

**TODD MARINE ASSOCIATION, INC.**  
**FIFTH RESTATED AND AMENDED**  
**CODE OF BY-LAWS**  
**EFFECTIVE SEPTEMBER 29, 2018**

**ARTICLE I**

**Identification**

Section 1.01. Name. The name of the Corporation is Todd Marine Association, Inc. (hereinafter referred to as the “Corporation”).

Section 1.01. Association Role. The Corporation is an Indiana non-profit corporation that serves as the membership association for all persons with designated slip rights at Todd Marina, which is the common name for the Monroe Lake J-15 Group Boat Dock and associated adjacent land and facilities.

Section 1.03. Place of Keeping Corporate Books and Records. The books of account, records, documents and papers of the Corporation shall be kept at any place or places within or without the State of Indiana as directed by the Board of Directors. In the absence of a direction, the books of account, records, documents and papers shall be kept at the principal office of the Corporation.

Section 1.04. Fiscal Year. The fiscal year of the Corporation shall be January through December of each year until such time as changed by resolution of the Board of Directors of the Corporation.

**ARTICLE II**

**The Board of Directors**

Section 2.01. Directors. The Board of Directors shall be comprised of six (6) Directors. The Members shall elect all six (6) Directors on the Board of Directors from those persons who qualify as Members, as that term is defined in Article V. A Member Not in Good Standing may not be a candidate for or serve as a Director.

Section 2.02. General Powers. Except as otherwise provided in the Articles of Incorporation, the business, property and affairs of the Corporation shall be managed by the Board of Directors. The Board may make delegations of authority pursuant to this Code of By-

Laws or by resolution of the Board at a regular or special meeting thereof. The Board may retain employees, full or part-time, or independent contractors, within its reasonable discretion, to perform delegated and assigned responsibilities.

Section 2.03. Member Rules and Regulations. The Board shall be authorized to develop, implement and enforce rules and regulations (“Rules and Regulations”) applicable to Members as necessary and appropriate for the safe and efficient operation and governance of the Corporation and Todd Marina, including as applicable, rules and regulations promulgated by the Indiana Department of Natural Resources (“DNR”) and the U.S. Army Corps of Engineers. Amendments to the Rules and Regulations, including those implemented by the Board on an interim basis due to necessity – new services, safety, regulatory, or otherwise - shall be subject to the membership approval requirements as specified in Section 5.08. Majority Vote.

Section 2.04. Annual and Additional Regular Meetings. The annual meeting of the Board shall be held annually on the last Saturday in September at the same location as, and at a time following the adjournment of, the Annual Member Meeting, or at another date and time as specified by the Board. The Board may provide by resolution, the time and place for holding of additional regular meetings throughout the year as the Board may direct.

Section 2.05. Special Meetings. The Board of Directors may provide the time and place for the holding of special meetings of the Board upon not less than ten (10) days’ notice to the Directors.

Section 2.06. Participation in Meetings. Any or all Directors may participate in a meeting of the Board or committee of the Board, by any means of communication by which all Directors participating may simultaneously hear each other during the meeting. A Director participating in a meeting by this means is deemed to be present in person at the meeting.

Section 2.07. Quorum. A majority of the actual Board, as constituted from time to time, shall be necessary to constitute a quorum for the transaction of any business except the filling of vacancies and the act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors unless the act of a greater number is required by law, the Articles of Incorporation or this Code of By-Laws.

Section 2.08. Term of Office. Directors shall serve for a three (3) year term and may serve no more than six consecutive years. The Directors shall be divided into three (3) groups of two (2) Directors each, creating staggered terms, such that normally two (2) Directors shall be elected each year.

Section 2.09. Removal. Any Director may be removed upon a showing of cause, as provided by law, at any special meeting or at any regular meeting of the Board of Directors.

Section 2.10. Vacancies. Any vacancy of a Director occurring in the Board of Directors caused by removal, resignation, death or other incapacity shall be filled by vote of the Members, as set forth in Section 2.01. Such vote shall be held within sixty (60) days of the date on which the Board receives notice of said vacancy and such vote may be taken by Written Ballot as provided in Section 5.14. Action without Meeting; Written Ballots.

