, or for any property other than the Condominium Property and the Marina Property.

Neither BMCA nor BMA will cause to be constructed on those portions of their respective properties on which these easements are located any type of building, barricade, or structure, or other fixed objects of any kind, shape, or form, which would, in any way, interfere with the uses, as provided for in this Easement Agreement, **provided, however**, that objects or structures intended for the safety of those using the Easements set forth herein or intended to restrict usage by those not entitled to usage of the Easements set forth herein, such as, for example, the gate BMCA has constructed at the entrance way to the Condominium Property to restrict access by those not otherwise entitled to access to the Condominium Property or the Marina Property, are not deemed a violation of the provisions of this paragraph, and **also, provided however,** that restrictions on Easement uses may reasonably be imposed as part of Declarant's development of the Condominium Property and the Marina Property, or as part of the construction, maintenance, repair, or reconstruction of either the Condominium Property or the Marina Property on, over, or under which the Easements described herein will run.

16. **Daylight Usage Only by BMA on Condominium Property.** Except for the Storm Water Easement (Paragraph No. 5) and the Utility Easement (Paragraph No. 10), the Easements granted herein in favor of BMA on the Condominium Property may be utilized only during daylight hours.

17. **BMCA to Establish and Enforce Rules and Regulations for all Easement Usage on Condominium Property.** In order to govern the orderly interrelationship between the owners and occupants of the Condominium Property and the owners and occupants of the Marina Property, any and all usage of Easement and Easement Areas located on Condominium Property will be subject to such Rules and Regulations as are established from time to time by BMCA.

18. **BMCA Control Over Repair, Maintenance, and Replacement or Reconstruction of all Easement Areas on Condominium Property.** Any and all repair, maintenance, and replacement or reconstruction of any Easement or Easement Area located on the Condominium Property must be reviewed, approved, ordered, contracted, scheduled, coordinated, undertaken, and overseen by BMCA.

19. **Allocation of Costs for Repair, Maintenance, and Replacement or Reconstruction of Easement Areas on Condominium Property.** Except for the obligation for those costs associated with the main boardwalk located on both the Condominium Property and Marina Property as addressed in Paragraph No. 22 below, all costs for repair, maintenance, and replacement or reconstruction of those Easements and Easement Areas located on the Condominium Property more specifically described in Paragraph Nos. 4 through 11 above, shall be divided equally, and paid one-half by BMCA and one-half by BMA.

20. **BMA to Establish and Enforce Rules and Regulations For Main Boardwalk Easement Usage on Marina Property.** In order to govern the orderly interrelationship between the owners and occupants of the Marina Property and the owners and occupants of the

Condominium Property, any and all usage of the Main Boardwalk Easement on Marina Property will be subject to such Rules and Regulations as are established from time to time by BMA.

21. **BMA Control over Repair, Maintenance, and Replacement or Reconstruction of Main Boardwalk Easement on Marina Property.** The repair, maintenance, and replacement or reconstruction of the Main Boardwalk Easement Area located on the Marina Property must be reviewed, approved, ordered, contracted, scheduled, coordinated, undertaken, and overseen by BMA.

22. **Obligation for Costs for Repair, Maintenance, and Replacement or Reconstruction of Main Boardwalk Easements on Marina Property and Condominium Property.** All costs for repair, maintenance, and replacement or reconstruction of the Main Boardwalk Easement located on the Condominium Property (Paragraph No. 12), and the Main Boardwalk Easement located on the Marina Property (Paragraph No. 13), shall be the obligation of, and be paid by, BMA alone.

23. **Allocation of Other Costs.** The following other costs associated with Easement or Easement Area usage of either the Condominium Property or the Marina Property shall be allocated as follows:

A. **Perimeter Fencing and Gate.** All costs for repair, maintenance, and replacement or reconstruction of the perimeter fencing and gate located on the Condominium Property shall be divided equally, and paid one-half by BMCA and one-half by BMA.

B. **Real Estate and Personal Property Taxes.** All real estate and personal property taxes for those Easement Areas on, over, and under the condominium common elements located on the Condominium Property shall be divided equally, and paid one-half (1/2) by BMCA and one-half (1/2) by BMA. BMCA, acting reasonably, shall make this property tax allocation.

