

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

**THIRD AMENDMENT AND RESTATEMENT OF
THE REVISED BYLAWS OF
MARINA CAY HOMEOWNERS ASSOCIATION, INC.**

ARTICLE I

INTRODUCTION

Section 1: The provisions of these Bylaws govern the internal affairs of this corporation and its members as applicable to the operation, administration, use and occupancy of Marina Cay Homeowners Association, Inc., located on the real property described on the Plat of Marina Cay, and such subsequent phases of Marina Cay, if any, as may hereafter be subjected to the provisions hereof.

Section 2: The original Bylaws of Marina Cay Homeowners Association, Inc. were recorded on June 28, 1990, under Reception No. 9017911230 simultaneously with the Declaration of Condominium to which these relate, all in accordance with Section 70-23-301, Montana Code Annotated. The original Bylaws were replaced and superseded by the Revised Bylaws of Marina Cay Homeowners Association, Inc. ("Revised Bylaws") recorded December 30, 2003, under Reception No. 200336415750, records of Flathead County. The First Amendment to the Revised Bylaws was recorded May 22, 2007, under Reception No. 200714213010, records of Flathead County, Montana. The Second Amendment to the Revised Bylaws was recorded on September 29, 2008, under Reception No. 200800027109. This Third Amendment and Restatement of the Revised Bylaws restates and incorporates the original Bylaws, all prior amendments, new amendments and all un-amended sections of the Bylaws.

Section 3: These Bylaws were adopted by this corporation, organized originally as a not-for-profit corporation under the laws of Montana, and in accordance with the

Internal Revenue Code, Section 501(c)(7) as amended, pertaining to homeowners associations and later re-organized as a for-profit corporation incorporated on December 10, 1992. It is the intent of these Bylaws to satisfy the requirements of Internal Revenue Code § 528 so as to prevent taxation of dues and assessments received from Owners.

Section 4: As used herein, these definitions shall apply.

“Association” and “Corporation” shall mean the corporation chartered on December 10, 1992, as Marina Cay Homeowners Association, Inc., and its predecessors in interest.

“Condominium” shall mean the project consisting of the individual Units, Common Elements and Limited Common Elements described in the Declaration of Condominium Under the Montana Unit Ownership Act for Marina Cay Condominiums recorded on June 28, 1990, in Flathead County, Montana, under Reception No. 9017911230, and any and all amendments thereto and restatements thereof under Section 70-23-301 *et seq.*, Montana Code Annotated.

“Declaration” shall mean Declaration of Condominium Under the Montana Unit Ownership Act for Marina Cay Condominiums recorded on June 28, 1990, in Flathead County, Montana, under Reception No. 9017911230, and any and all amendments thereto and restatements thereof under Section 70-23-301 *et seq.*, Montana Code Annotated, including the Fifth Amendment and Restatement of Declaration of Condominium of Marina Cay

“Mortgage” shall include mortgage, trust indenture and deed of trust.

“Owner,” “Unit Owner,” “Member” and “Shareholder” shall be interchangeable and shall mean all owners of an ownership interest in a unit except those individuals or entities that are interested in a unit solely as the beneficiary of a mortgage or security interest or as seller under a contract for deed.

“Share(s)” shall mean the ownership interest of an Owner in the Condominium.

“Voting rights” shall mean the right to vote an Owner’s shares of stock reflecting ownership of the Association.

“Unit” shall have that meaning set forth in the Declaration, including the fireplace, flue and chimney (up to the point where the flue or chimney passes through the unfinished perimeter ceiling).

ARTICLE II

PRINCIPAL OFFICE

The principal office of the corporation shall be maintained in Flathead County, Montana.

ARTICLE III

MEETINGS AND MEMBERS

Section 1: Every owner of a Unit within Marina Cay shall be a member of the Association and shall remain a member for the period of ownership of a unit. Conveyance of a unit shall be deemed to include conveyance of the owner's shares of stock in the corporation whether or not such transfer of shares is reflected in any document. Only an Owner may own shares of the corporation.

Section 2: There shall be an annual meeting of voting members of the Association on the first Saturday in June of each year, or at such other date as determined by the Board of Directors, at a time and place designated in the written notice thereof mailed to voting members by the Board of Directors at least thirty (30) days and not more than 60 days prior to the date of said meeting.

Section 3: Special meetings may be called at any time for the purpose of considering matters which require the approval of members. Such a special meeting shall be called by written notice mailed by the Board of Directors at least thirty (30) days prior to the date of such meeting to all members. Such written notice may be initiated by the majority of the Board of Directors and must be so initiated upon petition to the Board by members holding 30% of the shares. Such notice and such petitions shall specify the date, time and place of the meeting as well as an agenda.

Section 4: The presence at any meeting in person or by proxy of members owning a majority of the total voting interests shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the members upon the affirmative vote of members or their proxies owning a majority of the total voting interests present or represented by proxy at the meeting.

Section 5: Voting on any issue may be conducted by mail so long as sufficient ballots are returned representing the votes of sufficient shares to constitute a quorum.

Section 6: All paper certificates reflecting ownership of shares of the Association are hereby deemed cancelled and replaced by book entries in the Association's records. All shares of authorized stock shall be deemed issued to Owners in proportion to each unit owner's percentage of the undivided interests in the common elements, as defined in the Fifth Amendment and Restatement of Declaration of Condominium of Marina Cay Condominiums. Said percentage is calculated in accordance with the ratio the square footage of each owner's unit bears to the total square footage within the Condominium. Fractional shares may also be issued as book entries. Each full share represents one vote; each fractional share represents the corresponding fractional vote. All shares shall be deemed to be automatically allocated among Owners as their units or the common elements are now constituted or as any Units or Common Elements may hereafter be expanded or decreased in size.