Section 2.11. Compensation of Directors. The Board of Directors is empowered and authorized to fix and determine the compensation of the Directors, to be effective only after approval by the Members pursuant to the membership approval requirements as specified in Section 5.08. Majority Vote. Any Director will be required to abstain when the Board determines his or her compensation, including fees for professional services, and the compensation of any other Director who is the spouse or otherwise a relative of the Director. Until such time as the Board of Directors shall choose to act in this matter, members of the Board of Directors shall receive no compensation for acting in such capacity, but shall be entitled to reimbursement for their appropriately incurred and documented expenses.

Sec. 2.12. Action without Meeting; Written Consent. Action required or permitted by this article to be taken at a meeting of the Board of Directors may be taken without a meeting if the action is taken by all members of the Board of Directors. The action must be evidenced by at least one (1) written consent, via letter, fax or email:

- (1) describing the action taken;
- (2) signed by each Director; and
- (3) included in the minutes or filed with the corporate records reflecting the action taken.

Action taken under this section is effective when the last Director signs the consent, unless the consent specifies a prior or subsequent effective date. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

Section 2.13. Membership Agreement. The Board shall be authorized to develop, modify and implement a standardized Todd Marine Association, Inc. membership agreement (“Membership Agreement”) to be applicable to all Members. Amendments to the language of the Membership Agreement shall be subject to the membership approval requirements as specified in Section 10.1 – Amendments below.

Section 2.14. Schedule of Fees and Charges. The Board shall be authorized to develop, modify and implement a standardized Todd Marine Association, Inc. schedule of fees and charges (“Schedule of Fees and Charges”) for recovery of costs caused to be incurred by, or other services provided to, individual Members. Amendments to the Schedule of Fees and

Charges, including those implemented by the Board on an interim basis due to necessity – new services, safety, regulatory, or otherwise - shall be subject to the membership approval requirements as specified in Section 5.08. Majority Vote.

### **ARTICLE III**

#### **Executive Committee**

Section 3.01. Designation of Executive Committee. The Board of Directors may, by resolution adopted by majority of the actual number of Directors elected and qualified from time to time, designate three (3) or more of its number to constitute an Executive Committee. The Board of Directors shall have the power at any time to increase or decrease the number of members of the Executive Committee, to fill vacancies thereon, to change any member thereof and to change the functions or terminate the existence thereof.

Section 3.02. Powers of the Executive Committee. During the intervals between meetings of the Board of Directors and subject to such limitations as may be required by law or by resolution of the Board of Directors, the Executive Committee shall have and may exercise all of the authority of the Board of Directors, except those specifically reserved to the Board by the Articles of Incorporation or this Code of By-Laws.

Section 3.03. Meetings; Procedures; Quorum. Regular meetings of the Executive Committee may be held without notice, at such time and place as may from time to time be fixed by resolution of the Executive Committee. Special meetings of the Executive Committee may be called at any time by any member of the Executive Committee. Notice of such special meeting shall be sent to each member of the Executive Committee at his residence or usual place of business by letter or by email, at such time that, in the regular course, such notice would reach such place not later than during the day immediately preceding the day of such meeting; or may be delivered to a member personally at any time during such immediately preceding day. Notice of any such meeting need not be given to any member of the Executive Committee who has waived such notice, either in writing or by email, arriving either before or after such meeting, or who shall be present at the meeting. Any meeting of the Executive Committee shall be a legal meeting, without notice thereof having been given, if all the members of the Executive Committee who have not waived notice thereof shall be present in person. A majority of the Executive Committee as constituted from time to time shall be necessary to constitute a quorum for the transaction of any business and the act of a majority of the members present at a meeting at which a quorum is present shall be an act of the Executive Committee. The members of the Executive Committee shall act only as a Committee and the individual members shall have no power as such. All minutes of meetings of the Executive Committee shall be submitted to the next succeeding meeting of the Board of Directors for approval; but failure to submit the same or

to receive the approval thereof shall not invalidate any completed or noncompleted action taken by the Corporation upon authorization by the Executive Committee prior to the time at which the same shall have been, or were, submitted as above provided.

