

When recorded, return to:
Dan Bermingham, President
3049 Atherton Lane
Butte, MT 59701

CERTIFICATE OF AMENDMENT

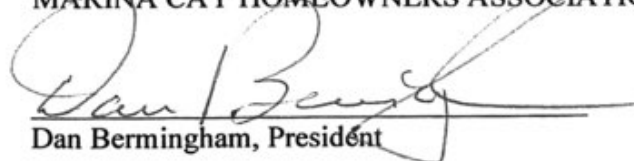
I, Dan Bermingham, sign and swear to the truth of this Certificate of Amendment as President of MARINA CAY HOMEOWNERS ASSOCIATION, INC.

I hereby certify that the attached, following Fifth Amendment and Restatement of the Declaration of Condominium for Marina Cay Condominiums sets forth in full the amendment and restatement adopted in a vote duly held at a meeting beginning on June 1, 2013, after sixty (60) days advance written notice, pursuant to the provisions of said Association's Articles of Incorporation and Bylaws, and Members casting the votes of seventy-five percent (75%) or more of the shares affirmatively voted for the adoption of the attached, following Fifth Amendment and Restatement of the Declaration of Condominium for Marina Cay Condominiums.

I, Joni W. Kemp, as Secretary of said Association sign and attest to the truth of the above statements.

DATED this 23 day of September, 2013.

MARINA CAY HOMEOWNERS ASSOCIATION, INC.


Dan Bermingham, President

ATTEST:

_____, Secretary

STATE OF MONTANA

SS:

County of Flathead

On this _____ day of _____, 2013, before me, the undersigned, a Notary Public for the State aforesaid, personally appeared Dan Bermingham and _____, known to me to be the President and Secretary, respectively, of MARINA CAY HOMEOWNERS ASSOCIATION, INC., and they signed and swore to the truth of the above Certificate of Amendment, and acknowledged to me their signatures as agents of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

Print name:
Notary Public for the State of Montana
Residing at _____, Montana
My commission expires _____

When recorded, return to:
Dan Bermingham, President
3049 Atherton Lane
Butte, MT 59701

**FIFTH AMENDMENT AND RESTATEMENT OF THE
DECLARATION OF CONDOMINIUM FOR
MARINA CAY CONDOMINIUMS**

This Fifth Amendment and Restatement of the Declaration of Condominium for Marina Cay Condominiums ("Restatement") concerns the Declaration of Condominium Under the Montana Unit Ownership Act for Marina Cay Condominiums recorded on June 28, 1990, under Reception No. 9017911230, as amended and supplemented by: (a) Amendment to the Declaration of Condominium of Marina Cay Condominiums recorded August 7, 1990, under Reception No. 9021912180; (b) (c) Supplemental Exhibit and Certification to Declaration of Condominium of Marina Cay Condominiums (Document No. 90-179-11230) and to Supplemental Declaration of Condominium of Marina Cay Condominiums Phase V (Document no. 94-320-11250); (d) Second Amendment to Declaration of Condominium Under the Montana Unit Ownership Act for Marina Cay Condominiums recorded May 22, 2007, under Reception No. 200714213000; (e) Third Amendment to Declaration of Condominium Under the Montana Unit Ownership Act for Marina Cay Condominiums recorded on September 29, 2008, under Reception No. 200800027108 ("Third Amendment"); and (f) Fourth Amendment to Declaration of Condominium Under the Montana Unit Ownership Act for Marina Cay Condominiums recorded on January 6, 2009, under Reception No. 200900000246 (all of which documents are together referred to herein as the "Marina Cay Condominium Declaration").

Previous amendments mistakenly alluded to the amendment of Supplemental Declaration of Condominium of Marina Cay Condominiums Phase V Under the Montana Unit Ownership Act, recorded May 3, 2001, under Reception No. 200112315250. The document recorded under said Reception Number does not relate to Marina Cay Condominiums.

This Fifth Amendment and Restatement of the Declaration of Condominium restates and incorporates the original Declaration, all prior amendments, new amendments and all un-amended sections of the Declaration.