Section 7: Voting rights shall be suspended as to any owner who fails to pay any annual or special assessment (or any monthly installment thereof) within forty-five (45) days after the same becomes due and payable. Voting rights shall be suspended also for any owner of a unit for which any annual or special assessment (or any monthly installment thereof) has not been paid within forty-five (45) days after the same becomes due and payable. A Member who obtained his ownership through or in relation to foreclosure by a holder of a first mortgage is not required to pay assessments for common expenses accrued prior to the foreclosure. Such a Member, however, must pay pre-foreclosure assessments for fines and expenses incurred solely in relation to his Unit in order to have voting rights for his shares. Such voting rights shall be restored upon payment of such past due assessments, plus interest and such other amounts as may be charged as a result of nonpayment.

Section 8: Each and every member hereby irrevocably constitutes and appoints the Homeowners Association as his, its and their true and lawful attorney-in-fact, in his, its and their name, place and stead, for the purpose of dealing with the Marina Cay property upon its damage, destruction or obsolescence. Acceptance by any grantee of a deed or other instrument of conveyance from any owner shall constitute appointment as herein provided. As attorney-in-fact, the Homeowners Association shall have full and complete authorization, right and power to make, execute and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any owner which may be necessary or appropriate to exercise the powers granted to the Homeowners Association as attorney-in-fact.

ARTICLE IV

BOARD OF DIRECTORS

Section 1: There shall be a total of six (6) Directors, each elected or appointed to three-year terms, the terms staggered so that two (2) terms expire each year. Only eligible homeowners may be Directors.

Section 2: Any Director may be removed at any meeting of members by due and proper vote at that meeting, subject to the limitations involving appointed directors, providing proper notice of such resolution or vote had been mailed at least thirty (30) days prior to said meeting.

Section 3: A regular meeting of the Board of Directors shall be held prior to each annual meeting of members and immediately after the adjournment of each annual meeting of members. A regular meeting of the Board of Directors shall also be held annually in October or at another time determined by the Board at its June meeting. This Bylaw shall be the only notice required for such regular meetings.

Section 4: Special meetings of the Board of Directors may be called by the President or by a majority of the Board. By unanimous consent of the Directors, a special meeting of the Board of Directors may be held, without notice, at any time or place.

Section 5: Notice of all special meetings shall be given to each Director at least two (2) days prior to the time fixed for the meeting. Such notice shall specify the time and place of meeting, and shall state the purpose or purposes thereof. Before or at any meeting of the Board of Directors, any Director may in writing waive notice of such meeting.

Section 6: A quorum for the transaction of business at any regular or special meeting of the Directors shall consist of majority of members of the Board. The signature and consent of all Directors in lieu of a meeting may transact any business for that purpose. Voting by e-mail and teleconferencing may be substituted for a written and signed vote; records of e-mail and teleconferencing voting must be maintained in the Board minutes.

Section 7: The Directors shall elect the officers of the Association specified in these Bylaws at the Directors meeting following each annual meeting of the members of the Association thereafter. An officer may be removed at any time by a majority vote of the full Board of Directors of the Association.

Section 8: The Directors shall receive compensation and reimbursement for expenses for their services in attending regular and special meetings. In addition, the President shall receive a monthly stipend to compensate for additional expenses. The compensation and reimbursement amounts for attending such meetings, and for the President, may be adjusted from time to time by the membership.

Section 9: Any vacancy or vacancies on the Board of Directors may be filled by the remaining Directors in any special or regular Directors meeting. For this purpose a special meeting may be conducted by teleconferencing and/or e-mail. Death, incapacity, resignation, or failure to maintain homeownership status of any Director shall cause his or her office to become vacant. Appointment to fill such vacancy shall be for the remaining term of the vacancy filled, but shall be confirmed by the members at the next annual meeting.

Section 10: The Board of Directors shall have the responsibility for and the authority to do all things necessary for the accomplishment of the matters specified in the Declaration of Condominium and the Bylaws, both as amended and restated from time to time, and all other contracts and agreements entered into on behalf of the Association.

Section 11: The Board of Directors shall have the authority to engage the services of a property Manager/agent or management service and to fix his or her compensation, and specify his or her authority.

Section 12: All checks, drafts, notes, acceptances, vouchers, conveyances, contracts and other instruments shall be approved and signed on behalf of the Association by such person or persons as shall be provided by general or special resolution of the Board of Directors, or in the absence of any such resolution applicable to such instruments, by the President, Vice-President, Secretary or Treasurer. A contracted accountant may sign checks.

ARTICLE V

OFFICERS

Section 1: The officers of the corporation shall be a President, Vice-President, Secretary and Treasurer. The officers shall be directors. All officers shall be elected for a one year term and shall hold office until their successors are duly elected and qualified, except that any officer can be removed from office by a vote to do so by a majority of the Board. All officers must be "eligible owners"; i.e., all fees, fines, dues and assessment payments must be current. A Member who obtained his ownership through or in relation to foreclosure by a holder of a first mortgage is not required to pay assessments for common expenses accrued prior to the foreclosure. Such a Member, however, must pay pre-foreclosure assessments for fines and expenses incurred solely in relation to his Unit in order to be an eligible home Owner. Should a director become an ineligible homeowner by reason of not paying current fees and assessments, he/she will immediately vacate their board position and shall be deemed to have resigned.

Section 2: The President shall preside at all Directors and members meetings; with the expressed approval of the Board of Directors shall have general supervision over the affairs of the Association; and shall perform all such other duties as are incident to the office. The Board may appoint such committees and committee chairpersons as appear necessary in its judgment. In case of the absence or disability of the President, the Vice-President shall perform his or her duties.

Section 3: The Secretary shall issue notices of all Directors and members meetings and shall attend and keep the minutes of the same; shall have charge of all Association books and records and papers. The Treasurer shall manage all money and securities of the Association. A portion of this work may be contracted to a Certified Public Accountant with the approval of the majority of the Directors.

Section 4: Any eligible member, or any designated officer or agent of a member in the event of corporate or partnership ownership, may be an officer of the Association except the person or business entity, or officer or agent of such business entity, holding the Manager position. This exception and exclusion from office shall extend to any and all future Managers of the Association as well as any relative, partner, co-owner or other direct business associate of such Managers.

