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DECLARATION
OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR

STILLWATER AT WHITEFISH

This Declaration of Covenants, Conditions, Restrictions and Easements for STILLWATER AT WHITEFISH (the "Declaration") is made this 28th day of December, 2006, by DKRW, LLC, a Washington limited liability company which is authorized to conduct business in the State of Montana (hereinafter the "Declarant").

ARTICLE I
STATEMENT AND PURPOSE AND IMPOSITION OF COVENANTS

Section 1.1. *Owner.* The Declarant is the owner of the property in Flathead County, Montana, lying and situated in Section 25, Township 31 North, Range 23 West, P.M.M., more particularly described as follows (the "Property"):

A tract of land, situated, lying and being in the Northwest Quarter of the Northwest Quarter and in the South Half of the Northwest Quarter of Section 25 and in the Northeast Quarter of the Northeast Quarter of Section 26, Township 31 North, Range 23 West, P.M.M., Flathead County, Montana and more particularly described as follows to wit:

Beginning at the Northwest corner of the Northeast Quarter of the Northeast Quarter of Section 26, Township 31 North, Range 23 West, P.M.M., Flathead County, Montana, which is a found iron pin; Thence along the North boundary of said NE1/4NE1/4 S89°02'41"E 1327.37 feet to a found brass cap and the Northwest corner of the Northwest Quarter of Section 25, Township 31 North, Range 23 West, P.M.M., Flathead County, Montana; Thence along the North boundary of said NW1/4 S89°44'03"E 532.98 feet to the approximate thread of Stillwater River; Thence along said thread the following

eight (8) courses: S17°17'45" W 112.33 feet; S58°35'35"W 209.68 feet; S86°31'31"W 225.36 feet; S06°24'36"E 108.13 feet; S57°07'04"E 387.77 feet; S85°20'14"E 363.30 feet; S73°25'52"E 175.57 feet; S62°02'01"E 409.85 feet to the East boundary of the Northwest Quarter of said NW1/4; Thence leaving said thread and along said East boundary S00°10'33"W 507.30 feet to a found iron pin and the Northwest corner of the Southeast Quarter of said Northwest Quarter; Thence along the North boundary of said SE1/4NE1/4 S89°45'02"E 182.55 feet to the approximate thread of said Stillwater River; Thence along said thread the following five (5) courses: S18°19'25"E 110.86 feet; S56°37'30"E 359.15 feet; S45°56'56"E 317.24 feet; S59°06'22"E 219.83 feet; S67°43'18"E 419.77 feet to the East boundary of said NW1/4; Thence leaving said thread and along said East boundary S00°12'20"W 449.29 feet to the approximate thread of said Stillwater River; Thence along said thread the following three (3) courses: S43°34'52"W 76.62 feet; S86°30'58"W 187.30 feet; S56°35'55"W 25.89 feet to the South boundary of said NW1/4; Thence leaving said thread and along said South boundary N89°48'59"W 2385.69 feet to a found aluminum cap and the Southwest corner thereof; Thence along the West boundary of said NW1/4 N00°02'32"E 1324.26 feet to a found iron pin and the Southeast corner of said NE1/4NE1/4 N89°10'21"W 1103.31 feet to a found iron pin on the Easterly R/W of a 60 foot County road known as Farm to Market Road; Thence along said R/W N10°34'05"W 1215.57 feet to a found iron pin on the West boundary of said NE1/4NE1/4; Thence leaving said R/W and along said West boundary N00°01'18"E 135.70 feet to the point of beginning and containing 130.950 Acres; more or less; Subject to and together with all appurtenant easements of record.

The above-described tract of land is the real property depicted on the Plat of Stillwater at Whitefish.

Section 1.2. *Purpose.* The purpose of the Declarant in making this Declaration is to create a development known as Stillwater at Whitefish on the Property (the "Project" or "Stillwater at Whitefish").

The Declarant further intends to ensure the attractiveness of the Property, including the residences and other improvements constructed on it; to prevent any future impairment of the Property and to guard against the construction on the Property of improvements of improper or unsuitable materials or with improper quality or methods of construction; to protect and enhance the value and amenities of the Property; to provide for the operation, administration, use and maintenance of the private roadway areas within the Property; to preserve, protect and enhance the values and amenities of the Property; and to promote the health, safety, and welfare of the owners of the Property.

Section 1.3. *Imposition of Covenants.* To accomplish the purposes indicated above, the Declarant hereby declares that from the date of recording this Declaration forward, the Property will constitute a subdivision known as Stillwater at Whitefish, and will be held, sold, and conveyed subject to the following covenants, conditions, restrictions and easements (collectively, these "Covenants"). These Covenants will run with the land and will be binding upon all persons or entities having any right, title, or interest in all or any part of the Property (including

Declarant) and their heirs, successors, and assigns, and their tenants, employees, guests, and invites. These Covenants will inure to the benefit of each owner of the Property.

ARTICLE II DEFINITIONS

The following terms, as used in this Declaration, are defined as follows:

Section 2.1. "*Annual Assessment*" means the Assessment levied annually pursuant to Section 9.3.

Section 2.2. "*Articles*" or "*Articles of Incorporation*" means the Articles of Incorporation of the Stillwater at Whitefish Homeowners' Association, Inc., a Montana non-profit corporation, which have been filed with the Montana Secretary of State, as such articles may be amended from time to time.

Section 2.3. "*Assessments*" means the Annual, Special and Default Assessments levied pursuant to Article X to meet the estimated cash requirements of the Stillwater at Whitefish Homeowners' Association.

Section 2.4. "*Building Envelope*" means the area in which virtually all Improvements (other than driveways, fencing, landscaping, and the like) must be constructed. The Building Envelope shall be established by the Owner and the Design Review Committee pursuant to the procedures set forth in the Design Guidelines.