I. **SUBMISSION TO CONDOMINIUM OWNERSHIP.**

The purpose of this Declaration is to submit the real property herein described, as well as the improvements constructed thereon, to the condominium form of ownership and use in the manner provided by the Montana Unit Ownership Act, Chapter 23, Title 70, Montana Codes Annotated (1989). The real property submitted hereby is located in Flathead County, Montana, and is owned in fee simple and particularly described as follows, to wit:

Three tracts of land, situated, lying, and being in the West Half of the Northeast Quarter (W1/2NE1/4) of Section 36, Township 27 North, Range 20 West, P.M.,M., Flathead County, Montana, and more particularly described as follows to wit:

TRACT ONE ("LOT 1A" ON PLAT):

Commencing at the Northwest corner of the Northeast Quarter (NE1/4) of Section 36, Township 27 North, Range 20 West, P.M.,M., Flathead County, Montana, which is a found brass cap; thence South and along the West boundary of said Northeast Quarter, a distance of 607.89 feet; thence East, 231.78 feet to a found R/W monument; thence South 89°38'44" East, 68.22 feet to a found iron pipe; thence South 419.80 feet to a found iron pin; thence East, 150.11 feet to a found iron pin and the True Point of Beginning of the tract of land herein described; thence North 00°00'06" West, 308.23 feet to a found iron pin on the South R/W of Grand Drive; thence along said R/W South 45°13'33" East, 156.22 feet to a set iron pin on the Westerly R/W of a 40-foot private road and utility easement; thence along said R/W South 00°06'36" West, 195.14 feet to a set iron pin which is the P.C. of a 30.00 foot radius curve, concave Northwesterly, having a central

angle of 83°03'24"; thence along an arc length of 43.49 feet to a set iron pin and the P.T. of said curve; thence South 83°10'00" West, 84.74 feet to a set iron pin; thence North 00°06'08" East, 36.76 feet to the point of beginning and containing 0.717 acres;

SUBJECT TO AND TOGETHER WITH a 40-foot private road and utility easement as shown on the plat;

SUBJECT TO AND TOGETHER WITH all appurtenant easements of record.

TRACT TWO ("LOT 1B" ON PLAT):

Commencing at the Northwest corner of the Northeast Quarter (NE1/4) of Section 36, Township 27 North, Range 20 West, P.M.,M., Flathead County, Montana, which is a found brass cap; thence South and along the West boundary of said Northeast Quarter, a distance of 607.89 feet; thence East, 231.78 feet to a found R/W monument; thence South 89°38'44" East, 68.22 feet to a found iron pipe; thence South, 419.80 feet to a found iron pin; thence East, 150.11 feet to a found iron pin; thence South 00°06'08" West, 77.05 feet to a found iron pin; thence North 83°10'00" East, 58.98 feet to a set iron pin and the True Point of Beginning of the tract of land herein described; thence continuing North 83°10'00" East, 30.64 feet to a set iron pin which is the P.C. of a 70.00 foot radius curve, concave Northwesterly, having a central angle of 83°03'24"; thence along an arc length of 101.47 feet to a set iron pin; thence South 00°06'36" West, 319.46 feet; thence South 32°58'11" East, 58.34 feet to a found fence post; thence South 38°33'28" East, 187.69 feet to a set iron pin; thence South 88°00'21" East, 10.00 feet to a set iron pin; thence South 01°56'24" West, 26.00 feet to a set iron pin; thence South 18°30'09" West, 26.85 feet to a set iron pin; thence South 32°29'24" West, 76.23 feet to a set iron pin; thence South 46°16'04" West, 41.97 feet to a set iron pin; thence South 44°34'46" East, 30.00 feet to a point on the approximate low water mark of the Swan River; thence along said low water mark South 66°28'34" West, 79.31 feet; thence continuing along said low water mark South 33°20'20" West, 97.05 feet; thence leaving said low water mark

North 87°51'06" West, 102.07 feet to a set iron pin; thence
North 33°42'33" West, 35.76 feet to a found iron pin; thence
North 02°30'38" West, 196.16 feet to a set iron pin; thence
South 87°51'06" East, 160.34 feet to a set iron pin; thence
North 02°28'06" East, 71.22 feet to a set iron pin; thence
North 87°52'29" West, 6.25 feet to a set iron pin; thence
North 00°06'36" West, 71.05 feet to a set iron pin; thence
North 58°27'40" West, 160.25 feet to a set iron pin; thence
North 32°00'00" West, 55.34 feet to a set iron pin; thence
North 55°30'22" East, 8.23 feet to a set iron pin; thence
North 00°06'08" East, 66.72 feet to a set iron pin; thence
North 31°41'38" East, 123.61 feet to a found iron pin; thence
North 03°19'38" East, 48.17 feet to the point of beginning and containing
2.618 acres

SUBJECT TO AND TOGETHER WITH a 40-foot private road and utility easement as shown on the plat.