ARTICLE VI

FINANCE

Section 1: The funds of the Association shall be deposited in such bank or banks, savings and loan associations, or other financial institutions as the Directors shall designate and shall be duly authorized by the Board of Directors. All such accounts shall be federally insured or consist of U.S. Treasury bills, U.S. Treasury notes or U.S. Treasury bonds; or consist of money market mutual funds made up entirely of U.S. Treasury bonds and/or other financial instruments backed by the full faith of the U.S. Government. The total of all federally insured accounts in any one bank should not exceed the Federal insurance limit for a period in excess of thirty (30) days.

Section 2: The Association may, upon the direction of the Board, conduct a full audit or examination of the Association's financial matters, books and records and make the results of such audit or examination available to all members.

ARTICLE VII

ASSESSMENTS

Section 1: Covenant of Personal Obligation of Assessments. Every owner, by acceptance of the deed or other instrument of transfer, including the acceptance by a purchaser of the terms and provisions of an executory land sales contract, of his Unit, hereafter, "unit", (whether or not it shall be so expressed in such deed or other instrument of transfer), is deemed to personally covenant and agree, jointly and severally, with every other owner and with this Association, and hereby does so covenant and agree, to pay the Association (a) annual assessments or charges, (b) special assessments, and (c) default assessments applicable to his Unit; such assessments to be established and collected as hereinafter provided. No owner may waive or otherwise escape personal liability for the payment of the assessments provided for herein by non-use of the Common Elements or the facilities contained therein or by abandonment or leasing of his unit. In addition to the foregoing, every owner shall also have the obligation to pay the following charges directly to the appropriate governmental subdivision or public utility: real property ad Valero taxes and special assessments imposed by Montana governmental subdivisions applicable to his unit.

Section 2: Purpose of Assessments. Proper uses of the assessments levied by the Association shall include, but not be limited to, the expenditure of funds for taxes, fees, expenses, charges, levies, premiums, expenditures or other costs of the Association for: (a) repairing, replacing and maintaining the Common Elements; (b) installing, maintaining and repairing roads and underground utilities upon, across, over and under any part of the Condominium; (c) installing, constructing, maintaining and repairing lighting, walkways, clubhouses, recreational buildings, parks, playgrounds and related facilities; (d) furnishing garbage and trash pickup and water, sewer, electric services and other utilities to the Condominium, to include the cost of such services to individual units; (e) providing horticultural services to the Condominium such as mowing grass, caring for the grounds, the sprinkling system, walks, pathways, and landscaping the trees, shrubs and grass; (f) obtaining and maintaining insurance; (g) exterior maintenance; (h) local telephone service; (i) establishing and maintaining reserves for repairs, maintenance, taxes, capital improvements and other purposes; (j) carrying out all other powers, rights, and duties of the Association, including the administration of the Association and related legal, accounting and other expenses; and (k) generally for any other purposes and uses that the Association shall determine to be necessary to meet the primary purposes of the Association. In the event that any of the assessments levied by the Association shall be used for constructing improvements, and if the total amount of assessments used for such construction shall exceed \$50,000.00 (i.e., the total amount of such assessment for all the units as an aggregate, and not \$50,000.00 per unit), then the use of assessments for such construction shall require the approval of all members holding a simple majority of voting rights.

Section 3: Date of Commencement of Annual Assessments. All annual assessments shall commence on the first day of such month as determined by the Board of Directors of the Association or in any other manner approved by the Board of the Homeowners Association, and shall be made due and payable in twelve (12) monthly installments per annum; annual assessments paid in full by January 15 of the assessment year will be entitled to a discount, the amount of the discount to be established by the Board of Directors; all others will pay a monthly handling charge to be established annually by the Board of Directors. Any owner purchasing a unit between installment due dates shall pay a pro rata share of the last installment due.

Section 4: Amount of Total Annual Assessments. The total annual assessments against all units shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year, which estimates may include, among other things, (a) expenses of management; (b) taxes and special assessments; (c) premiums for all

insurance which the Association is required or permitted to maintain; (d) common lighting, heating and other utility charges, water charges, trash collection and sewer service charges; (e) exterior repairs and maintenance; (f) legal and accounting fees; (g) any deficit remaining from a previous assessment year; (h) the creation of reasonable contingency reserves, surpluses and sinking funds; (i) any other costs, expenses and fees which may be incurred or may reasonably be expected to be incurred by the Association for the benefit of the owners.

Section 5: Apportionment of Annual Assessments. The Association's total annual assessment for an assessment year shall be apportioned against all units according to each unit's interest in the Common Elements as defined in the Declaration of Condominium of Marina Cay Condominiums; that is, in the proportion each member's square footage bears to the total square footage within Marina Cay (except as may be otherwise provided herein for special charges). The owner of each unit shall be personally liable for each such assessment which is assessed against his or her unit, and in case of multiple owners of a Unit, each such owner shall be jointly and severally liable personally for each such assessment. The total annual assessment shall be apportioned among all units as hereinabove provided.

Section 6: Determination of Amount of Annual Assessments. The Board shall determine, levy and assess the Association's annual assessments, which determination, levying and assessing may be made by the Board. If the Board shall desire to determine, levy and assess an annual assessment per unit for a particular assessment year which shall be in excess of the amount of the annual assessment per unit for the assessment year immediately preceding this particular assessment year, then the Board may do so and shall give written notice thereof to all owners at least thirty (30) days in advance of the commencement date of the particular assessment year and notify the owners of such increased annual assessment. If the Board shall not determine, levy and assess the annual assessment for a particular assessment year in accordance with the foregoing sentence, then it will be presumed that the annual assessment per unit for that particular assessment year will be the same as the annual assessment per unit for the assessment year immediately preceding that particular assessment year.