## **ARTICLE IV**

### **Officers of the Corporation**

**Section 4.01. Election.** At its annual meeting, the Board of Directors shall elect or appoint a President, a Secretary, a Treasurer, a First Vice President, and may appoint one (1) or more additional Officers.

**Section 4.02. Vacancies.** Whenever any vacancies occur in any office by death, resignation, increase in the number of offices of the Corporation, or otherwise, such vacancy shall be filled by the Board of Directors and the Officer so elected or appointed shall hold office until a successor is chosen and qualified, unless sooner removed as provided for by applicable law.

**Section 4.03. Removal.** Any elective Officer of the Corporation may be removed, either with or without cause, at any time by two-thirds (2/3) vote of the entire Board of Directors.

**Section 4.04. The President.** The President shall be the Chief Executive Officer of the Corporation. The President shall preside at all meetings of the Members and of the Board of Directors, and, subject to the approval of the Board of Directors, shall direct the policies and management of the Corporation. The President shall discharge all the duties inherent to a presiding officer and perform such other duties as from time to time may be assigned by the Board of Directors or as prescribed by law or this Code of By-Laws.

**Section 4.05. The First Vice President.** The First Vice President shall perform all duties incumbent upon the President during the absence or disability of the President and perform such other duties as this Code of By-Laws may require or the Board of Directors may prescribe.

**Section 4.06. The Secretary.** The Secretary shall attend all meetings of the Board of Directors and Executive Committee, and shall keep or cause to be kept in a book provided for the purpose, a true and complete record of the proceedings of such meetings, and shall perform a like duty for all standing committees appointed by the Board of Directors when required. The Secretary shall attend to the giving and serving of all notices of the Corporation. The Secretary shall keep the books and records of the Corporation, contracts and agreements, and shall perform such other duties as this Code of By-Laws may require, or the Board of Directors may prescribe.

Section 4.07. The Treasurer. The Treasurer shall maintain a correct and complete record of account showing accurately at all times, the financial condition of the Corporation. The Treasurer shall be the legal custodian of all monies, notes, securities and other valuables which may from time to time come into the possession of the Corporation. The Treasurer shall immediately deposit all funds of the Corporation coming into his/her hands in a reliable bank or other depository to be designated by the Board of Directors and shall keep such bank account in the name of the Corporation. The Treasurer shall perform all duties incumbent upon the President during the absence or disability of the President and First Vice President. By direction of the Board of Directors, regular business functions of this office may be performed by another Officer, an employee or an independent contractor.

## ARTICLE V

### Members of the Corporation

Section 5.01. Members. The Corporation shall have Members. Membership shall be restricted to those persons with designated slip rights at Todd Marina, as defined in Section 5.09 Board Approval of Memberships below.

Section 5.02. Annual Meeting. Annual meetings of the Members shall be held at 10:30 a.m. on the last Saturday of September each year in the parking lot of Todd Marina, or at another location and time communicated to Members by thirty (30) days advance notice. At such meeting, the Directors shall be elected by vote of the Members with voting rights. The Members may transact other business at such meetings as may properly come before them.

Section 5.03. Special Meetings. Special meetings of the Members may be called by the president or by the Members with voting rights. Special meetings of the Corporation may be called by the Members if at least twenty percent (20%) of the Members with voting rights for the proposed issue to be considered at the special meeting submit to the Board at least one (1) written demand for the special meeting that:

- a) Describes the purpose for which the meeting is to be held; and
- b) Is signed by the Members requesting the special meeting.

If the Board does not send out a notice of the date, time and place for a special meeting within thirty (30) days after the date the Board receives a valid written demand for the special meeting as prescribed herein, a Member who signed the written demand may set the date, time and place for the special meeting, and send out the notice for the special meeting to the other Members. No business shall be conducted at a special meeting except as stated in the notice.

Section 5.04. Notice of Meetings. No notice of the annual meeting of the Members shall be required if the meeting is held at the time, date and location specifically identified in

Section 5.02. If the annual meeting is held other than as specifically identified, and for all other meetings, the Secretary or other officer specified by the Board of Directors shall cause notice of the meeting date, time and location to be hand-delivered, sent prepaid by United States mail to Member's mailing address of record, or sent via email to Member's email address of record at least thirty days in advance of such meeting. Further, Member meetings must be held in Monroe County, Indiana at a time when and a place where it can be reasonably expected that most Members will be able to attend, and further such meeting must be held on a weekend day within the hours of 10am and 5pm.