SUBJECT TO AND TOGETHER WITH all appurtenant easements of record.

TRACT THREE ("Tract 2" on Corrected COS No. 9582):

A tract of land, situated, lying, and being in the Northeast Quarter of Section 36, Township 27 North, Range 20 West, P.M.,M., Flathead County, Montana, and more particularly described as follows to wit:

Tract 2, as shown and described on Corrected Certificate of Survey No. 9582 (Records of Flathead County, Montana), and containing 0.417 acres;

SUBJECT TO AND TOGETHER WITH a 20 foot water line easement and a 20 foot sewer line easement;

TOGETHER WITH a cross easement for parking;

SUBJECT TO AND TOGETHER WITH all appurtenant easements of record.

The above described tracts of land shall hereafter be known as: Marina Cay Condominiums .

II. NAME AND DESCRIPTION OF CONDOMINIUM.

1. Description of Buildings. The property shall be known and designated as "MARINA CAY." The property consists of five presently-existing buildings. "Building No. 1" (Phase I), also described as the "Bay Building," is a three-story, twenty unit (numbered 1 through 20) building located as shown on the Plat of Marina Cay Condominiums, filed at the Office of the Clerk and Recorder of Flathead County, Montana. "Building No. 2" (Phase II), also described as the "Hill East Building," is a three-story, twelve-unit (numbered 21 through 32) building located as shown thereon. "Building No. 3" (Phase III), also described as the "Courtyard Building," is a two-story, twenty-five unit (numbered 131 through 142 and 231 through 243) building located as shown thereon. "Building No. 4" (Phase IV), also described as the "Waterfront Building," is a three-story, twenty-seven unit (numbered 151 through 159, 251 through 259 and 351 through 359) building located as shown thereon. "Building No. 5" (Phase V), also described as the "Hill West Building," is a three-story, nine-unit (numbered 33 through 41) building located as shown on the plat thereof.

Each unit will be sold in undivided, common condominium ownership interests.

Attached hereto as Exhibits A-1 through A-15 are floor plans of units identified thereon. Attached hereto as Exhibit B is a location plat setting forth the locations and dimensions of the buildings and the unit designations.

2. Definition of "Unit." Each Unit shall consist of an individual air space as designated on the Exhibits attached hereto bounded by the interior face of the unfinished perimeter walls, the unfinished perimeter ceilings, and unfinished perimeter floors of the

Unit, and the doors and windows thereof. For the purpose of defining a Unit, the terms set forth above shall be defined as follows:

- a. "unfinished perimeter wall" means the interior surfaces of the studs, supports and other wooden, metal or similar structural materials which constitute the interior face of a wall of a Unit.
- b. "unfinished perimeter ceiling" means the beams, joists and wooden or other structural materials that constitute the interior face of the ceiling of a Unit.
- c. "unfinished perimeter floor" means the beams, floor joists and floor deck material that constitute the interior face of the floor of a Unit.

A Unit shall include any drywall, sheetrock, wall paneling, wood, tile, paint, paper, carpeting or any other wall, ceiling or floor covering, windows, window glass and window frames, shutters, awnings, doorsteps, stoops and doors, door glass and door frames. A Unit shall further include fixtures and hardware and all improvements contained within the unfinished perimeter walls, ceilings and floors, and the fireplace, flue and chimney (up to the point where the flue or chimney passes through the unfinished perimeter ceiling). A Unit shall include any utility equipment that serves solely that Unit, including but not limited to heating and refrigerating elements or related equipment, utility lines and outlets, electrical and plumbing fixtures, pipes and all other related equipment required to provide heating, air-conditioning, hot and cold water, electrical or other utility services to the Unit and located within the unfinished walls, ceilings and floors provided, however, that a Unit shall not include any of the structural components of the Building or utility or service lines located within the Unit but serving more than one Unit.

III. COMMON ELEMENTS.

(1) "Limited Common Elements" means and refers to those parts of the Common Elements which are either limited to and reserved for the exclusive use of the owner or owners of a particular condominium unit or are limited to and reserved for the common use of the owners of more than one, but fewer than all, of the condominium units. Without limiting the foregoing, the Limited Common Elements shall include the balcony or patio and the fireplace adjacent to an individual unit, decorating materials attached to the interior surfaces of the above boundaries, (including carpeting) as well as the interior walls, doors decorating materials, fixtures, cabinetry and other items attached thereto, skylights, and the utility and heating contained within such individual unit to the exclusion of the use thereof by the other owners, except by invitation. No reference thereto need be made in any instrument of conveyance, encumbrance or other instrument.