Section 2.5. "*Bylaws*" means the bylaws of the Stillwater at Whitefish Homeowners' Association which establish the methods and procedures of its operation, as such bylaws may be amended from time to time.

Section 2.6. "*Common Area*" means any real property shown as a private road and utility easement, pedestrian and bike path easement, common area or as a homeowners' park on the final Plat or Plats of Stillwater at Whitefish, records of Flathead County, Montana and any other property in which the Stillwater at Whitefish Homeowners' Association owns an interest for the common use, benefit and enjoyment of the Members.

Section 2.7. "*Common Expenses*" means (i) premiums for the insurance carried by the Stillwater at Whitefish Homeowners' Association under Article XIII; (ii) all other expenses incurred by the Stillwater at Whitefish Homeowners' Association in administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Area and any Improvements located on it; (iii) all expenses expressly declared to be Common Expenses by the Stillwater at Whitefish Documents; (iv) all expenses lawfully determined to be Common Expenses by the Board of Directors; and (v) all expenses to be allocated among the Owners as provided in Article X.

Section 2.8. "*Declarant*" means DKRW, LLC, a Washington limited liability company, or its successors or assigns, including any Successor Declarant.

Section 2.9. "*Default Assessment*" means any Assessment levied by the Stillwater at Whitefish Homeowners' Association pursuant to Section 10 below.

Section 2.10. "*Design Guidelines*" means the guidelines and rules published and amended and supplemented from time to time by the Design Review Committee.

Section 2.11. "*Design Review Committee*" or "*Committee*" means the committee formed pursuant to Article VII to maintain the quality and architectural harmony of improvements in Stillwater at Whitefish.

Section 2.12. "*Development Rights*" is defined in Section 12.1.2.

Section 2.13. "*Expansion Property*" means such additional real property now owned or in the future acquired by Declarant (including any Successor Declarant) as Declarant may make subject to the provisions of this Declaration, by duly recorded Declaration of Annexation.

Section 2.14. "*Homeowners' Park*" means any real property shown as a homeowners' park on the final Plat or Plats of Stillwater at Whitefish, records of Flathead County, Montana. The Homeowners' Park is part of the Common Area.

Section 2.15. "*Improvement(s)*" means all buildings, parking areas, loading areas, fences, walls, hedges, plantings, lighting, poles, driveways, roads, ponds, lakes, trails, gates, signs, changes in any exterior color or shape, excavation and all other site work, including, without limitation, grading, road construction, utility improvements, removal of trees or plantings, and any new exterior construction or exterior improvement which may not be included in the foregoing. "Improvement(s)" does not include turf, shrub, or tree repair or replacement of a magnitude which does not change exterior colors or exterior appearances. "Improvement(s)" does include both original improvements and all later changes and improvements.

Section 2.16. "*Lot*" means a parcel of land designated as a lot on any Plat of the Property.

Section 2.17. "*Maintenance Fund*" means the fund created by Assessments and fees levied pursuant to Article X below to provide the Stillwater at Whitefish Homeowners' Association with the funds required to carry out its duties under this Declaration.

Section 2.18. "*Member*" means any person or entity holding membership in the Stillwater at Whitefish Homeowners' Association.

Section 2.19. "*Owner*" means the owner of record (including Declarant, and including the most recent contract purchaser, but excluding all contract sellers), whether one or more persons or entities, of fee simple title to any Lot or, if the Lot is subject to one or more contracts for deed, the owner of the purchaser's interest in the most recent contract for deed, but "Owner"

does not mean or refer to any person or entity who holds such interest merely as security for the performance of a debt or other obligation, including a mortgage or trust indenture, unless and until such person or entity has acquired fee simple title pursuant to foreclosure or other proceedings.

Section 2.20. "*Pedestrian and Bike Path Easement*" means the ten foot (10') pedestrian and bike path easement depicted on the Plat of Stillwater at Whitefish.

Section 2.21. "*Period of Declarant Control*" means the period beginning on the date this Declaration is first recorded in the office of the Clerk and Recorder of Flathead County, Montana, and ending on the date which is 10 years later.

Section 2.22. "*Person*" (whether or not in capitalized form) means a natural person, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or combination of the foregoing.

Section 2.23. "*Plat*" means any survey or surveys of all or part of the Property, together with such other diagrammatic plans and information regarding the Property as may be required by applicable law, or as may be included in the discretion of Declarant, as each such survey may be amended and supplemented from time to time, and all as recorded in the office of the Clerk and Recorder for Flathead County, Montana.

Section 2.24. "*Property*" means and includes the property described on *Section 1.1* and initially subjected to this Declaration, and also refers to any additional real property that may be incorporated in the Project from time to time and made subject to these Covenants pursuant to the provisions of this Declaration.

Section 2.25. "*Special Assessment*" means an Assessment levied pursuant to Section 10.4.

Section 2.26. "*Special Declarant Rights*" is defined as set forth in Section 12.1 below.

Section 2.27. "*Stillwater at Whitefish Documents*" means the basic documents creating and governing Stillwater at Whitefish, including, but not limited to, this Declaration, the Articles of Incorporation and Bylaws, the Design Guidelines and any other procedures, rules, regulations or policies adopted under such documents by the Stillwater at Whitefish Homeowners' Association, all as may be amended from time to time.

Section 2.28. "*Stillwater at Whitefish Homeowners' Association*" or the "*Association*" means the Stillwater at Whitefish Homeowners' Association, Inc., a Montana nonprofit corporation, and any successor of that entity by whatever name.

Section 2.29. "*Stillwater at Whitefish Rules*" means the rules and regulations adopted by the Stillwater at Whitefish Homeowners' Association from time to time.