Section 7: Special Assessments. In addition to the annual assessments authorized above, the Association may at any time and from time to time determine, upon approval by Members holding a simple majority of the voting rights in the Association, levy and assess in any assessment year a special assessment applicable to that particular assessment year (and for any such longer period as may be determined) for the purpose of defraying, in whole or in part, the unbudgeted costs, fees and expenses of any

construction, reconstruction, repair, demolishing, replacement or maintenance of the Common Elements, specifically including any fixtures and personal property related thereto. Any amounts determined, levied and assessed pursuant hereto shall be assessed to the units in proportion to the respective undivided interest in the Common Elements appurtenant thereto. All the owners of a particular unit shall be jointly and severally liable to the Association for the payment of all assessments against their particular unit. Notice in writing of the amount of such special assessment per unit and of the time for payment thereof shall be given to the owners, and no payment shall be due less than thirty (30) days after such notice shall have been given. In the event that any of the special assessments levied by the Association pursuant to this Section shall be used for the construction of the Condominium or of any facilities located thereon and if the total amount of special assessments levied for such construction shall exceed \$50,000.00 (i.e., the total amount of such special assessments for all units as an aggregate, and not \$50,000.00 per unit), then the use of special assessments for such construction shall require the approval of a simple majority of the voting rights in the Association.

Section 8: Special Assessment on Sale of Unit. In addition to the annual and special assessments authorized above, the Association shall assess and collect an assessment in the amount of Two Hundred Dollars (\$200.00) from the purchaser of any unit sold after the recording of the Declaration of Condominium and these Bylaws. Said amount shall be payable to the Association by the purchaser within thirty (30) days of the closing of his or her purchase of a unit. Such assessments shall be used for the purpose set forth in Section 2 hereof.

Section 9: Special Assessment on Ownership Name Change without Sale of Unit. In addition to the annual and special assessments authorized above, the Association shall assess and collect an assessment in the amount of Fifty Dollars (\$50.00) if an existing owner changes the name of that ownership without actually selling the unit.

Section 10: Due Dates of Assessment Payments. Unless otherwise determined by the Association, the annual assessments and any special assessments not pre-paid are to be paid in monthly installments and shall be due and payable to the Association at its office, without notice, on the first day of each month. If any such monthly installment shall not be paid within forty-five (45) days after it shall have become due and payable, then interest shall begin to accrue on the forty-sixth day after the due date at the rate of 15 percent per annum (or such other rate as may be established by the Board of Directors, not to exceed the maximum rate allowed by law) and a "late charge" thereon in an amount to be determined annually by the Board to cover the extra expenses

involved in handling such delinquent assessment installment. An owner's monthly assessment shall be prorated if the ownership of a unit commences or terminates on a day other than the first day or last day, respectively, of a month. Accounts delinquent for ninety days or more are due and payable in full upon receipt of a monthly bill.

Section 11: Lien for Assessments. Accounts delinquent for ninety days or more shall be subject to lien. The annual and special assessments (including monthly installments thereof) and any and all default assessments (together with any and all interest, costs, late charges, expenses, fines and reasonable attorney's fees which may arise), shall be burdens running with land a perpetual lien in favor of the Association upon the specific unit to which such assessments apply. To evidence such lien upon a specific unit, the Association may prepare a written lien notice setting forth the description of the unit, the amount of assessments thereon which are unpaid as of the date of such lien notice, the name of the owner or owners thereof, and any and all other information that the Association may deem proper. The lien notice shall be signed by a member of the Board, by an officer of the Association or by a duly authorized agent, and shall be recorded in the office of the Clerk and Recorder of Flathead County, Montana. The Association may have a title search done on the property before a lien is filed. The homeowner on whom such a lien is filed shall bear all costs associated with the lien. Any such lien notice shall not constitute a condition precedent nor delay the attachment of the lien, but such lien is a perpetual lien upon the unit and attaches without notice at the beginning of the first day of any period for which an assessment is levied or assessed.

Section 12: Effect of Non-Payment of Assessments. If any annual or special assessment (or any monthly installment thereof) is not fully paid within forty-five (45) days after the same becomes due and payable, or if any default assessment shall arise, then in any of such events and as often as the same may happen, interest shall accrue at the rate determined under Section 10 above from the forty-sixth day after the due date on any amount thereof which was not paid within such forty-five (45) day period or on the amount of assessment in default, whichever shall be applicable, and the Association may thereafter bring an action at law or in equity, or both, against any owner personally obligated to pay the same and may also proceed to foreclose its lien against the particular unit in the manner and form provided by Montana law for foreclosure of real estate mortgages in and through the courts, except that there shall be no right of redemption. No owner may vote in Association elections while forty-five (45) or more days past due on any assessment (or monthly installment thereof). All past due payments made by check must clear the bank on which such check is written no later than the day prior to Association elections if an owner is to be eligible to vote. An

action at law or in equity by the Association against an owner to recover a money judgment for unpaid assessments (or any monthly installment thereof), may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien therefore. In the event that any such assessment (or monthly installment thereof) is not fully paid when due and the Association may commence such an action (or may counterclaim or cross-claim for such relief in any action) against any owner personally obligated to pay the same or any proceed to foreclose its lien against the particular unit, then all unpaid monthly installments of annual and special assessments and all default assessments (including any such installments or foreclosure proceedings), and late charges, fines, any accrued interest, the Association's cost of suit, expenses and reasonable attorney's fees incurred for preparing and recording any lien notice and the Association's costs of suit, expenses and reasonable attorney's fees incurred for any such action and/or foreclosure proceedings shall be taxed by the court as a part of the costs of any such action or foreclosure proceedings and shall be recoverable by the Association from any owner personally obligated to pay the same and from the proceeds of the foreclosure obligated to pay the same and from the proceeds of the foreclosure sale of the particular unit in satisfaction of the Association's lien. Foreclosure, or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessments (or monthly installments thereof) which are not fully paid when due or for any subsequent default assessments. The Association shall have the power and right to bid on or purchase any unit at foreclosure or other legal sale based on its lien and to acquire and hold, lease mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. The Association may use its claim as a credit bid at any such foreclosure or other legal sale based on its lien.