Section 5.05. Waiver of Notice. Any Member may, at any time, waive notice of any meeting of the Members in writing, and such waiver shall be deemed equivalent to the receipt of such notice.

Section 5.06. Adjournment of Meeting. At any meeting of Members, a majority of the Members with voting rights who are present at such meeting, either in person or by proxy, may adjourn the meeting to another time.

Section 5.07. Quorum. Except as otherwise provided in this Code of By-Laws, the Members with voting rights present in person or by proxy at any meeting of the Members, shall constitute a quorum at such meeting.

Section 5.08. Majority Vote. The vote of a majority of the Members with voting rights present in person or by proxy at a meeting at which a quorum shall be present shall be binding upon all Members for all purposes except where a higher percentage vote is required by this Code of By-Laws, the Articles of Incorporation, or consistent with Indiana law.

Section 5.09. Board Approval of Memberships. Members (known as "Class B Members" prior to September 29, 2018) shall be those persons who have been approved for membership by the Board of Directors after having met all prerequisites. Prerequisites are as follows: (1) Member must have acquired a common ownership interest in Todd Marina, (2) Member must have provided Corporation with a fully completed, signed and notarized DNR Affidavit of Land Ownership, (3) Member must have provided Corporation with a signed and notarized reconveyance Quitclaim Deed as described in section 5.11 (1) below, and (4) Member must have signed a Todd Marine Association, Inc. Membership Agreement. Upon the Board's determination of Member's completion of the required prerequisites and execution of said Membership Agreement by an authorized member of the Board of Directors, Member is granted a transfer of membership and a license by the Corporation, its agents or assigns, for exclusive use of a designated boat slip in Todd Marina subject to this Code of By-Laws, the Rules and Regulations, and the Membership Agreement.

Section 5.10. Member Not in Good Standing. After due process as described in this section, the Board of Directors may assign the designation of Member Not in Good Standing to a Member if the Member's actions or inactions can be credibly believed by the Board of Directors to cause loss of value in the other Members' investments in their Todd Marina ownership, or based on Member's noncompliance with any of the following:

- a) the provisions of this Code of By-Laws,
- b) the provisions of the Membership Agreement,
- c) the provisions of the Rules and Regulations,
- d) the provisions of the DNR or U.S. Army Corps of Engineers regulations and requirements, or
- e) any local, state, or federal laws or regulations.

Prior to any such designation being assigned, Member shall be provided, at Member's mailing address of record or at Member's email address of record, with a written Notice of Violation from the Board of Directors specifying the area of non-compliance, the required remedy, and a required compliance date, with such date commensurate with the nature and severity of the violation. Such notice shall be deemed given when deposited in the U.S. Mail or upon sending the email, whichever the case may be. Member may appeal in writing to the person and address indicated on the Notice of Violation within 15 days of said notice being issued, specifying any objection to said Notice of Violation. The Board of Directors shall respond to Member's appeal within 7 days of its issuance. If Member's appeal is granted, the Notice of Violation will be withdrawn or modified. Absent a withdrawal of the Notice of Violation, if Member remains in non-compliance beyond the required compliance date, the Board of Directors may assign to Member the Member Not in Good Standing designation.

A Member assigned the Member Not in Good Standing designation may receive one or more sanctions as determined appropriate by the Board of Directors in its reasonable discretion, including, without limitation, the following:

- a. Posting of Member's status as a Member Not in Good Standing on the official Membership Roster, including in the Members' section of the TMA website
- b. Loss of Member voting rights
- c. Lock-out of boat access to Member's designated slip
- d. Withholding or withdrawing of Member's Mooring Permit
- e. Possible termination of Membership after further due process as described in the Termination of Membership section below.

Section 5.11. Duration of Membership. Members shall maintain their membership during such period as they are licensed by the Corporation to use a designated boat slip in Todd Marina.