Section 2.30. "*Successor Declarant*" means any party or entity to who Declarant assigns any or all of its rights, obligations or interest as Declarant, as permitted by Section 18.7 and evidenced by an assignment or deed of record in the office of the Clerk and Recorder of Flathead County, Montana, designating such party as a Successor Declarant, signed by the transferor and the transferee. Upon such recording, Declarant's rights and obligations under the Declaration will cease and terminate to the extent provided in such document, and all such rights and obligations shall be transferred to and assumed by the Successor Declarant to the extent provided in such document.

ARTICLE III EXPANSION AND PLAT

Section 3.1. *Development Rights*. Declarant reserves the right to exercise all Development Rights in connection with the Stillwater at Whitefish subdivision in accordance with Article XII below.

Section 3.2. *Declaration of Lot Boundaries*. The boundaries of each Lot are delineated on the Plat, and each Lot is identified by the number noted on the Plat.

Section 3.3. *Plat*. The Plat will be filed for record in the office of the Clerk and Recorder of Flathead County, Montana. The Plat may be filed as a whole or as a series of Plats from time to time.

ARTICLE IV ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 4.1. *Membership*. Every Owner, by virtue of being an Owner, and for so long as he is an Owner, will be a Member of the Stillwater at Whitefish Homeowners' Association. Membership will be appurtenant to and may not be separated from ownership of any Lot. No Owner, whether one or more persons, will have more than one membership per Lot owned, but all of the persons owning each Lot will be entitled to rights of membership and of use and enjoyment appurtenant to such ownership. The Declarant shall be considered an Owner and shall be a Member of the Association with all of the same privileges of the other Owners and Members. For purposes of voting, the Declarant shall have one vote for each Lot owned by the Declarant.

Section 4.2. *Transfer of Membership*. An Owner may not transfer, pledge or alienate its membership in the Association in any way except upon the sale or encumbrance of his Lot, and then only to the purchaser or Mortgagee of his Lot.

Section 4.3. *Classes of Membership*. The Association will have one class of voting membership, composed of all Owners, including Declarant, except that the Declarant shall have such additional rights and responsibilities as expressly provided in this Declaration.

Section 4.4. *Voting Rights.* All Members will be entitled to vote on Association matters on the basis of one vote for each Lot owned.

Section 4.5. *Appointment of Officers and Directors by Declarant.* Until the expiration of the Period of Declarant Control, Declarant will retain the exclusive powers to appoint, remove and replace Directors and officers of the Association.

**ARTICLE V
POWERS AND DUTIES OF STILLWATER AT WHITEFISH
HOMEOWNERS' ASSOCIATION**

Section 5.1. *Stillwater at Whitefish Homeowners' Association Management Duties.* Subject to the rights and obligations of Declarant as set forth in this Declaration, the Stillwater at Whitefish Homeowners' Association will be responsible for the administration and operation of the Stillwater at Whitefish subdivision. The Board of Directors will exercise for the Association all powers, duties and authority vested in or obligated to be taken by the Association and not reserved to Declarant or the other Members by this Declaration, or by other applicable law.

Section 5.2. *Common Area.*

5.2.1. *Use of Common Area.* The Common Area generally is designated by this Declaration for the common use, benefit and enjoyment of the Owners and their families, tenants, employees, guests and invitees.

5.2.2. *Stillwater at Whitefish Homeowners' Association's Responsibility for Common Area.* The Stillwater at Whitefish Homeowners' Association, subject to the rights and obligations of the Owners set forth in this Declaration, shall be responsible for the management, maintenance and control of the Common Area and shall be responsible for maintaining all private roads within the Property, except private driveways located on the Lots located on the Property, which shall be the responsibility of the Owners of the Lot. Such maintenance will include repair and replacement of such private roads, as well as periodic maintenance of the surface and regular snow, ice, and trash removal from all private roads within the Property. All Owners shall pay to the Association such amounts for road maintenance and repairs, including a reserve for replacement, as may be set from time to time by the Association relating to the Common Area.

5.2.3. *Association's Agreements Regarding Common Area.* The Association, acting through the Board of Directors, may grant easements, rights-of-way, leases, licenses and concessions through or over the Common Area without the independent approval by the Owners. Without limiting the generality of the foregoing, the Association may grant such rights to suppliers of utilities serving the Project or property adjacent to the Project, and to developers or owners of property adjacent to the Project for the purpose of accommodating minor encroachments onto the Common Area or other purposes that do not unreasonably interfere with the use and enjoyment of the Common Area by the Owners.

Section 5.3. *Delegation by Stillwater at Whitefish Homeowners' Association.*

5.3.1. *Committees.* The Association may delegate any of its rights, duties or responsibilities to any committee or other entity (in addition to the Design Review Committee) that the Board may choose to form.

5.3.2. *Limitation.* Any delegation by the Board under this Section is subject to compliance with the Bylaws and the requirement that the Board, when so delegating, will not be relieved of its responsibilities under the Stillwater at Whitefish Documents.

Section 5.4. *Books and Records.* The Association will make available for inspection by Owners and Mortgagees, upon request, during normal business hours or under other reasonable circumstances, current copies of the Stillwater at Whitefish Documents, and the books, records, and financial statements of the Association prepared pursuant to the Bylaws.

Section 5.6. *Reserve Account.* The Association will establish and maintain an adequate reserve fund from Annual Assessments levied pursuant to Section 9.3. below for maintenance, repair or replacement of the private roads and landscaping or improvements located within the Common Area.

Section 5.7. *Successor to Declarant.* The Association will succeed to all of the rights, duties and responsibilities of the Declarant under this Declaration upon termination of the Period of Declarant Control.

**ARTICLE VI
SEPTIC AND WATER FACILITIES**

Section 6.1 *Septic Facilities.* Each Lot shall be served by an independent septic system approved by the Montana Department of Environmental Quality or its successor or equivalent government agency. Each Owner shall be responsible for the construction and maintenance of the septic system on that Owner's Lot.