All real estate and personal property taxes assessed against any portion of the Marina Property shall be paid by BMA alone, without BMCA contribution.

C. **Insurance.** All property coverage (casualty) insurance and public liability and property damage insurance costs incurred by BMCA relative to the Easement Areas located on, over, and under the applicable condominium common elements on the Condominium Property shall be divided equally and paid one-half (1/2) by BMCA and one-half (1/2) by BMA. BMCA, acting reasonably, shall make this insurance allocation.

All property coverage (casualty) and public liability and property damage insurance costs incurred by BMA for the Marina Property shall be paid by BMA alone, without BMCA contribution.

D. **Sea Wall.** All costs for repair, maintenance, and replacement or reconstruction of the sea wall whether such repair, maintenance, and replacement is located on the Marina Property or landward thereof, on the Condominium Property, shall be the obligation of, and paid by, BMA alone, without BMCA contribution. For purposes of defining the sea wall, although the seaward edge or face of the sea wall is located within the Marina Property boundary, it is understood that damage, cracking, or other deterioration of the sea wall could occur not only on or within the seaward edge or face of the sea wall and landward onto the Condominium Property, but could also occur on the Condominium Property and spread seaward toward or to the edge or face of the sea wall. In any and all events, the obligation of BMA set forth herein includes all aspects of the sea wall regardless of whether repair, maintenance, and replacement or reconstruction extends beyond the Marina Property to and into the Condominium Property.

E. **Utility Charges.** Since the utility charges for usage of utilities by BMCA on the Condominium Property and BMA on the Marina Property are separately metered, the monthly utility charges for utility usage shall be paid by that Party incurring the usage charge.

24. **Agreement to Pay Easement Assessments.** BMA agrees to pay periodic Easement Assessments, monthly or otherwise, as determined and made by BMCA for BMA's share of the repair, maintenance, replacement or reconstruction of the Easements and Easement Areas located on the Condominium Property, including other costs described herein. Such Easement Assessments may be Regular Easement Assessments, Special Easement Assessments, and Capital Improvement Easement Assessments which shall be fixed, established and collected by BMCA from time to time as provided for herein.

A. **Creation of Lien and Personal Obligation For Easement Assessments.** Each owner of the Marina Property and the Boat Slips located thereon, by acceptance of a deed 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 deed or other instrument, is deemed to covenant and agree to pay BMCA such Easement Assessments as are fixed, established, and collected from time to time as provided herein. The Easement Assessments, together with interest thereon, late charges, attorney fees, court costs and all other costs of collection incurred by BMCA in collecting or attempting to collect delinquent Easement Assessments, whether or not suit is filed, shall be a continuing lien upon the Marina Property and all the Boat Slips located thereon in favor of BMCA. Each such Easement Assessment, together with such interest, late charges, costs and reasonable attorneys' fees, shall also be the personal obligation of the owner of the Marina Property and Boat Slips located thereon at the time the Easement Assessment becomes due.

B. **Purpose of Easement Assessments.** The Easement Assessments levied by BMCA shall be used exclusively for the purposes of promoting the health, safety and

welfare of the Parties as it concerns Easement Area usage, including the management, repair, maintenance, care, operation, preservation, replacement, and reconstruction of Easement Areas, thereby enhancing the quality of life of, and value to, the owners of the Condominium Property and the Marina Property, including, but not limited to, the improvement and maintenance of those services and facilities devoted to this purpose and related to the use and enjoyment of the Easement Areas, or in furtherance of any other duty or power relating to usage of the Condominium Property by BMA.