- 1) Acceptance of Quitclaim Deed from Corporation and Execution of Reconveyance Deed to Corporation. Each Member shall accept by Quitclaim Deed an undivided



1/100<sup>th</sup> fee simple interest in Todd Marina (as legally described by the attached Exhibit “A,” incorporated herein as if fully set forth) and shall execute a Quitclaim Deed reconveying the said interest to the Corporation upon the granting of transfer of a Membership, which reconveyance shall be held by the Corporation during the Membership. Upon termination or subsequent transfer of the Membership, the Corporation shall divest the Member’s 1/100<sup>th</sup> fee simple interest in the said real estate by recordation of the said reconveyance Quitclaim Deed and convey a comparable interest to the transferee or the subsequent owner.

- 2) Transfer of Membership. The membership may be transferred by a Member who is thereby relinquishing his or her right to the use of the designated boat slip with the prior written consent of the Board, which consent shall not be unreasonably withheld. The Board of Directors may approve other conditions pertaining to the transfer of memberships.
- 3) Termination of Membership and Corporation’s Right to Transfer Membership upon Termination. The Corporation may terminate a membership for any Member who (1) has accumulated \$3000 or more of non-paid assessments or other fees due and payable to the Corporation or (2) has been designated by the Board of Directors of the Corporation as a Member Not in Good Standing two or more times or for more than two (2) consecutive months for un-remedied violations of membership requirements that could result in injury to the health and safety of people, damage to the property of Todd Marina or its Members, or imperil Todd Marina’s group boat dock permit from the IDNR.

The Corporation shall provide written notice, via certified mail to Member at Member’s mailing address of record, of the Corporation’s Proposed Termination of Membership including a description of the membership violation leading to the proposed termination, the action that must be taken by Member to remedy the violation and avoid termination of membership, and a required action completion date, with such date commensurate with the nature and severity of the violation.

Member shall have 15 days from the date the notice is issued, to appeal in writing, to the person at the address indicating in the Notice, specifying any objection to such Notice. The Board of Directors shall respond to Member’s appeal within 7 days of its issuance. If Member’s appeal is granted, the Notice of Proposed Termination of Membership will be withdrawn or modified. Absent a withdrawal of the Notice, if Member remains in non-compliance beyond the required compliance date, the Board of Directors may send a Notice of Termination of

Membership to Member, via certified mail to the Member's address of record, to be effective 7 days from the Notice date.

Upon the effective date of Termination of Members' membership, the Member shall be designated a Terminated Member, and Terminated Member's license to use its designated boat slip is revoked, the Corporation shall have the right to record the reconveyance Quitclaim Deed for the Todd Marina ownership interest associated with Terminated Member's designated slip, and the Corporation may thereafter sell such interest and transfer Terminated Member's membership to another party ("Replacement Member") who has paid the Corporation market value for such ownership interest.

The Terminated Member will remain responsible for all Corporation assessments and any associated penalties and fees that are applicable until its ownership interest and membership are transferred to a Replacement Member.

The amounts owed to the Corporation by Terminated Member, if any, plus all reasonable expenses incurred by the Corporation in selling Terminated Member's Todd Marina ownership interest and transferring Terminated Member's membership, including attorney fees, shall be deducted from the amounts received from Replacement Member from its purchase of the interest, with any positive difference being provided to Terminated Member within 30 days. The Corporation reserves the right to take any appropriate action to recover from Terminated Member any negative difference.

Section 5.12. Voting Rights. Each Member, based on the official Membership Roster as of the close of business the day before a vote is taken, shall be entitled to one (1) vote for each matter submitted to a vote of the Members, including without limitation, on matters directly relating to the nature and amount of assessments for the maintenance, repair and/or improvement of the docks, slips and facilities serving them. When more than one person holds a membership, all such persons shall be Members, however, the vote for such license shall be exercised as they determine, but in no event, shall more than one vote be cast with respect to any membership. However, Members who are Members Not In Good Standing, as defined in Section 5.10 of this Code of Bylaws, or have not paid all assessments and fees due and payable to the Corporation, including without limitation, amounts due under Sections 2.14, 6.03, 6.04 and 6.05, shall not have voting rights and shall not be entitled to vote on any matters.