Section 6.2 *Water Facilities.* Each Lot shall be served by its own water well and water distribution system. The Owners shall be responsible for the drilling of the water well and construction of the water distribution system serving their Lots. All wells shall be owned, operated, repaired, maintained and replaced by the Owners of the Lots serviced thereby. Owners shall register their wells with the Montana Department of Natural Resources and Conservation and document their water rights as required by Montana law.

**ARTICLE VII
DESIGN REVIEW COMMITTEE**

Section 7.1. *Committee.* There is hereby established an Design Review Committee, which will be responsible for the review and approval of the Building Envelope and all proposed Improvements on the Lots.

Section 7.2. *Committee Membership.* During the Period of Declarant Control, the Committee will be composed of at least two but no more than three persons. After expiration of the Period of Declarant Control, the Committee will be composed of three persons and at least one of those persons shall be a professional design consultant. All of the members of the Committee will be appointed, removed, and replaced by Declarant, in its sole discretion, until the expiration of the Period of Declarant Control or such earlier time as Declarant may elect to voluntarily waive this right by notice to the Association, and at that time the Board of Directors will succeed to Declarant's right to appoint, remove, or replace the members of the Committee.

Section 7.3. *Purpose and General Authority.* No Improvement will be erected, placed, reconstructed, replaced, repaired or otherwise altered, nor will any construction, repair or reconstruction be commenced until plans for the Improvements have been approved by the Committee; provided, however, that Improvements that are completely within a building may be undertaken without such approval. The Owner shall submit a site plan (including a proposed Building Envelope) and a building plan including elevations showing the design, location, material, color and exterior finish of proposed Improvements to the Design Review Committee. All expenses of the committee will be paid by the Association and will constitute a Common Expense. The Committee will have the right to charge a fee for application submitted to it for review, in an amount which may be established by the Committee from time to time. All plans shall be submitted in accordance with the rules and procedures described in the Design Guidelines. All Improvements shall be constructed only in approved Building Envelopes and in accordance with approved plans.

Section 7.4 *Design Guidelines.* The Design Review Committee may publish Design Guidelines which update the initial Design Guidelines described below and which set forth the procedures and criteria for review of Improvements to be constructed on any Lot, and for review of landscaping plans. Failure to follow procedures or criteria set forth in the current published Design Guidelines shall form an adequate basis for rejection of the submitted site plan and elevations; provided, however, that this requirement shall not be construed as preventing the Declarant or the Design Review Committee, at their option, from waiving or amending the Design Guidelines at any time or with respect to any application. Failure to follow such procedures or criteria set forth in the Design Guidelines shall also be deemed a breach of this Declaration by such Owner and shall entitle the Association or the Design Review Committee to exercise and pursue the rights and remedies provided herein with respect to such breach.

Section 7.5. *Failure to Act.* In the event the Design Review Committee fails to approve or disapprove such Building Envelope, design, location, materials, color and exterior finish within sixty days after the detailed site plan and elevations have been submitted to it, approval shall not be required and such Owner shall be deemed in compliance with this Article. Any plans, elevations and proposals so approved, either expressly in writing or by the expiration of the sixty day period hereinabove provided, shall then permit the Owner to commence construction in accordance with said plans and elevations, but any deviation from said plans and

elevations which in the judgment of said Design Review Committee is a substantial detriment to the appearance of the structure or of the surrounding area shall be corrected to conform with the plans and elevations as submitted.

Section 7.6. *Expert Consultation/Committee Discretion.* The Committee may avail itself or other technical and professional advice and consultants as it deems appropriate, and the Committee may delegate its plan review responsibilities, except final review and approval, to one or more of its members or to consultants retained by the Committee. Upon that delegation, the approval or disapproval of plans and specifications by such member or consultant will be equivalent to approval or disapproval by the entire Committee. The Committee will exercise its best judgment to see that all Improvements conform and harmonize with any existing structures as to external design, quality and type of construction, materials, color, location on the Lot, height, grade and finished ground elevation, and the schemes and aesthetic considerations set forth in the Design Guidelines and the other Stillwater at Whitefish Documents. The Committee, in its sole discretion, may excuse compliance with such requirements as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements.

Section 7.7. *Binding Effect.* The actions of the Committee in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it, or with respect to any other matter before it, will be conclusive and binding on all interested parties.

Section 7.8. *Organization and Operation of Committee.*

7.8.1. *Term.* The term of office of each member of the Committee will be one year, commencing January 1 of each year, and continuing until his successor shall have been appointed. Should a Committee member die, retire or become incapacitated, or in the event of a temporary absence of a member, a successor may be appointed as provided in Section 7.2.

7.8.2. *Chairman.* So long as Declarant appoints the Committee, Declarant will appoint the chairman. At such time as the Committee is appointed by the Board of Directors, the chairman will be elected annually from among the members of the Committee by a majority vote of the members. In the absence of a chairman, the party responsible for appointing or electing the chairman may appoint or elect a successor, or if the absence is temporary, an interim chairman.

7.8.3. *Operations.* The Committee chairman will take charge of and conduct all meetings and will provide for reasonable notice to each member of the Committee prior to any meeting. The notice will set forth the time and place of the meeting, and notice may be waived by any member.

7.8.4. *Voting.* The affirmative vote of a majority of the members of the Committee will govern its actions and be the act of the Committee.

Section 7.9. *Other Requirements.* Compliance with the Stillwater at Whitefish design review process is not a substitute for compliance with Flathead County building, zoning and

subdivision regulations, and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction.

Section 7.10. *Enforcement.*

7.10.1 Inspection. Any member or authorized consultant of the Design Review Committee, or any authorized officer, Director, employee or agent of the Association may enter upon any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to inspect Improvements constructed or under construction on the Lot to determine whether the Improvements have been or are being built in compliance with the Stillwater at Whitefish Documents and the plans and specifications approved by the Design Review Committee.