(2) "General common elements" are any and all other portions or items of the property or projects including, but not limited to those items set forth in Section 70-23-102(8), M.C.A., as well as:

- a. The land on which the building is located, except any portion thereof included in a unit or made a limited common element by the Declaration, and all easements, rights and appurtenances belonging thereto.
- b. The condominium buildings, except for the individual units, including but not limited to the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, fire escapes, entrances and exits of the building;

- c. The yards, garden, working areas and outside storage spaces, private pathways, sidewalks and private roads;
- d. Mechanical installations consisting of the equipment and materials necessary for all central services such as power, gas, light, hot and cold water, heating, refrigeration, air-conditioning, waste disposal and incinerating;
- e. The elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;
- f. Storage areas for janitorial, caretaking and maintenance supplies and equipment; ; and
- g. All other elements of the buildings necessary or convenient to their existence, maintenance and safety or normally in common use;
- h. Each unit owner shall have an easement in common with the owners of all other units to use all pipes, ducts, wires, cables, conduits, public utility lines, and other common elements located in any of the other units and serving his unit. Each unit shall be subject to an easement in favor of the other units to use the pipes, ducts, wires, cables, conduits, public utility lines and other common elements serving such other unit and located in such unit.

(3) The owner of each unit shall have an undivided interest in the general common elements based upon the square footage of each unit, as set forth on Exhibit C hereto, subject to the interests of owners of other property in Marina Cay as presently

constructed or to be constructed in the future. All future unit owners hereby grant necessary possession and control of all common elements to such Manager as may be appointed by the Board of Directors of Marina Cay Homeowners Association, Inc., (hereafter "Homeowners Association"), solely for the purposes of maintaining, repairing, improving and administering them, and otherwise carrying out the duties and obligations as set forth in such Management Agreement as may be entered into between the Homeowners Association and the Manager, Montana law, and such other regulations as may be imposed by law. The limited common elements are reserved for the sole use of the unit to which they are appurtenant. If and when common elements are added or annexed, this Declaration shall be duly amended to describe and reflect the general and limited common elements as then existing. The percentage ownership of the common elements by unit owners shall be always based upon the proportion that the square footage of the individual unit owned bears to the total square footage within Marina Cay.

(4) The "Dock Project" shown on Exhibit D, attached and incorporated herein, contains twelve (12) boat moorings (the "Dock Spaces"). Eight (8) of the Dock Spaces shown on Exhibit D are currently General Common Elements. Four (4) of the Dock Spaces are currently Limited Common Elements. The Homeowners Association is hereby authorized to lease and/or convert and designate six (6) additional (for a total of ten (10)) Dock Spaces to Limited Common Elements. The Homeowners Association shall retain two (2) Dock Spaces as general common elements for the use of all members of the Homeowners Association under rules and regulations prescribed by the Homeowners Association.

- i. Sales or leases of the Dock Spaces shall be made solely to members of the Homeowners Association. It shall be in the sole discretion of the Homeowners Association to determine how many of the Dock Spaces, if any, shall be sold and how many of the Dock Spaces, if any, shall be leased. In the event the Homeowners Association elects to sell some or all of the ten (10) Dock Spaces, the Homeowners Association shall have the power to designate the Dock Spaces being sold as Limited Common Elements to be associated with the Unit owned by the member purchasing the Dock Space. In the event the Homeowners Association elects to lease some or all of the Dock Spaces, it shall be in the Homeowners Association's sole discretion to determine the terms and conditions of the leases and any renewals, amendments or future leases from time to time. All proceeds from sales or leases of the Dock Spaces shall be paid to the Homeowners Association and deposited in the Homeowners Association's reserve account or such other Homeowners Association account as the Homeowners Association may designate.
- ii. The two Dock Spaces not subject to sale or lease and any other Dock Spaces which for any other reason are not sold or leased to specific members shall be designated as general common elements as defined in Article III of this Fifth Amendment and Restatement

of Declaration of Condominium Under the Montana Unit Ownership Act for Marina Cay Condominiums . The Homeowners Association shall have the power to schedule usage periods for Owners and make reasonable rules and regulations regarding the use of any Dock Spaces designated as general common elements to ensure the harmonious and beneficial use of these Dock Spaces by the members of the Homeowners Association who may desire to use these Dock Spaces.