Section 13: Successor's Liability for Assessments. Notwithstanding the personal obligation of each owner of a unit to pay all assessments thereof and notwithstanding the Association's perpetual lien upon a unit for such assessments, all successors in interest to the fee simple title of a unit shall be jointly and severally liable with the proper owner or owners thereof for any and all unpaid assessments, interest, late charges, costs, expenses and attorney's fees against such unit, without prejudice to any such successor's right to recover from any prior owner any amounts paid thereon by such successor; provided, however, that a successor in interest to the fee simple title of a unit shall be entitled to rely upon the existence and status, or absence thereof, of unpaid assessments, interest, late charges, costs, expenses and attorney's fees as shown upon any certificate issued by the Association to such named successor in interest. The foregoing liability of successors in interest for all unpaid assessments, interest, late

charges, costs, expenses and attorney's fees against his unit shall not apply to any first Mortgagee or first Mortgagee's nominee who shall, in good faith and not for the primary purpose of circumventing this Section, acquire the unit by virtue of foreclosure of the first mortgage or through a deed or assignment in lieu of foreclosure proceedings or sale contract or any purchaser at the foreclosure sale for the first Mortgage; provided, however, any such first Mortgagee, nominee or person shall be liable for any claims for a pro rata share of any assessments or charges resulting from a pro rata reallocation of such assessments or charges to all units (including the unit subject to the first Mortgage).

Section 14: Subordination of Association's Lien for Assessments. The Association's perpetual lien on a unit for assessments provided for herein shall be superior to any homestead exemption as is now or may hereafter be provided by Montana law. The acceptance of a deed to land subject to the Bylaws shall constitute a waiver of the homestead exemption against such assessment. Said assessment shall also be superior to all other liens and encumbrances except: (a) real property tax and special assessment liens duly imposed by Montana governmental subdivision, and (b) the lien of any first Mortgage recorded in the records of the office of the Clerk and Recorder of Flathead County, Montana prior to the date such assessment became due or the lien, including any and all advances made by the first Mortgagee and notwithstanding that any of such advances may have been made subsequent to the date of the attachment of the Association's liens. With respect to the foregoing sub-part (b) of this section, any first Mortgagee who comes into possession of a unit by virtue of foreclosing the first Mortgage, , or any purchaser at a foreclosure sale of the first Mortgage, will take the unit free of any claims for unpaid Association assessments, interest, late charges, costs, expenses and attorney's fees against the unit which accrue prior to the time such first Mortgagee or purchaser comes into possession of the unit, except for claims for a pro rata share of such assessments resulting from a pro rata reallocation of such assessments to all units (including the unit which is encumbered by the first Mortgage). As provided herein, no sale or transfer, or cancellation or forfeiture of any executory land sales contract, shall relieve such unit from liability for any such claims thereafter becoming due or from any lien thereof. All other persons obtaining a lien or encumbrance on any unit after the recording of this Declaration shall be deemed to consent that any such lien or encumbrance shall be subordinate and inferior to the Association's future liens for assessments, interest, late charges, costs, expenses and attorney's fees, whether or not such consent be specifically set forth in the instrument creating any such lien or encumbrance. Sale or other transfer of any unit shall not affect the Association's lien for assessments, interest, late charges, costs, expenses and attorney's fees due and owing at the time of such sale or other transfer and shall not

affect the personal liability of each owner who shall have been responsible for the payment thereof.

Section 15: Certificate of State of Assessments. Upon request in writing by any person and payment of a reasonable charge therefore, the Association shall furnish within thirty (30) days after such request is received, a certificate setting forth: (a) the amount of any unpaid assessments, interest, late charges, costs, expenses and attorney's fees then existing against a particular unit, (b) the amount of the current monthly installments of the annual assessment and the day that the next monthly installment is due and payable, (c) the date of the payment of any installments of any special assessments then existing against the unit and (d) any other information deemed proper by the Association. Upon the issuance of such a certificate signed by a member of the Board, by an officer of the Association or by a duly authorized agent, the information contained therein shall be conclusive upon the Association as to the person or persons to whom such certificate is addressed and who rely thereon in good faith.

Section 16: Mortgagees May Pay Assessments and Cure Defaults. Provided that a Mortgagee has, in writing, requested the following information with respect to a unit upon which the Mortgagee holds a Mortgage and has furnished the Association with the address to which the Mortgagee wants the information sent, then, if any assessment, or monthly installments thereof, on any unit shall not be paid by the owner thereof within forty-five (45) days after the same is due, or if a default by any owner of any provisions hereof shall not be cured within forty-five (45) days after written notice thereof is given to such owner, then the Association shall thereafter send a notice thereof to such Mortgagee and may (but shall not be required to) send a notice thereof to any other Mortgagee thereof. Any Mortgagee may (but shall not be required to) pay such assessment or monthly installment thereof, together with any other amounts secured by the Association's lien, and may (but shall not be required to) cure any such default.

Section 17: Liens. Except for annual, special and default assessment liens as provided herein, mechanics' liens, tax liens and judgment liens arising by operation of law and liens arising under Mortgages, there shall be no liens obtainable against the Common Elements or any interest therein of any unit.

Section 18: Assessment on Purchasers of Dock Space. In addition to the annual and special assessments authorized above, the Association shall assess and collect an annual assessment and may assess and collect special assessments from time to time, in amounts determined by the Association, for the maintenance, operation, utilities, taxes,

repair, upkeep and replacement of the Dock Spaces within the Dock Project, as those terms are defined in the Third Amendment to Declaration of Condominium Under the Montana Unit Ownership Act for Marian Cay Condominiums recorded September 29, 2008, under Reception No. 200800027108, from the owner or lessee (if permitted by the lease) of any Dock Space within the Dock Project. The assessments under this Section shall commence and be due and payable in accordance with Sections 3 and 11 of this Article. All provisions of this Article regarding failure to pay or delinquency in payment and the remedies available to the Association shall apply equally to assessments under this Section.