7.10.2. Deemed Nuisances. Every violation of these Covenants is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed for such violation by law or equity against Member will be applicable. Without limiting the generality of the foregoing, these Covenants may be enforced as provided below.

(i) *Fines for Violations.* The Committee may adopt a schedule of fines for failure to abide by the Committee rules and the Design Guidelines, including fines for failure to obtain any required approval from the Committee.

(ii) *Removal of Nonconforming Improvements.* The Association may, upon request of the Committee and after reasonable time after notice to the Owner, without being deemed guilty of trespass, remove any Improvement constructed, reconstructed, refinished, altered, or maintained in violation of these Covenants. The Owner of the Improvement will immediately reimburse the Association for all expenses incurred in connection with such removal. If the Owner fails to reimburse the Association within 30 days after the Association gives the Owner notice of the expenses, the sum owed to the Association will bear interest at the maximum rate permitted under Montana law from the date the expense was incurred by the Association through the date of reimbursement in full, and all such sums and interest will be a Default Assessment enforceable as provided in Article IX.

Section 7.11. *Continuity of Construction.* All Improvements commenced on the Property will be prosecuted diligently to completion. If an Improvement is commenced and construction is then abandoned for more than ninety days, or if construction is not completed within the required twelve-month period described below in Section 8.4, then after notice and opportunity for hearing as provided in the Bylaws, the Association may impose a fine of not more than \$50.00 per day to be charged against the Owner of the Lot until construction is resumed, or the Improvements are completed, as applicable.

**ARTICLE VIII
PROPERTY USE RESTRICTIONS**

Section 8.1 *General Restriction.* The Property will be used only for the purposes set forth in these Covenants, as permitted by the applicable regulations of the Flathead County, Montana and the laws of the State of Montana and the United States, and as set forth in the Stillwater at Whitefish Documents or other specific recorded covenants affecting all or any part of the Property and no structure which fails to meet the following minimum standards shall be erected, placed or allowed to remain on any Lot. In general, the Design Review Committee shall have no power to approve any Improvement failing to meet the following minimum baseline standards. However, the Design Review Committee shall have the power to grant individual variances on a case-by-case basis. The grant of a variance shall in no way be deemed to set a precedent for future variances or to otherwise waive the restrictions contained in these Covenants.

Section 8.2 *Construction Guidelines.* All construction at Stillwater at Whitefish shall comply with the construction guidelines which are set forth in and are a part of the Design Guidelines.

Section 8.3 *Single-Family Residence and Outbuildings.* Upon obtaining the approval of the Design Review Committee, no more than one single-family residence and a single guesthouse may be built within the Building Envelope on each Lot. Additionally, upon obtaining the approval of the Design Review Committee, outbuildings may be built within the Building Envelope on the condition that they conform in appearance with the single-family residence. The Design Review Committee shall not approve any outbuilding which impedes the adjoining Lot Owner's use or enjoyment of their property or any outbuilding that does not fit with the character of the Property or that is otherwise unsightly.

Section 8.4 *Further Subdivision.* No Lot shall be further subdivided.

Section 8.5 *Temporary Buildings, Square Footage, etc.* No temporary building, shack, tent, house trailer, mobile home or modular structure shall be located on any Lot. All construction, including landscaping, must be completed within twelve months from the commencement of construction. All residences must be of new construction, built on-site, and shall contain no less than 2,400 square feet of living space, exclusive of garages, decks, porches or basements. All two or three-level residences must contain no less than 1,600 square feet of living space on the first level, exclusive of attached garages, basements, decks, porches and basements. No daylight or walkout basement shall be located on any Lot. Full basements may be located on any Lot on the condition that there be proper drainage away from the structure and the basement must be approved by the Design Review Committee.

Section 8.6 *Landscaping and Drainage.* Immediately after construction, all disturbed ground must be landscaped or revegetated. No Owner may change the alignment and grade of the drainage swales next to the County and private roadways which would redirect or impede the flow of runoff.

Section 8.7. *Vehicles, etc.* No trucks exceeding one-ton capacity, trailers, unsightly or abandoned vehicles, boats or equipment of any type shall be parked or stored upon any Lot unless placed in an appropriate garage or outbuilding or otherwise screened from view. No vehicle or equipment may be parked on or alongside the County or private roadways.

Section 8.8. *Signs.* Except for the Stillwater at Whitefish entrance sign, signs used by contractors, signs locating utilities, and address identification devices, no sign, billboard or advertising structure of any kind shall be erected, used or maintained on the Property. Pursuant to the Conditions of Preliminary Plat approval issued by Board of Commissioners of Flathead County, address identification signs shall be visible from the private roadway, either at the driveway entrance or on the residence.

Section 8.9. *Driveways.* All driveways shall be paved with asphalt or concrete from the street or road to the garage. If required by the Design Review Committee or by the Flathead County Road Department, each driveway shall have a culvert (twelve inch minimum corrugated galvanized steel with flared ends or its equivalent) at the drainage point next to the road.

Section 8.10. *Commercial Activity.* No profession, business, manufacturing, trade or commercial activity may be conducted on any Lot except home occupations as defined by County ordinance and which do not significantly increase traffic within the Stillwater at Whitefish subdivision. No church, synagogue, mosques or other place of worship shall be located on any Lot. No Owner shall operate any daycare, pre-school or other child or person care facility on their Lot.

Section 8.11. *Setbacks.* Other than driveways, related appurtenances and landscaping related improvements, no Improvement shall be constructed outside of the Building Envelope which has been established for each Lot.

Section 8.12. *Fuel Tanks.* Other than propane tanks, which shall be of 1,000 gallons or less and shall be installed underground, no above or belowground fuel tanks shall be permitted on any Lot.