C. **Regular Easement Assessments.** The BMCA Board of Directors (herein "BMCA Board") is hereby expressly authorized to adopt and amend budgets for the administration and operation of the Easement Areas (including, but not limited to, the management, repair, maintenance, care, operation, preservation, replacement, and reconstruction) without ratification by BMA, 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 the BMA Board of Directors (herein "BMA Board"). No later than thirty (30) days prior to the beginning of each fiscal year, the BMCA Board shall submit to the BMA Board a pro forma operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total Easement Area expenses to be incurred for such fiscal year. The BMCA Board shall at that time determine the amount of the Regular Easement Assessment to be paid by BMA. BMA shall thereafter pay to BMCA BMA's share of such Regular Easement Assessment either in equal monthly installments on the first (1st) day of each month, or in such other manner as the BMCA Board may, in its sole discretion, determine. In the event the BMCA Board shall determine that the estimate of total charges for the current year is, or will become, inadequate to meet all Easement Area expenses for any reason, it shall then immediately determine the appropriate amount of such inadequacy and issue a supplemental estimate of the Easement Area expenses and determine the revised amount of the Regular Easement Assessment to be paid by BMCA and BMA, and the date or dates when revised monthly installments of Regular Easement Assessments shall commence.

D. **Capital Improvement Easement Assessments.** In addition to Regular Easement Assessments, the BMCA Board may levy in any fiscal year a Capital Improvement Easement 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 Easement Area related capital improvement (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 Easement Area purpose as determined by the BMCA Board. Notice in writing of the amount of such Easement Assessments and the time for payment thereof shall be given promptly to the BMA Board.

E. **Special Easement Assessments.** Special Easement Assessments shall be levied by the BMCA Board against BMA for:

(i) Costs incurred for misconduct, other failure to comply with the terms and conditions of this Easement Agreement, or as the result of emergency circumstances;

(ii) Attorneys' fees, interest and other charges relating thereto as provided for in this Easement Agreement.

F. **Date of Commencement of Easement Assessments.** Regular and other Easement Assessments shall commence on the first (1st) day of the month following the conveyance of the first unit on the Condominium Property by Declarant to an owner other than Declarant, or the conveyance of the Marina Property or the first Boat Slip by Declarant to an owner other than Declarant, unless written notice to the contrary is given to the applicable owners. Until BMCA makes an Easement Assessment, the Declarant shall pay all Easement Area expenses of the Condominium Property and the Marina Property.

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

H. **No Offsets.** All Easement Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that BMCA is not properly exercising its duties and powers as provided for herein or a claim that BMA does not use certain Easement Areas.

I. **Statement of Payment.** The BMCA Board shall, upon demand, furnish to the BMA Board a statement in writing signed by an officer or authorized agent of BMCA setting forth whether the Easement Assessments of BMA have been paid and the amount of delinquency, if any. A reasonable charge, of not less than twenty dollars ($20.00) shall be collected by the BMCA Board for the issuance of each such statement. Each statement shall be conclusive evidence of payment of any Easement Assessment therein stated to have been paid.

25. **Effect of Nonpayment of Easement Assessments and Remedies.**

A. **Delinquency.** Any Easement Assessment which is not paid when due is delinquent. Whenever an Easement Assessment is delinquent, the BMCA Board may at its option invoke any or all of the sanctions provided for herein, and any other remedy authorized by applicable law.

B. **Late Charge.** If any Easement Assessment is not paid within fifteen (15) days after the date when it becomes due and payable, BMA shall be obligated to pay a late charge in an amount established by the BMCA Board. The amount of such late charge until paid shall constitute part of the Easement Assessment Lien as provided for in Paragraph No. 24.A.

C. **Interest.** If any Easement 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 BMCA Board on the amount owing from the date due until such time as it is paid.

D. **Action at Law.** BMCA shall have the right, at its option, to enforce collection of any delinquent Easement Assessments in any manner allowed by law. BMCA may bring an action to recover a delinquent Easement Assessment personally against BMA and/or against all the owners within the Marina Property (Boat Slips and otherwise) or to foreclose the Easement Assessment Lien in the manner provided by law for foreclosure of a realty mortgage against the Marina Property, including the Boat Slips located thereon; provided, however, that the BMCA Board's choice of one remedy shall not prejudice or constitute a waiver of BMCA'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 BMA and the Marina Property, including the Boat Slips located thereon, 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). BMA vests in BMCA, or its assigns, the right and power to bring actions at law and/or lien foreclosures against BMA and the Marina Property, including the Boat Slips located thereon, for the collection of delinquent Easement Assessments.