Section 19: Special Assessment on Sale of Dock Space. In addition to the annual and special assessments authorized above, the Association shall assess and collect an assessment in the amount of Two Hundred Dollars (\$200.00) from the purchaser or lessee (if permitted by the lease) of any Dock Space sold after the recording of the Third Amendment to Declaration of Condominium Under the Montana Unit Ownership Act for Marina Cay Condominiums and this Second Amendment to Revised Bylaws of Marina Cay Homeowners Association, Inc. Said amount shall be payable to the Association by the purchaser within thirty (30) days of the closing of his or her purchase or lease of a Dock Space. Half of such assessments shall be used for the purposes set forth in Section 2 hereof and half of the said assessments shall be placed in the Dock Project maintenance reserve.

ARTICLE VIII

INSURANCE AND FIDELITY BONDS

Section 1: The Association shall obtain and maintain in full force and effect at all times the insurance coverage set forth in the following Sections. Companies duly organized to do business in the State of Montana shall provide this insurance coverage.

Section 2: The Association shall obtain from an insurance carrier acceptable to the Board , at a minimum, replacement-cost fire and extended coverage insurance policy on the Common Elements and Limited Common Elements of the property having a \$5,000 deductible provision. The Board of Directors has the authority to change the deductible amount. This property insurance shall provide that losses under the policy shall be payable to the Association.

Section 3: The Association shall obtain comprehensive public liability insurance in an amount of no less than \$2,000,000.00 . The Board of Directors has the

authority to set the deductible amount. The policy shall require the insurer to provide a defense to suit. The policy shall cover damages, interest and attorney's fees awarded against the Association.

Section 4: The Association shall obtain adequate insurance coverage to protect against dishonest acts on the part of its officers, directors, employees and others who handle or are responsible for handling the funds of the Association. Such coverage shall name the Association as the insured. The Board of Directors has the authority to determine the amount and extent of this coverage.

Section 5: The Association shall obtain Workers' Compensation Insurance for any direct employees as required by law.

Section 6: The Association shall obtain officers and directors personal liability, errors and omissions insurance, in a face amount no less than \$2,000,000.00, to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Association.

Section 7: The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as the Board of Directors deems appropriate.

Section 8: Insurance premiums for the above-provided insurance shall be a common expense to be paid by monthly assessments levied by the Association.

Section 9: The owners of each unit shall obtain adequate replacement cost property insurance coverage, and liability insurance on their units, as "units" are defined in the Declaration. The Association may establish and change uniform maximum deductible provisions for all units. Every Owner shall provide the Board or its authorized agent with a current certificate of insurance reflecting the Owner's compliance with the provisions of this Article.

Section 10: Except for its own property, the Association is not responsible for any damage or loss whatsoever caused by or to any property or contents of any nature or kind in or upon a unit or in or upon any part of the Common Elements or Limited Common Elements.

Section 11: No Owner shall be entitled to claim any compensation from the Association for any loss or damage to the property or person of the Owner arising from any defect or want of repair of the Common Elements or Limited Common Elements

any part thereof unless such loss or damage is covered by the insurance held or required to be held by the Association pursuant to these Bylaws.

Section 12: Each Owner shall be responsible for damage caused to his Unit arising from any willful, careless or negligent acts or omissions by himself or by any member of his family or his or their guests, servants, agents, invitees, licensees or tenants. Should an Owner fail to repair such damage in a manner satisfactory to the Board or its representative, the Board may do or cause to be done such repairs and the Owner affected agrees to and shall reimburse the Association for all monies expended for labor, materials, normal overhead and profit and all costs incurred in collection with respect to the doing of such repairs and the Board or its representative may use all or any of the remedies available to it as herein set out to recover such monies for the Association and such monies shall be a charge upon the Owner's Unit to the same extent as they would be if they were Common Expense charges assessed upon his Unit.

Section 13: An Owner shall indemnify and save harmless the Association from the expenses of any maintenance, repair or replacement rendered necessary to the Common Elements or Limited Common Elements or to any Unit by his act or omission or by that of any member of his family or his or their guests, servants, agents, invitees, licensees or tenants, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association .

Section 14: Each and every policy of liability, fire or comprehensive insurance shall name the Association as an insured, and shall, as available and where applicable, provide:

- (i) that the policy may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to all Insureds;
- (ii) that in no event shall the Association's insurance coverage be liable for contribution with insurance purchased by any Owner or mortgagee and such owner's or mortgagee's insurance shall be deemed as primary insurance;
- (iii) a waiver by the insurer of its rights of subrogation against the Association, its officers, directors, employees and agents, and the Owners and any member of the household or guests of any Owner, except for arson, fraud, or other intentional tort, and vehicle impact;

- (iv) a waiver of the insurer's option to repair, rebuild or replace in the event that after damage the status of the condominium is terminated; and
- (v) all insurance coverage dealt with in this By-Law may be subject to any reasonable deductible that is imposed or otherwise requested by the insurer.

Section 15: 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 Association shall be a common expense of all of the owners.

Section 16: Each Owner is responsible for his own personal liability, his Unit, and his personal property. Each Owner shall carry personal liability and property damage insurance respecting his individual Unit.

Section 17: Without affecting any other rights or remedies, each Owner hereby releases and relieves the Association and all other Owners jointly, and waives his right to recover damages against the Association and all other Owners for loss of or damage to his property arising out of or incident to the perils required to be insured against herein by an owner. The effect of such releases and waivers is not limited by the amount of insurance carried or required or by any deductibles applicable hereto. The parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against the other Owner, as the case may be, and these Bylaws constitute a waiver of subrogation clause against the Association and all other owners, so long as the insurance is not invalidated thereby.

Section 18: This Declaration shall be interpreted so as to match the Unit Owners' duty to insure with the Unit Owner's responsibilities to maintain, repair, replace and reconstruct, and to match the Owner's duty to insure with the Owner's duty to repair, maintain, replace and reconstruct. Further, the respective responsibilities to insure shall coincide with the division of responsibilities between the Association and an individual owner in a standard "bare walls" fire and casualty insurance policy for condominiums.