Section 5.13. Vote by Proxy. A Member with voting rights may vote the Member's membership in person or by proxy. A Member may appoint a proxy to vote or otherwise act for the Member by signing a TMA Proxy Form (attached as Exhibit B) personally, or by an

attorney-in-fact. An appointment of a proxy is effective when received in person, via US Mail, or via email, by the Secretary or other officer. An appointment is valid for eleven (11) months unless a shorter or longer period is expressly provided in the appointment form. An appointment of a proxy is revocable by the Member. Subject to any express limitation on the proxy's authority appearing on the face of the appointment form, the Corporation may accept the proxy's vote or other action as that of the Member making the appointment.

Section 5.14. Action without Meeting; Written Ballots. An action that may be taken at an annual, a regular, or a special meeting of Members may be taken without a meeting if the Corporation delivers a written ballot to every Member entitled to vote on the matter.

A written ballot must do the following:

- a) Set forth each proposed action.
- b) Provide an opportunity to vote for or against each proposed action.

Approval by written ballot under this section is valid only when the following occur:

- (a) The number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.
- (b) The number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

A solicitation for votes by written ballot must do the following:

- (a) Indicate the number of responses needed to meet the quorum requirements.
- (b) State the percentage of approvals necessary to approve each matter other than the election of Directors.
- (c) Specify the time by which a ballot must be received by the Corporation to be counted.

A written ballot may not be revoked.

Section 5.15. Member Contact Information, Boat Registration, and Proof of Insurance Coverage. Members shall ensure that the Corporation at all times has been provided with current contact information of record, including full name, mailing address, telephone number, and email address. Members shall ensure that the Corporation has been provided with current boat registration and proof of insurance coverage information relating to their boat to be moored in a designated boat slip at Todd Marina. Members shall maintain at all times for their watercraft registered with TMA and moored at Todd Marina, a combined single limit of liability insurance per accident for bodily injury and property damage of not less than the minimum level specified in the TMA Rules and Regulations.

Section 5.16 Waiver of Partition. Except as otherwise expressly provided in this Code of By-Laws, no Member, during the duration of the Corporation will, either directly or indirectly, take any action to require partition or appraisal of the Corporation or any of its assets or properties or cause the sale of any assets of the Corporation or property, and notwithstanding any

provision of applicable law to the contrary, each Member (for itself and its legal representatives, successors and assigns) hereby irrevocably waives any and all right to partition, or to maintain any action for partition, or to compel any sale with respect to its interest in, or with respect to, any assets or properties of the Corporation.

## **ARTICLE VI**

### **Annual Accounting, Budget, and Assessment**

Section 6.01. Annual Accounting. Annually, after the close of each fiscal year of the Corporation and prior to the date of the Annual Member Meeting next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each Member a financial statement prepared by or at the direction of the Corporation Treasurer, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

Section 6.02. Proposed Annual Budget. Annually, before the date of the annual meeting of the Members, the Board of Directors shall cause to be prepared a proposed annual budget for the upcoming fiscal year estimating the total amount of the Todd Marina expenses for the upcoming fiscal year and shall furnish a copy of such proposed budget to each Member at or prior to the time the notice of such annual meeting is mailed or delivered to such Members. The annual budget shall be submitted to the Members at the annual meeting of the Members for adoption, and, if so adopted, shall be the basis for the regular assessments (hereinafter defined) for the upcoming fiscal year. At the annual meeting of the Members, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Members as specified in Section 5.08 Majority Vote; provided, however, that in no event shall the annual meeting of the Members be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the regular assessments and all sums assessed by the Corporation shall be established using generally accepted accounting principles applied on a consistent basis.

The annual budget may include the establishment and maintenance of an Operating Reserve Fund for operating and maintenance expenses that may be incurred in a fiscal year beyond those amounts budgeted for those expenses in such year, with such reserve amount to be approved by a majority vote of the Members as specified in Section 5.08 Majority Vote. The annual budget may include the establishment and maintenance of a Replacement Reserve Fund for capital expenditures and replacement of dock and supporting facilities, which replacement reserve fund, if established, shall be used for those purposes and not for usual or ordinary repair expenses, with such reserve amount to be approved by a majority vote of the Members as specified in Section 5.08 Majority Vote.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Members shall not constitute a waiver or release in any manner of the obligations of the Members to pay the Todd Marina expenses as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Members, there is no annual budget approved by the Members, as herein provided, for such current fiscal year, the Members shall continue to pay regular assessments based upon the last approved budget or, at the option of the Board, based upon one hundred ten percent (110%) of such last approved budget, as a temporary budget.