Section 8.13. *Motorized Vehicles.* No trucks, off-road vehicles, recreational vehicles, motor homes, motor coaches, snowmobiles, campers, trailers, boats or boat trailers or similar vehicles other than passenger automobiles or pickup or utility trucks with a capacity of one ton or less or any other motorized vehicles will be parked, stored, or in any manner kept or placed on any portion of the Property except in an enclosed garage, outbuilding or screened from public view. Snowmobiles, off-road vehicles, and motorcycles may be used on the Property only for transportation to and from a dwelling and shall be operated in a quiet manner.

Section 8.14. *Maintenance.* All improvements located on any Lot shall be maintained in the same condition as at the time of initial construction, normal wear and tear excepted. All improvements shall be preserved and of a pleasant appearance by maintaining paint, stain or sealer as needed. If any improvement or landscaping is damaged or destroyed, the Owner shall promptly rebuild, repair and restore the structure to its appearance and condition prior to the

casualty. Reconstruction or repair shall be completed within nine months of any casualty that damaged or destroyed the improvement or landscaping.

Section 8.15. *Roofing.* No residence, outbuilding or any other structure may have metal roofing other than copper roofing which has been approved by the Design Review Committee. Pursuant to the Conditions of Preliminary Plat approval issued by Board of Commissioners of Flathead County, wood shake or wood shingles, treated or otherwise, are prohibited and all roofing materials must be either Class A or Class B fire resistant materials.

Section 8.16. *Fences.* Declarant has installed a natural four-rail split rail fence around much of the perimeter of Stillwater at Whitefish. All perimeter, side and front fences must match the style, size, shape and color of the fence installed by the Declarant. Pursuant to the Conditions of Preliminary Plat approval issued by Board of Commissioners of Flathead County, fence height shall not exceed five (5) feet. The location of all side yard and front fences must be approved by the Design Review Committee. Front yard fences must be set back from the edge of asphalt at least fifteen (15) feet. For purposes of animal control, upon obtaining the approval of the Design Review Committee, small areas attached to the primary residence or outbuildings may be enclosed with a solid wood or color bond chain link fence that does not exceed six feet in height. Upon obtaining the approval of the Design Review Committee, additional fencing for the purpose of controlling and managing horses, may be installed. No fence or gate shall be installed that blocks or crosses the Pedestrian and Bike Path Easement.

Section 8.17. *Utilities and Lighting.* All utilities shall be buried underground. There shall be no exterior antennas except for small satellite dishes, which shall be unobtrusive. Exterior lighting shall not be directed at neighboring Lots or impede the neighbors use or enjoyment of their Lot.

Section 8.18. *Animals.*

8.18.1. Except as provided below, no poultry or other birds (except pet birds kept inside a residence), hogs, or other livestock or animals shall be kept or raised on any Lot.

8.18.2. Horses, not to exceed four in total, may be kept on each Lot. Horses are to be confined to the Owner's Lot and kept in appropriate outbuildings or contained by fencing similar in appearance to the perimeter fencing.

8.18.3. Dogs, cats or other small household pets, not to exceed four in total, may be kept on each Lot.

8.18.4. All animals are to be leashed, fenced or otherwise confined to the Owner's Lot and not allowed to roam at any time.

8.18.5. No Owner shall have or keep any animal which creates an ongoing disturbance for any other Lot Owner.

8.18.6. Pursuant to the Conditions of Preliminary Plat approval issued by Board of Commissioners of Flathead County, the feeding of deer and bear and the use of attractants is prohibited.

Section 8.19. *Nuisances.* No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which is or which may become an annoyance or nuisance to other Owners.

Section 8.20. *Landscape Maintenance.* All yards and landscaping shall be maintained and shall not be allowed to become unsightly. Lawns and native grasses shall be mowed on a regular basis. All weeds, including noxious weeds, shall be eradicated or controlled and all Owners shall fully comply with state and local law regarding the control and eradication of noxious weeds. Undeveloped Lots must be mowed at least twice each year and may not be used as a dumping area for trimmings or grass clippings. Removal of trees of six inches or more in diameter shall requires the written approval of the Association.

Section 8.21. *Garbage.* No Lot shall be used or maintained as a dump site or storage ground for rubbish, trash, garbage, junk vehicles, equipment or other waste. All refuse and other waste shall be removed as quickly as possible and not be allowed to become a noxious or visual detriment. Burning of refuse will be allowed in accordance with all governing law and upon obtaining the written consent of the Association. Except on the collection day, all trash receptacles shall be screened from public view. Refuse receptacles shall be removed from public view no later than 7:00 p.m. on the collection day. All refuse shall be protected from disturbance by wind and animals.

Section 8.22. *Agricultural Activities.* Acceptance of a deed to a Lot shall be deemed a waiver of any claims for normal agricultural activities conducted on properties adjacent to Stillwater at Whitefish. All Owners acknowledge and recognize that agricultural activities are conducted on adjacent land and relinquish all right to compensation or relief from such activities. However, no Owner shall be deemed to have relinquished their rights to seek compensation or injunctive relief for injuries to person or property caused by release of any toxic or hazardous material or for negligent or intentional actions of those conducting agricultural activities on adjoining lands.

Section 8.23. *Firearms.* Firearms shall not be discharged upon any Lot or the Common Area located on the Property.

Section 8.24. *Outhouses.* No outhouse or privy shall be permitted or maintained on any Lot, except that a chemical toilet shall be permitted on a Lot during the time a residence or other Improvements are being constructed.

Section 8.25. *Excavation.* No excavation will be made except in connection with Improvements approved as provided in these Covenants. For purposes of this Section, "excavation" means any disturbance of the surface of the land which results in a removal of earth, rock, or other substance a depth of more than 18 inches below the natural surface of the land.

Section 8.26. *Noise.* No exterior horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the Property or improvements, will be placed or used on any portion of the Property.