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

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

G. **Personal Liability of Purchaser for Easement Assessments.** A purchaser of the Marina Property, or any Boat Slip located thereon, shall be jointly and severally liable with the seller for all unpaid Easement Assessments against BMA 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 or toward such Easement Assessments.

H. **Construction Liens.** BMA shall indemnify and hold harmless BMCA from and against liability or loss arising from the claim of any lien against the Condominium Property or any part thereof for labor performed or for materials furnished in Easement related work on the Condominium Property for which BMA does not pay its allocated share. BMCA may enforce such indemnity by collecting from BMA the amount necessary to discharge any such lien, including all costs and attorney's fees incidental thereto, in obtaining discharge of the lien.

I. **Priority of Eligible Mortgage Holders.** The enforcement of any Easement Assessment Lien provided for herein shall not affect, impair, defeat or render invalid the lien or charge of any holder of a first mortgage on a Boat Slip or the Marina Property (herein "Eligible Mortgage Holder") made in good faith and for value encumbering any Boat Slip or the Marina Property. The provisions of this Easement Agreement shall be binding upon and effective against any Boat Slip or the Marina Property whose title to a Boat Slip or the Marina Property is derived through foreclosure or trustee's sale, or otherwise.

J. **Eligible Mortgage Holder Relationship with Easement Assessment Liens.**

(i) The Easement Assessment Lien provided for in this Easement Agreement for the payment of Easement Assessments shall be subordinate to the lien of any Eligible Mortgage Holder which was recorded prior to the date any such Easement Assessment becomes due;

(ii) If any Boat Slip or the Marina Property which is subject to a monetary lien created by this Easement Agreement, is also subject to the lien of an Eligible Mortgage Holder, then: (1) the foreclosure of any lien created by this Easement Agreement 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 Easement Assessment Lien hereof, except that any person who obtains an interest thereafter shall take title free of any Easement Assessment Lien created by this Easement Agreement or any personal obligation for said charges as shall have accrued up to the time of any foreclosure,

but subject to the Easement Assessment Lien hereof for all said charges that shall accrue subsequent to such foreclosure;

(iii) Without limiting the provisions of subsection (ii) of this Paragraph No. 25.J., any Eligible Mortgage Holder who obtains title to a Boat Slip or the Marina Property 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 or the Marina Property, as may be applicable, free of any claim for unpaid Easement Assessments against such Boat Slip or the Marina Property which accrued prior to the time such Eligible Mortgage Holder or purchaser takes title to such, except for liens or claim for a share of such Easement Assessments resulting from a pro rata reallocation of such Easement Assessments to all Boat Slips or the Marina Property; and

(iv) Nothing in this Section shall be construed as releasing any person from the personal obligation to pay for any Easement Assessments levied pursuant to this Easement Agreement during the period such person was an owner.

K. **Other Rights of Eligible Mortgage Holders.** Any Eligible Mortgage Holder shall, upon written request to BMA, be entitled to inspect books, records, and financial statements of BMA and obtain current information with regard to delinquencies in Easement Assessments.

26. **Appurtenant Nature and Use of Easements.** The various easements set forth herein shall be for the benefit of either the Condominium Property or the Marina Property, as applicable, as the case may be, and for the respective heirs, representatives, successors, and assigns of either Party. The Condominium Property shall be servient to Easements hereby created and granted in favor of BMA on, over, or under the Condominium Property, and such Easements so created shall be deemed to be appurtenant to the benefited the Marina Property. The Marina Property shall be servient to the Easement hereby created and granted in favor of BMCA on, over, or under the Marina Property, and such Easement shall be deemed to be appurtenant to the benefited the Condominium Property.