- iii. The purchaser of any Dock Space sold by the Homeowners Association will receive a document designating the Dock Space as a Limited Common Element of the Unit owned by the purchasing member. The purchasing member shall have the right to sell or transfer the Dock Space to another member of the Homeowners Association. The proceeds of any such sale or transfer shall be the exclusive property of the selling member. All transfers of Dock Spaces will be evidenced by an Amendment to Declaration of Condominium Under the Montana Unit Ownership Act for Marina Cay Condominiums signed by the selling member, the purchasing member, and the Homeowners Association, which will remove the Dock Space being sold as a Limited Common Element of the Unit owned by the selling member and designate the Dock Space as a Limited Common Element of the Unit owned

by the purchasing member. Such a transfer shall not require the consent of any other Unit owner. Exhibit E attached hereto describes the four Dock Spaces that are now Limited Common Elements and the Units to which they are appurtenant.

- iv. The designation of any Dock Space as a Limited Common Element of a particular Unit shall have no effect on that Unit's percentage of ownership of general common elements within Marina Cay.
- v. The Homeowners Association shall have the right to adopt rules and regulations and to prescribe conditions and terms of use regarding any Dock Space within the Dock Project as the Homeowners Association sees fit for the benefit and protection of the members of the Homeowners Association.
- vi. All members of Marina Cay Homeowners Association, Inc. hereby appoint the Homeowners Association as their rightful agent and attorney-in-fact for all purposes relating to the Dock Spaces to carry into effect the Dock Project and the types of transactions and operations provided above for the ongoing ownership, lease, use and transfer of Dock Spaces from time to time in the future, including, but not limited to the initial sale or lease of up to ten (10) Dock Spaces, designating such Dock Spaces as Limited Common Elements associated with the Unit of any member who purchases any of the Dock Spaces, subsequently re-designating

any of the Dock Spaces as Limited Common Elements of a different Unit on the resale of a Dock Space to another member of the Homeowners Association, adopting rules and regulations and prescribing conditions and terms of use regarding any Dock Space within the Dock Project, acting in connection with any lease of any Dock Space, including any amendments, renewals or termination of any lease, and signing any and all documents to effectuate such transactions and operations and all other transactions or involving the Dock Project in any manner on behalf of the members.

(5) Conversion of Dock Spaces From General Common Element to Limited Common Elements. In accordance with the powers granted to the Homeowners Association in the Third Amendment, the Homeowners Association, acting for itself and as attorney in fact for all owners at Marina Cay, hereby converts and constitutes the following described Dock Spaces to be Limited Common Elements for the exclusive possession and use of those members of Marina Cay Homeowners Association as may be specified from time to time in certain documents conveying the right, title and interest in and to the exclusive possession and use of the following described Dock Spaces as Limited Common Elements to those certain members of Marina Cay Homeowners Association:

Dock Spaces 1, 7, 9 and 11, according to Exhibits D and E hereto.

The above described Dock Spaces and the use, possession and control thereof may not be granted, bargained, sold or conveyed to any person or entity that is not a

member of the Marina Cay Homeowners Association, as that term is defined in the Marina Cay Condominium Declaration. Any attempt to transfer the above Dock Space to a person or entity that is not a member of the Marina Cay Homeowners Association shall be void and all right, title and interest in and to the Dock Space shall revert to the Marina Cay Homeowners Association.

IV. **USE.**

- a. A unit owner shall occupy and use his or her unit as a single family private residence, and only for his or her family, guests, lessees, renters, tenants, invitees or exchangees.
- b. No unit may be sold or otherwise transferred without first complying with the provisions contained in the Bylaws of the Homeowners Association.
- c. No more than two (2) units within Marina Cay, as it now exists, may be owned or operated in any sort of time-share, or other similar fractional use as defined in MCA § 37-53-201. All such units are subject to fees payable to the Homeowners Association as regular and common assessments against such units, and may be collected and enforced as with all other assessments.

V. **PROCESS.**

Service of process in the cases provided in Section 70-23-901, M.C.A. (1989), shall be made upon the Association's registered agent at the Association's registered office as reflected in the records of the Secretary of State of Montana or as provided by law.