ARTICLE IX

USE RESTRICTIONS AND REGULATIONS

Section 1: The Homeowners Association may, from time to time, approve and enact restrictions and regulations applicable to the Units, Limited and Common Elements. The Homeowners Association may also delegate to a property manager the ability to set and enforce rules and regulations affecting the units, provided, however, that no restriction or regulation enacted shall be inconsistent with Paragraph IV of the Declaration of Condominium of Marina Cay Condominiums.

Section 2: No owner or member may place signs of any size or sort upon or near their unit, including but not limited to signs indicating the unit is for sale or rent, or for any commercial enterprise. Any signs deemed desirable to the Condominium shall be approved and authorized by the Board of Directors.

Section 3: Each unit may have access to no more than one parking site for the owner's personal use, but only during such time as the owner is in residence at the Condominium. No vehicles may be left in storage on site. Only emergency repairs to vehicles are permitted on the premises. Boats, trailers and recreational vehicles must be parked off the premises.

Section 4: (A) All pets are forbidden in any part of the Condominium at all times.
(B) No hazardous, unreasonably offensive or noxious activity shall be carried on in the Condominium, nor shall noises be made or anything done thereon which may be or become an unreasonable annoyance or nuisance to the neighborhood. By way of example and not as an exclusive list, no fireworks, sparklers, rockets or recreational explosive devices shall be ignited, and no firearms shall be discharged in any part of the Condominium.
(C) No commercial, political, charitable or religious door-to-door solicitation, canvassing or surveying shall be allowed in the Condominium.
(D) No sound shall be emitted from any unit, common area, vehicle or boat which is unreasonably loud including but without limitation, speakers, horns, whistles, bells or other sound devices, with the exception of security devices and/or fire alarms.

Section 5: The owner or lessee of a Dock Space, any member using an Amenity Space (as defined below), or any other authorized user (collectively referred to as the "User") of any Dock Space shall use the Dock Space to moor one boat and for no other purpose. The boat must be registered with the State of Montana under the name of the User, who must be a member of the Association. A copy of the registration shall be provided to the Association upon request. The Association may permit the mooring of jet skis, wave runners or other personal watercraft, or the Association may prohibit the mooring of jet skis, wave runners or other personal watercraft, by adopting rules

applicable to all the Dock Spaces from time to time. Users shall use the Dock Space solely for personal recreational purposes for User and User's family and guest. No commercial use of the Dock Space is permitted. No overnight occupancy of any watercraft shall be permitted.

Section 6: If the owner of any Dock Space ceases to be a member of the Association for any reason, including the sale of the Unit that the Dock Space is designated to as a Limited Common Element, and the sale does not include the Dock Space, the selling member must immediately place the Dock Space for sale and cease using the Dock Space on the day that the owner's membership in the Association is terminated. Dock Spaces can only be sold to and owned by members of the Association. The right of the selling member to use the Dock Space will be suspended indefinitely unless the Dock Space is re-designated as a Limited Common Element of another Unit owned by the member.

Section 7: A lessee who sells his or her Unit in Marina Cay may assign the lease to the new owner on terms and conditions approved by the Association. In addition, a lessee may assign the lease to another member of the Association on terms and conditions approved by the Association and both members. Except as provided above, if the lessee of any Dock Space ceases to be a member of the Association, the lessee's lease shall terminate on the day that the lessee's membership in the Association terminates.

Section 8: The owner or lessee of any Dock Space shall not let, sublet, rent or allow use of their Dock Space to any person who is not a member of the Association or who is not renting a Unit within Marina Cay. As to lessees, any attempt to so assign the lease or let, sublet, rent or otherwise allow use of the Dock Space shall render the lessee's lease void. The Marina Cay property manager shall be notified in advance of all rentals of Dock Space to persons renting a Marina Cay Unit.

Section 9: The Association shall obtain casualty insurance covering the Dock Project and shall provide the owner or lessee with evidence of such insurance upon request. The owner or lessee of a Dock Space shall obtain casualty insurance covering the boat that Lessee elects to moor at the Dock Space, and shall provide the Association with evidence of such insurance upon request.

Section 10: The User of any Dock Space shall hold the Association harmless and maintain liability insurance as follows:

(a) The User shall hold harmless, defend and indemnify the Association and Association's agents from all liabilities, costs and expenses of every kind and nature whatsoever that may be claimed or accrue by reason of any accident, injury or death in or about the Dock Space, the operation of any boat moored at the Dock Space or as the result of the condition, maintenance or operation of the Dock Space and adjacent areas, except for any such liability caused by negligence of the Association.

(b) User agrees to keep in force bodily injury/property damage liability insurance covering the Dock Space and any boat moored at the Dock Space, with bodily injury coverage of at least \$100,000 per occurrence. All such insurance shall be written by a company or companies authorized to issue such insurance in the State of Montana. Association shall be an additional named insured on the policy. User agrees to pay all premiums for such insurance and to deliver to Association evidence of the fact that such insurance is in force and will not be canceled without at least twenty (20) days' prior written notice by the insurance company or companies to Association.

(c) The Association shall obtain such liability insurance in such amounts as the Association may elect from time to time.

Section 11: The Association shall be responsible for all costs associated with the maintenance, operation, repair, upkeep and replacement of the Dock Project, except for damage to the Dock Project caused by User or User's family and guests as further explained in Section 13, below. No substantial improvements shall be constructed in the Dock Space without the prior written consent of the Association.

Section 12: The Association shall be responsible for maintaining the basic structure of the Dock Project in good, working order, subject to ordinary wear and tear. The User shall be responsible for maintaining the surface of the Dock Project that is adjacent to User's Dock Space in good, clean and safe condition.

Section 13: User shall be responsible for any damage to the Dock Project or any other costs or expenses incurred by the Association caused by User or User's family or guests. Any such amounts shall be payable upon demand by the Association.