Section 6.03. Regular Assessment. The annual budget as adopted by the Board shall, based on the estimated cash requirement for the Todd Marina expenses for the upcoming fiscal year, as set forth in said budget, contain a proposed assessment to each Member, which shall be the same amount for each slip. Following the adoption of the annual budget, each Member shall be given written notice of such assessment against the designated slip which Member is licensed to use (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days, following adoption of the final annual budget by the Board, to reflect the assessment against each slip based upon such annual budget as finally adopted. The aggregate amount of the Regular Assessment shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each boat slip and the due date for payment shall be communicated to Member in an Assessment Communication from the Corporation. Payment of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed in the Assessment Communication. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget, then:

- (i) if the Regular Assessment based upon the final annual budget adopted by the Members exceeds the amount of the Regular Assessment based upon the temporary budget, such excess which is due shall be paid by Member within 45 days of receiving notice from the Corporation of such excess, or
- (ii) if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Members, such excess shall be credited against the next year's Regular Assessment.

The Regular Assessment for the current fiscal year of the Corporation shall become owed to the Corporation for each slip as of the first day of each fiscal year of the Corporation, even though the Assessment Communication may not issue until a later date, and even though the

final determination of the amount of such Regular Assessment may not have been made by that date. The fact that Member has paid its Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided sells, conveys or transfers its Todd Marina ownership interest, shall not relieve or release such Member or its successor from payment of the Regular Assessment for such slip as finally determined, and such Member and its successor as owner of such Todd Marina interest shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to the terms hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth herein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations.

Section 6.04. Special Assessment. In addition to the Regular Assessment, the Corporation may make special assessments (herein called "Special Assessment") to Members for the purpose of defraying, in whole or part, the cost of any valid expense of the Corporation, including without limitation, purchase, construction, reconstruction, repair or replacement of Todd Marina property, extraordinary legal expenses, or any other expenses allowed by Law provided that any such Special Assessment shall be assessed only after approval by at least of two-thirds of the Members voting in person or by proxy at a Member meeting, or by Written Ballot pursuant to Section 5.14, in which such Special Assessment has been proposed. Special Assessment payments, which shall be the same amount for each slip, will be due and payable to the Corporation by the due date specified in the notice of Special Assessment.

Section 6.05. Late Payment and Non-Payment. Interest at the rate of 1.5% per month shall be assessed on all sums due and unpaid by Member beginning the day after the specified due date. In the event that the Corporation engages in collection efforts to collect money due from Member, the Corporation shall be entitled to an award for all damages, costs and expenses incurred therefore, including reasonable attorney fees.

## **ARTICLE VII**

### **Indemnification**

Section 7.01. Indemnification. Except as specifically set forth in the Settlement Agreement filed in Cause No. 53C06 0512 PL 02406 in the Circuit Court of Monroe County, Indiana, any Director, Officer or former Director or Officer of the Corporation or any person who may have served at the request as a Director or Officer of the Corporation shall be

indemnified against all liability and against expenses actually and reasonably incurred by them in connection with the defense and any civil action, suit or proceeding in which they are made or threatened to be made a party by reason of being or having been an Officer or Director, if:

(1) the individual's conduct was in good faith; and

(2) the individual reasonably believed:

(A) in the case of conduct in the individual's official capacity with the corporation, that the individual's conduct was in the corporation's best interests; and

(B) in all other cases, that the individual's conduct was at least not opposed to the corporation's best interests; and

(3) in the case of any criminal proceeding, the individual:

(A) had reasonable cause to believe the individual's conduct was lawful; or

(B) had no reasonable cause to believe the individual's conduct was unlawful.

The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not determinative that an individual did not meet the standard of conduct described in this section.