VI. UNITS SUBJECT TO DECLARATION.

All present and future owners of units or common interests therein shall be subject to, and shall comply with the provisions of this Fifth Amendment and Restatement of Declaration and the Bylaws of the Homeowners Association, both as amended from time to time, together with any other recorded restrictive covenants or conditions for the property subject to this Declaration, and to any rules and regulations adopted or amended from time to time.

VII. EASEMENTS.

In addition to all easements and rights-of-way of record at or before the recording of this Fifth Amendment and Restatement of Declaration, Marina Cay and all portions thereof, shall be subject to valid, legally enforceable easements as shown on any recorded plat or other recorded document affecting the property, or any portion thereof that have been recorded prior to the recordation of this Fifth Amendment and Restatement of Declaration .

The condominium project, and all portions thereof, shall be subject to an easement for encroachments created by construction and overhangs as designed or constructed by the Declarant and for the settling, shifting and movement of any portion of the buildings. A valid easement for said encroachments and for the maintenance thereof shall exist. In the event that a condominium building or unit is partially or totally destroyed, and then rebuilt, the owners of the particular units so rebuilt hereby agree that minor encroachments of the rebuilt units upon the Common elements shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist.

Such encroachments shall not be considered to be encumbrances upon any part of the condominium project. Encroachments referred to herein include, but are not limited to, condominium buildings or units constructed on the property, by error in the condominium plat, by settling, rising, movement or shifting of the earth or any portion of the project or by changes in position caused by repair or reconstruction of any part of the project.

There is hereby created a general easement upon, across, over, in and under all of the property for ingress, egress, installation, replacing repairing and maintaining all utilities, including but not limited to water, sewer, gas, telephone, electrical and master television antenna systems. By virtue of this easement, it shall be expressly permissible for the companies providing electrical and telephone services to erect and maintain the necessary poles and other necessary telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the condominium buildings.

Notwithstanding anything to the contrary contained in this paragraph, no water, sewer, gas, telephone, electrical or antenna lines, system or facilities may be installed or relocated on the property, except as initially approved by Declarant during the development of the project, or thereafter as approved by the Homeowners Association. Should any utility company furnishing a service covered by the general easement herein created request a specific easement by separate recordable documents in the future, the Homeowners Association shall have, and is hereby given the right and authority to grant such easement upon, across, over or under any part or all of the property without

conflicting with the terms hereof. The easement provided for in this paragraph shall in no way affect, avoid, extinguish or modify any other recorded easement on the property.

In addition to the easement created hereunder, the utility company furnishing the electrical service to the property shall have and is hereby granted a two-foot wide easement along and centered on the underground electrical power service conductors to the designated point of service on the condominium buildings. The foregoing easement for the underground electrical service may be crossed by streets, driveways and walkways. Such easement for the underground electrical service shall be kept clear of all other improvements, including buildings, patios and other pavings, other than crossing walkways, streets or driveways.

A general easement is hereby granted to all police, sheriff, fire protection, ambulance and all other similar emergency agencies or persons to enter upon all streets and upon the Common Elements in the proper performance of their duties.

An easement is hereby granted to the Homeowners Association, its officers, agents, employees and assigns to enter upon, across, over, in and under the Common Elements and a right to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration and the Bylaws of the Homeowners Association.

An easement is hereby granted to the Homeowners Association, its officers, agents, employees, successors and assigns to enter upon, across, over, in and under any portion of the property for the purpose of changing, correcting or otherwise modifying

the grade or drainage channels of the property so as to improve the drainage of water on the property.

Some of the Common elements are or may be located within individual units or may be conveniently accessible only through such individual units. The owners of all other units shall have the irrevocable right, to be exercised by the Homeowners Association as their agent, to have access to each individual unit and to all Common elements from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal or replacement of any of the Common Elements located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Elements or to any individual unit. The Homeowners Association shall also have such right independent of any agency relationship. Damage to the interior of any part of an individual unit resulting from the maintenance, repair, emergency repair, removal or replacement of any of the Common elements or as a result of emergency repairs within another individual unit at the instance of the Homeowners Association or of the owners shall be an expense of all of the owners. Non-emergency repairs shall be made only during regular business hours on business days after 24-hours notice to the occupants of the individual unit wherein such repairs are to be made, except where the occupants have no objections to earlier entry for repairs. In emergency situations, the occupants of the affected individual unit shall be warned of impending entry as early as is reasonably possible.