Section 14: The Association shall have no responsibility for providing security for the Dock Space or the boat moored at the Dock Space. The Association shall not be responsible for any damage to User or their family, guests or their properties resulting

from vandalism, weather, acts of God, or the like.

Section 15: The Association shall pay all real and personal property taxes and assessments levied and assessed against the Association related to the Dock Project.

Section 16: Users agree not to permit any lien or encumbrance from any source or for any purpose whatsoever to remain against the Dock or the Dock Space during the term of lessee's lease.

Section 17: The two Dock Spaces within the Dock Project retained by the Association (the "Amenity Spaces") shall be available for use by all members of the Association on the terms and conditions below:

(a) Use of the Amenity Spaces shall be limited to one week per Unit per year, unless all weeks are not reserved by a date specified by the Homeowners Association, in which case a second week may be reserved. Reservations by members for specific weeks shall be made on first-come, first-served basis with reservations being accepted starting April 1 of each year, or on such other basis as the Homeowners Association may specify from time to time.

(b) All reservations, processing, and use shall be overseen by an agent appointed by the Homeowners Association. A non-refundable processing fee may be required for each reservation for an Amenity Space submitted by a member.

(c) Use of the Amenity Spaces is strictly for members and the family and guests of members. Use of the Amenity Spaces is not transferable to a renter of any Unit at Marina Cay.

(d) The Association shall have the right to unilaterally modify the rules and procedures relating to the Amenity Spaces as required for the harmonious use and benefit of the members.

Section 18: The Association has the right to make and modify additional rules regarding the regulation and use of the Dock Project and Dock Spaces as it sees fit to protect and benefit the Marina Cay property and members of the Association.

Section 19: Owners may rent their units to third-parties without the involvement of the Association. Prior to each tenant's occupancy, the owner shall give the tenant a

copy of the rules contained above and of any other rules promulgated by the Association or its property manager. Owners are responsible for the conduct of their guests and tenants. Owners shall reimburse the Association for the repair or replacement of any damage to the Common Elements or Limited Common Elements caused by their guests or tenants. Owners may be fined for the conduct of their guests and tenants.

Section 20: The Association may enforce any rules promulgated by the Board of Directors or by its property manager by either or both of:

(a) Suit for injunctive relief and/or damages, in which case the substantially prevailing party shall be entitled to recover its court costs and attorney's fees in a reasonable amount from the other party; and

(b) Assessment of fines for infractions according to the procedure herein.

(1) The Board shall promulgate written rules creating a procedure that will permit Owners to contest the imposition of fines. The Board shall also adopt a written scale of fines that may be imposed upon Owners for violation of particular parts of the Declaration or rules. A fine may not exceed \$500 per violation. Each separate day of a continuing violation may be considered a separate violation.

(2) Prior to the imposition of a fine, the Board or its agent shall give the Owner in question written notice of the violation and intended amount of the fine, and the notice shall provide a stated period of time, after receipt of the notice, to correct the violation to avoid the fine. The Board shall determine, in its sole discretion, the period of time allowed in each instance, and such period may be as short as one day or as long as 15 days.

(3) Such fines shall be deemed assessments and may be collected the same as the annual assessments, including by lien pursuant to the terms of Article VII, Section 11.

ARTICLE X

AMENDMENTS

No amendment of these Bylaws shall be effective unless approved by the affirmative vote of seventy-five percent (75%) of the shares eligible to vote. Any amendment must be recorded to be valid.

ARTICLE XI

MISCELLANEOUS

Section 1: All notices to the Board of Directors shall be sent postage prepaid in care of the Association's accountant, said notices to be effective upon receipt, and all notices by the Board of Directors or its agent to Owners shall be delivered by hand or by courier or sent by the Board or its agent postage prepaid to the most recent address furnished by each owner, with copies to all mortgagees, trust indenture beneficiaries, or contract sellers from which the Board has received written requests for notices . Said notices shall be deemed received and effective on the day of the first attempt to deliver by hand or by courier or three (3) days after mailing. An Owner's or other recipient's failure or refusal to accept delivery or mail shall not affect the date on which receipt and effectiveness are deemed to occur.

Section 2: The invalidity of any part of these Bylaws shall not affect or impair in any manner the validity, enforceability, or effect of the balance of these Bylaws. Similarly, any invalidity in the Declaration of Condominium under the Montana Unit Ownership Act shall not affect the balance thereof.

Section 3: No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to be abrogated or waived by reason of any failure to enforce the same, regardless of the number of violations or breaches thereof which may occur.

Section 4: Upon dissolution or final liquidation of the corporation, obligations shall be paid and assets distributed in conformity with the laws of the State of Montana.

ARTICLE XII

CONFLICTS

These Bylaws are set forth to comply with the requirements of Section 70-23-307 and Section 70-23-308, Montana Code Annotated. In case any of these Bylaws conflict with the provisions of such statutes, the Declaration of Condominium under the Montana Unit Ownership Act, the provisions of such statute or of the said Declaration, as amended, as the case may be, shall control.

The undersigned, as President and Secretary of Marina Cay Homeowners Association, Inc., have hereunto executed and hereby certify this Third Amendment and Restatement of the Revised Bylaws was duly adopted and approved by the affirmative vote of 75% of the shares eligible to vote on this _____ day of _____, 2013.

STATE OF MONTANA

SS:

County of _____

On this _____ day of _____, 2013, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Dan Bermingham, known to me to be the President of MARINA CAY HOMEOWNERS ASSOCIATION, INC., and he signed and swore to the truth of the above Third Amendment and Restatement of the Revised Bylaws, and acknowledged to me his signature as agent 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 _____

STATE OF MONTANA

SS:

County of _____

On this _____ day of _____, 2013, before me, the undersigned, a Notary Public for the State of Montana, personally appeared _____, known to me to be the Secretary of MARINA CAY HOMEOWNERS ASSOCIATION, INC., and he/she signed and swore to the truth of the above Third Amendment and Restatement of the Revised Bylaws, and acknowledged to me his/her signature as agent 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 _____