The Parties to this Easement Agreement hereby declare that the Condominium Property and the Marina Property and the Boat Slips located thereon are and shall be conveyed, hypothecated, encumbered, leased, occupied, or otherwise used, improved or transferred in whole or in part, subject to the terms, covenants, conditions, restrictions, rights and obligations set forth in this Easement Agreement. All of the covenants, conditions and restrictions shall run with the benefited properties for all purposes and shall be binding upon and inure to the benefit of the Parties to this Easement Agreement, all future owners of any portion of either benefited properties, and, as may be applicable, respective heirs, personal representatives, successors and assigns. Because of the appurtenant nature of the Easements set forth herein, the same shall be

deemed to pass with any conveyances or transfers of all or any part of the Condominium Property or the Marina Property and Boat Slips located thereon, as may be applicable, whether or not such conveyances or transfers specifically describe or include the same.

27. **Indemnity.** Each of the Parties to this Easement Agreement (an "Indemnifying Party") hereby agrees to indemnify and hold harmless the other Party, and its/their successors and assigns (the "Indemnified Party"), from and against all claims, damages, judgments, penalties, costs, liabilities, losses and fees (including any and all sums reasonably paid for settlement of claims, attorney fees, consultant and expert fees, whether incurred prior to trial, at trial or on appeal), whether relating to injury to or death of any person or damage to any property, resulting from or in any way arising out of a breach of this Easement Agreement by the Indemnifying Party or out of the use of the any Easement Area by the Indemnifying Party or by the Indemnifying Party's agents, permittees or invitees; provided, however, the Indemnifying Party shall not indemnify nor save harmless the Indemnified Party from any such action, claim or demand arising out of the negligent or willful conduct of the Indemnified Party, or its/their agents, permittees, or invitees.

28. **Public Liability and Property Damage Insurance.** Both BMCA and BMA agree that the public liability and property damage insurance policy of each shall be endorsed to name the other Party as an additional insured thereunder and state that the applicable Party's insurance company will give thirty (30) days prior written notice to the other Party of any cancellation or reduction in the insurance under said policies. The limits of such coverage shall not be less than $1 Million per occurrence with respect to bodily injury death or property damage, with a $2 Million aggregate in a twelve (12) month period. Consideration shall be given to adjusting limits at least every five (5) years to account for inflation. Evidence of the existence of such insurance showing the other Party as additional named insured will be submitted annually to each Party.

29. **Amendments; Construction.** No modification of or amendment to the terms of this Easement Agreement shall be deemed effective unless the same shall be in writing and executed by the Party to be bound by such modification or amendment. This Easement Agreement shall be governed by and construed in accordance with the laws of the State of Montana.

30. **Attorney Fees.** In the event of any suit in connection with the interpretation of the rights, obligations, and duties under this Easement Agreement, including any suit for the breach thereof, the prevailing Party shall be entitled to costs and a reasonable attorney's fee.

31. **Severability.** If one or more of the provisions contained herein are declared invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be impaired thereby.

32. **Headings.** The headings used herein are for convenience only, and shall not be construed as a part of this Easement Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

33. **Binding Effect.** This Easement Agreement shall be binding upon and inure to the benefit of the Parties hereto, its/their heirs, personal representatives, successors and assigns, and appurtenant to and binding upon the Condominium Property and Marina Property and Boat Slips located thereon.

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BIGFORK MARINA ASSOCIATION, INC.
Board of Directors:

By:_____
Reto Barrington

By:_____
Dennis W. Foster

By:_____
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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IN WITNESS WHEREOF, the Parties have executed this Easement Agreement this 10th day of July, 2007.

DECLARANT:

Reto Barrington

Dennis W. Foster

Randall L. Gembala

BIGFORK MARINA CONDOMINIUM ASSOCIATION, INC.
Board of Directors:

By: Reto Barrington

By: Dennis W. Foster
Dennis W. Foster

By: Randall L. Gembala
Randall L. Gembala

THIS SPACE INTENTIONALLY LEFT BLANK

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 of Bigfork Marina Condominium Association, Inc.




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

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 of Bigfork Marina Association, Inc.