All conveyances of condominium units hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements contained in this

paragraph, even though no specific reference to such easements or to this paragraph appears in the instrument for such conveyance.

Every owner, his family members, his guests and lessees shall have a right and easement of enjoyment in and to the General Common Elements and to those Limited Common Elements appurtenant to his individual unit, plus a right and easement of ingress and egress over, across and upon the General Common Elements for the purpose of getting to and from his individual unit, the parking areas, the recreational facilities and the public way for both pedestrian and vehicular travel, which rights and easements shall be appurtenant to and pass with the transfer of title to the owner's individual unit; provided, however, that such rights and easements shall be subject to the following:

- a. The covenants, conditions, restrictions, easements, reservations, rights-of-way and other provisions contained in this Fifth Amendment and Restatement of Declaration, the Condominium plat, the Articles of Incorporation and Bylaws of the Marina Cay Homeowners Association, Inc., all as originally recorded and later amended and restated. b. The right of the Homeowners Association to suspend the voting rights and any and all rights of any owner to the use of any recreational facilities for any period during which any Homeowners Association assessment against such owner or against such owner's individual unit remains unpaid for thirty (30) days beyond its due date. As used herein, "recreational facilities" includes any spa, exercise room, Common Element Dock

Spaces, pool, and any other facility determined by the Board to be for recreation, whether currently existing or constructed later.

- c. The right of the Homeowners Association to suspend the use of any recreational facilities for any period not to exceed sixty (60) days as a result of the owner's infraction or the infraction by any member of the owner's family or by the owner's guests or invitees of any rule or regulation of the Homeowners Association or its designated manager.
- d. The right of the Homeowners Association to limit the number of guests or invitees of each owner which may use the recreational or other facilities contained in the Common Elements.
- e. The right of the Homeowners Association to adopt, from time to time, any and all rules and regulations concerning vehicular traffic and travel upon, in, under and across the property.
- f. The right of the Homeowners Association to adopt, from time to time, any and all rules and regulations concerning the Common elements and the facilities located thereon as the Homeowners Association may determine is necessary or prudent.

VIII. MISCELLANEOUS.

- a. The covenants and restrictions of this Fifth Amendment and Restatement of Declaration shall run with and bind the land, for a term of twenty years from the date this Fifth Amendment and Restatement of Declaration is

recorded, after which time they shall be automatically extended for successive periods of ten years.

- b. This Fifth Amendment and Restatement of Declaration may be amended by a ballot vote of the Owners at an annual meeting or at a special meeting called expressly for the purpose of voting on amendments. The notice of the meeting shall set forth the full language of the proposed amendment and shall be mailed or delivered to Owners at least sixty (60) days prior to the meeting. Ballots may be cast in person, by proxy, or by mail. In order for any amendment to be effective, the votes representing at least seventy-five percent (75%) of the shares must be cast in favor of the amendment.
- c. The amendment(s) shall be effected when a Certificate of Amendment is recorded with the Clerk and Recorder of Flathead County, Montana. The Certificate of Amendment shall be duly signed and sworn to by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures and oaths or affirmations acknowledged before a notary public. The Certificate of Amendment shall set forth in full the amendment adopted and shall certify that, in a vote duly held at a meeting after sixty (60) days advance written notice, pursuant to the provisions of the Association's Articles of Incorporation and Bylaws, the Members casting the votes of seventy-five percent (75%) or more of the shares affirmatively voted for the adoption

of the amendment. Neither the ballots nor any other instrument executed by the owners need to be recorded.

d. Amendments to this Declaration, its Covenants and Exhibits, and Agreements shall be filed of record with the Flathead County Clerk and Recorder, Kalispell, Montana. The execution of the purchase contract for an interest in a unit and/or the acceptance of a deed thereto shall constitute an acceptance of an agreement to the provisions of all of the aforesaid documents, instruments and exhibits by such owner any by any person occupying the unit through said owner.

e. The provisions of such recorded documents shall be covenants running with the land and shall bind any person and his or her successors, having any interest in such unit as though the provisions were recited and fully stipulated in each deed or conveyance thereof. Such provisions shall not be deemed abrogated or waived by reason of any failure to enforce the same, no matter the number of breaches or violations which may occur. The invalidity of any portion of this Fifth Amendment and Restatement of Declaration or the Exhibits hereto shall not affect the validity or enforceability of any other portion.

END