Section 8.27. *Lighting.* All exterior lighting of the Improvements and grounds on the Property will be subject to regulation by the Design Review Committee.

Section 8.28. *Outbuildings.* The design and construction of all outbuildings will be subject to regulation by the Design Review Committee. All outbuildings shall be designed and constructed to compliment the primary residence. No metal buildings shall be permitted on any Lot.

Section 8.29. *Gardens.* All gardens shall be for personal and family use only and no crops shall be grown for commercial purposes. No garden shall exceed 100 feet by 100 feet and the location of gardens shall be approved by the Design Review Committee.

Section 8.30 *Defensible Space Standards.* Pursuant to the Conditions of Preliminary Plat approval issued by Board of Commissioners of Flathead County, the defensible space standards set forth in Appendix G (or any successor Appendix or regulation) of the Flathead County Subdivision Regulations shall be complied with.

Section 8.31. *County Imposed Restrictions.* All conditions or restrictions imposed by Flathead County during the subdivision process are hereby incorporated by reference.

Section 8.32. *Enforcement.* The Association may take such action as it deems advisable to enforce these Covenants as provided in this Declaration. In addition, the Association will have a right of entry on any part of the Property for the purposes of enforcing this Article, and any costs incurred by the Association in connection with such enforcement which remain unpaid 30 days after the Association has given notice of the cost to the Owner will be subject to interest at the Default Rate from the date of the advance by the Association through the date of payment in full by the Owner and will be treated as a Default Assessment enforceable as provided in Article X.

**ARTICLE IX
OWNER'S OBLIGATIONS FOR MAINTENANCE**

Section 9.1. *Owner's Responsibility for Lot.* Except as provided in the Stillwater at Whitefish Documents or by written agreement with the Association, all maintenance of a Lot and the Improvements located on it will be the sole responsibility of the Owner of the Lot. The Association will, in the discretion of the Board, assume the maintenance responsibilities of such Owner if, in the opinion of the Board, the level and quality of maintenance being provided by such Owner is not satisfactory. Before assuming the maintenance responsibilities, the Board will notify the Owner in writing of its intention to do so, and if the Owner has not commenced and diligently pursued remedial action within 30 days after the mailing of such written notice, then

the Association will proceed. The expenses of the maintenance by the Board will be reimbursed to the Association by the Owner within 30 days after the Association notifies the Owner of the amount due, and any sum not reimbursed within that 30 day period will bear interest at the maximum rate permitted under Montana law from the date of the expenditure until payment in full.

Section 9.2. *Owner's Negligence.* If the need for maintenance, repair or replacement of any portion of the Common Area (including Improvements located on it) arises because of the negligent or willful act or omission of an Owner or his family member, guest, invitee or tenant, then the expenses incurred by the Association for the maintenance, repair or replacement will be a personal obligation of that Owner. If the Owner fails to repay the expenses incurred by the Association within 30 days after the notice to the Owner of the amount owed, then those expenses will bear interest at the maximum rate permitted under Montana law from the date of the advance by the Association until payment by the responsible Owner in full.

ARTICLE X ASSESSMENTS

Section 10.1. *Creation of Lien and Personal Obligation for Assessments.* Except as otherwise provided by this Declaration, Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot, by accepting a deed for a Lot, is deemed to covenant to pay to the Association (1) the Annual Assessments imposed by the Board of Directors as necessary to generally carry out the functions of the Association; (2) Special Assessments for capital improvements and other purposes as stated in this Declaration; and (3) Default Assessments which may be assessed against a Lot pursuant to the Stillwater at Whitefish Documents for the Owner's failure to perform an obligation under the Stillwater at Whitefish Documents or because the Association has incurred an expense on behalf of or caused by the Owner under the Stillwater at Whitefish Documents.

10.1.1. *Declarant Exempt.* Notwithstanding the ownership of any Lot, the Declarant shall not be obligated to pay any of the Assessments described in this Declaration.

10.1.2. *Assessment Lien.* All Assessments, together with fines, interest, costs, and reasonable attorneys' (and legal assistants') fees, will be a charge on the land and will be a continuing lien upon the Lot against which each such Assessment is made until paid.

10.1.3. *Assessment Remedies.* Each such Assessment, together with fines, interest, costs, and reasonable attorneys' fees and costs, will also be the personal and individual obligation of the Owner of such Lot as of the time the Assessment falls due, and two or more Owners of a Lot will be jointly and severally liable for such obligations. No Owner may exempt himself from liability for any Assessments by abandonment of his Lot or by waiver of the use or enjoyment of the Common Area. Suit to recover a money judgment for unpaid Assessments and related charges as listed above may be maintained without foreclosing or waiving the Assessment lien provided in this Declaration.

Section 10.2. *Purpose of Assessments.* The Assessments levied by the Association will be used exclusively to promote the recreation, health, safety, and welfare of the Owners and occupants of the Stillwater at Whitefish subdivision.

Section 10.3. *Annual Assessments.*

10.3.1. *Calculation of Annual Assessments.* The Board of Directors will prepare a budget before the close of each fiscal year of the Association. Annual Assessments for Common Expenses will be based upon the estimated net cash flow requirements of the Association to cover items including, without limitation, the cost of routine maintenance, repair and operation of the Common Area; and premiums for insurance coverage as deemed desirable or necessary by the Association; snow removal, landscaping, care of grounds and common lighting within the Common Area; routine renovations within the Common Area; wages; common water and utility charges for the Common Area; legal and accounting fees; expenses and liabilities incurred by the Association under or by reason of this Declaration; payment of any deficit remaining from a previous Assessment period; and the supplementing of the reserve fund for general, routine maintenance, repairs and replacement of improvements within the Common Area on a periodic basis, as needed.