Expenses incurred in defending any action, suit or proceeding, civil or criminal, may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding notwithstanding any provision of this Article to the contrary. Advancement of monies shall be conditioned upon receipt of an undertaking by or on behalf of the Director, Officer, employer, or agent to repay the amount paid by the Corporation if it shall ultimately be determined that the Director, Officer, employer or agent is not entitled to indemnification as provided for in this Section.

Section 7.02. Liability of Officers and Directors. Except as specifically set forth in the Settlement Agreement filed in Cause No. 53C06 0512 PL 02406 in the Circuit Court of Monroe County, Indiana, no person shall be liable to the Corporation for any loss, damage or expense suffered by it on account of any action taken or omitted as a Director or Officer unless the acts of omission or co-omission, pursuant to the Indiana Nonprofit Corporation Act of 1991, would result in individual liability on the part of an officer or director. Action may be taken or omitted based upon good faith reliance on past Corporation activities, activities generally carried on by corporations of similar nature, the advice of counsel or certified public accountants, or upon statements made or information furnished by Directors, Officers, employees or agents of the Corporation, the Member or of any other person or entity that he/she had no reasonable grounds to disbelieve.

Section 7.03. Interest of Directors and Contracts. Any contract or other transaction between the Corporation and any affiliated firm or entity of which one (1) or more of its Directors are members or employees, or in which they are interested, or between the Corporation and any corporation, partnership or association of which one (1) or more of its directors are

shareholders, members, directors, officers or employees, or in which they are interested, or in which the Corporation is a member, shareholder, or otherwise interested, shall be valid for all purposes, notwithstanding the presence of such director or directors at the meeting of the Board of Directors of the Corporation which acts upon or in reference to, such contract or transaction and notwithstanding his/her or their participation in such action, if the fact of such interest shall be disclosed or known to the Board of Directors and the Board of Directors shall, nevertheless, authorize, approve or ratify such contract or transaction, by a vote of a majority of the disinterested directors present, notwithstanding the fact that such majority of the Directors present may not constitute a quorum, a majority of the Board of Directors, or a majority of the directors present at the meeting at which the contract or transaction is considered. This Section 7.03 shall not be construed to invalidate any contract or other transaction which would otherwise be valid under the common and statutory law applicable thereto. Anything contained herein to the contrary notwithstanding, no transaction may be entered into by the Corporation which would not be permitted by Indiana Business Corporation Law as amended.

## **ARTICLE VIII**

### **Fiscal Year Audits**

Section 8.01. Fiscal Year Audits. After the end of each Fiscal Year, the Board of Directors shall cause audits to be performed of the financial and operational activities of the Corporation for such Fiscal Year, with the results of such Fiscal Year Audits being presented in written form to the Members no later than the next annual Member's meeting.

## **ARTICLE IX**

### **Compliance with Section 501 (c) (7) of the Internal Revenue Code**

Section 9.01. Compliance with Section 501 (c) (7) of the Internal Revenue Code. No director, officer, employee, independent contractor, Member or representative of the Corporation shall take any action or carry on any activity by or on behalf of the Corporation not permitted to be taken or carried on by an organization exempt under Section 501 (c) (7) of the Internal Revenue Code as it now exists or may be amended. No part of the net earnings of the Corporation shall inure to the benefit or be distributable to any director, officer, Member, or other private person, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in the Articles of Incorporation and this Code of By-Laws. This section shall not prohibit reasonable compensation to directors or officers for services actually rendered as allowed by the Articles of Incorporation and/or this Code of By-Laws.



**ARTICLE X****Amendments**

Section 10.1. Amendments. The power to make, alter, amend or repeal this Code of By-Laws and the language of the Membership Agreement is vested in the Board of Directors of the Corporation, but such action shall be taken only at an annual meeting of the Board of Directors or meeting of the Board of Directors specifically called for such purpose, if such meeting is properly called, and adopted by a majority of the Board of Directors, and only after approval by at least of two-thirds of the Members voting in person or by proxy at a Member meeting, or by Written Ballot pursuant to Section 5.14, in which such amendments have been proposed. Members must be provided any proposed amendments to the Code of By-Laws and language of the Membership Agreement at least 30 days in advance of such meeting.