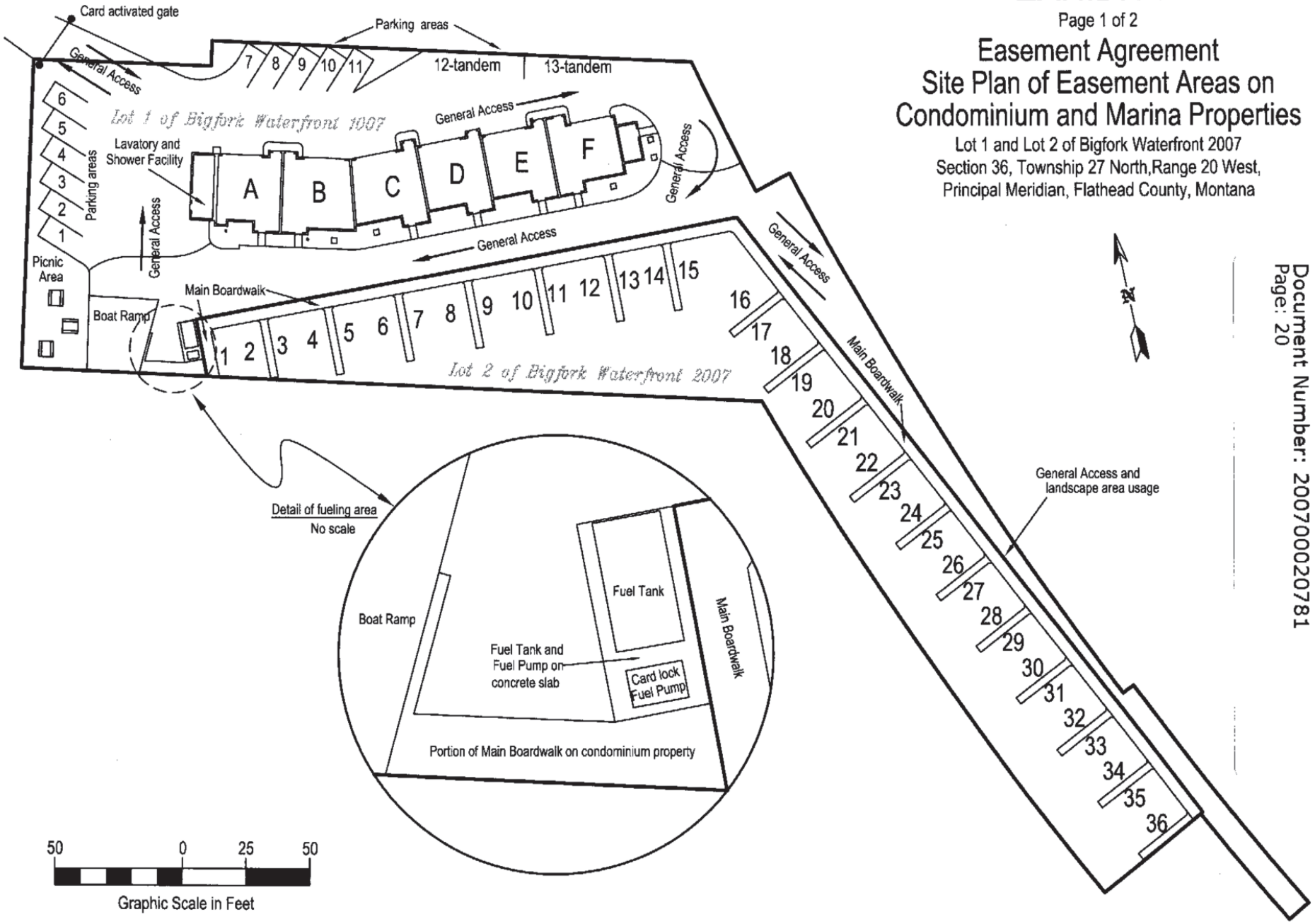

NOTARY PUBLIC for the State of Montana
Printed Name: Jo Gray
Residing at Whitefish, Montana
My Commission Expires: September 8, 2007

# EXHIBIT A

Page 1 of 2

## Easement Agreement
## Site Plan of Easement Areas on Condominium and Marina Properties

Lot 1 and Lot 2 of Bigfork Waterfront 2007
Section 36, Township 27 North,Range 20 West,
Principal Meridian, Flathead County, Montana



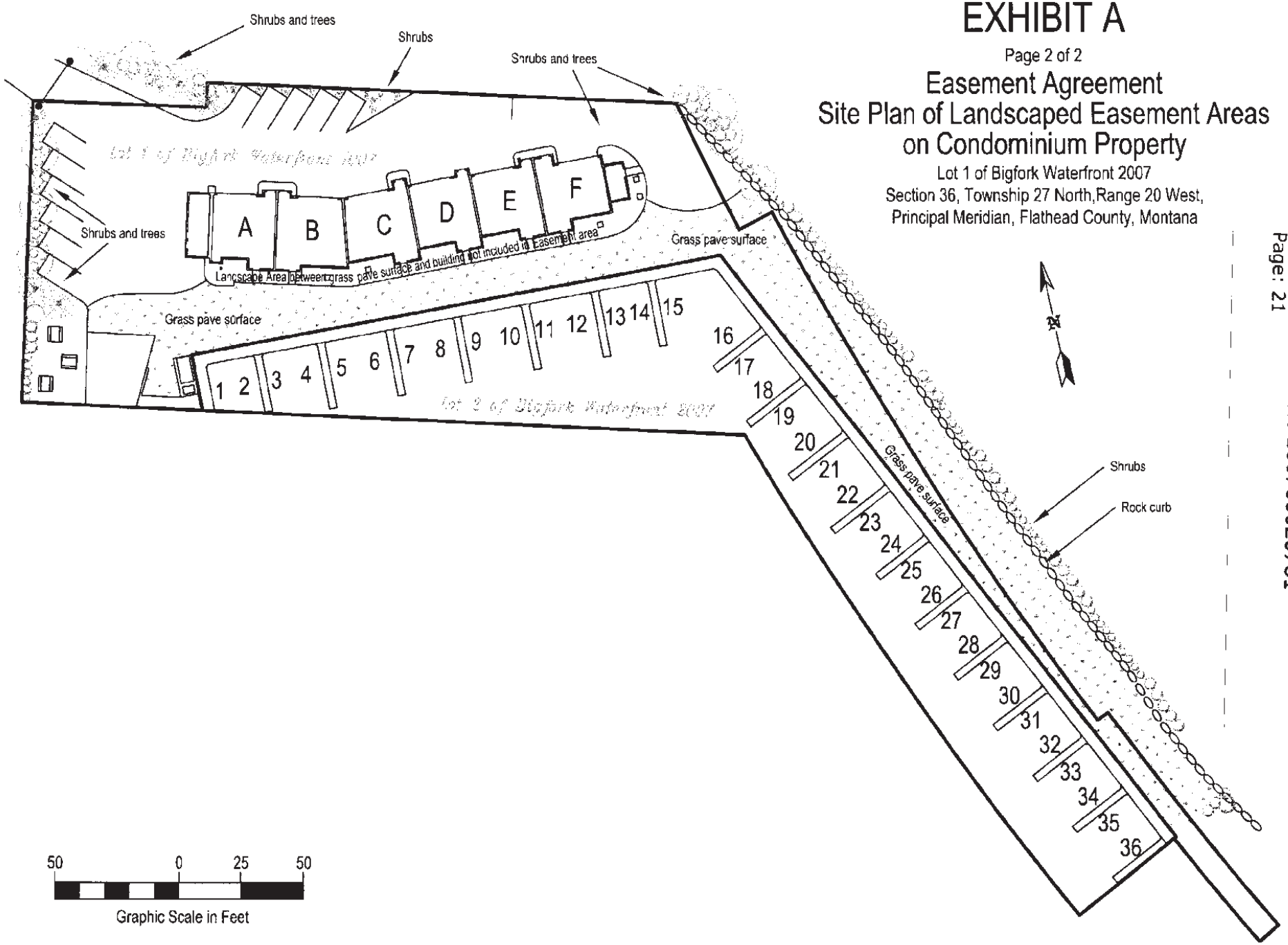

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# EXHIBIT A

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## Easement Agreement
## Site Plan of Landscaped Easement Areas on Condominium Property

Lot 1 of Bigfork Waterfront 2007
Section 36, Township 27 North, Range 20 West,
Principal Meridian, Flathead County, Montana




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