10.3.2. *Apportionment of Annual Assessments.* Except as otherwise provided herein, each Owner will be responsible for that Owner's share of the Common Expenses, which will be divided equally among the Lots included in the Project under this Declaration from time to time. Accordingly, at any given time, an Owner's share of Common Expenses will be determined as a fraction, the numerator of which is the number of Lots owned by the Owner, and the denominator of which is the number of Lots then platted and incorporated into the Project. Further, the costs of utilities may be assessed in proportion to usage.

10.3.3. *Collection.* Annual Assessments will be collected in periodic installments as the Board may determine from time to time, but until the Board directs otherwise, they will be payable annually in advance on the date determined by the Board. The omission or failure of the Association to fix the Annual Assessments for any Assessment period will not be deemed a waiver, modification, or release of the Owners from their obligation to pay the same.

Section 10.4. *Special Assessments.*

10.4.1. *Determination by Board.* The Board of Directors may levy, in any fiscal year, one or more Special Assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, or, after adopting and submitting a revised budget to the Association as may be required to make up any shortfall in the current year's budget.

10.4.2. *Apportionment and Collection of Special Assessments.* The Board will apportion Special Assessments among the Lots and collect payment according to the same guidelines as set forth for Annual Assessments in Section 10.3.2

10.4.3. *Notice.* Notice of the amount and due dates for such Special Assessments must be sent to each Owner at least 30 days prior to the due date.

Section 10.5. *Default Assessments.* All monetary fines, penalties, interest or other charges or fees (excluding Annual and Special Assessments) levied against an Owner pursuant to the Stillwater at Whitefish Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Stillwater at Whitefish Documents, and any expense (including without limitation attorneys' fees and costs) incurred by the Association as a result of the failure of an Owner to abide by the Stillwater at Whitefish Documents, constitutes a Default Assessment, enforceable as provided in this Declaration below.

Section 10.6. *General Remedies of Association for Nonpayment of Assessment.* Any installment of an Annual Assessment, Special Assessment or Default Assessment which is not paid within 30 days after its due date will be delinquent. In the event that an installment of an Annual Assessment or Special Assessment becomes delinquent, or in the event any Default Assessment is established under this Declaration, the Association, in its sole discretion, may take any or all of the following actions:

10.6.1. Assess a late charge for each delinquency at uniform rates set by the Board of Directors from time to time;

10.6.2. Charge interest from the date of delinquency at the maximum rate permitted under Montana law;

10.6.3. Suspend the voting rights of the Owner during any period of delinquency;

10.6.4. Accelerate all remaining Assessment installments for the fiscal year in question so that unpaid Assessments for the remainder of the fiscal year will be due and payable at once;

10.6.5. Bring an action at law against any Owner personally obligated to pay the delinquent Assessment charges;

10.6.6. File a statement of lien with respect of the Lot and foreclose as set forth in more detail below.

10.6.7. For a delinquent Assessment related to the provision of utilities, the utility service to the Lot may be suspended after giving the Owner ten days' written notice that the service will be suspended unless the delinquent Assessment is paid.

The remedies provided under this Declaration will not be exclusive, and the Association may enforce any other remedies to collect delinquent Assessments as may be provided by law.

Section 10.7. *Assessment Lien.* Any Assessment chargeable to a Lot will constitute a lien on the Lot, effective the due date of the Assessment. To evidence the lien, the Association

may, but will not be obligated to, prepare a written lien statement with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Association, and the delinquent Assessment amounts then owing. Any such statement will be duly signed and acknowledged by an officer or Director of the Association and will be served upon the Owner of the Lot by mail to the address of the Lot or at such other address as the Association may have in its records for the Owner. At least ten days after the Association mails the statement to the Owner, the Association may record the statement in the office of the Clerk and Recorder of Flathead County, Montana. Thirty days following the mailing of such notice to the Owner, the Association may proceed to foreclose the statement of lien in the same manner as provided for the foreclosure of mortgages under the statutes of the State of Montana.

Section 10.8. *Successor's Liability for Assessment.* All successors to the fee simple title of a Lot will be jointly and severally liable with the prior Owner or Owners thereof for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorneys' and legal assistants' fees against such Lot without prejudice to any such successor's right to recover from any prior Owner any amounts paid by such successor.

Section 10.9. *Statement of Status of Assessments.* The Association will furnish to an Owner or his designee or to any Mortgagee, within fourteen days of request, a statement setting forth the amount of unpaid Assessments then levied against the Lot in which the Owner, designee or Mortgagee has an interest.

Section 10.10. *Failure to Assess.* The omission or failure of the Board to fix the Assessment amounts or rates or to deliver or mail to each Owner an Assessment notice will not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner will continue to pay Annual Assessments on the same basis as for the last year for which an Assessment was made until a new Assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

ARTICLE XI EASEMENTS AND PROPERTY RIGHTS OF OWNERS

Section 11.1. *Owner's Easements of Access and Enjoyment.* Every Owner has a perpetual, non-exclusive easement for ingress, egress and utilities to and from his Lot and for the use and enjoyment of the Common Area, which easement is appurtenant to and will pass with the title to every Lot, subject to the provisions set forth in this Declaration.

Section 11.2. *Delegation of Use.* Any Owner may delegate, in accordance with the Stillwater at Whitefish Documents, its rights of access and enjoyment described in Section 11.1 above to its tenants, employees, family, guests or invitees.

Section 11.3. *Easements of Record and of Use.* The Property will be subject to all easements shown on any recorded Plat and to any other easements of record or of use as of the date of recordation of this Declaration. All Lots will be subject to the Pedestrian and Bike Path

Easement shown on the Plat of Stillwater at Whitefish. No Owner shall gate or otherwise impede such Easement.

**ARTICLE XII
SPECIAL DECLARANT RIGHTS
AND ADDITIONAL RESERVED RIGHTS**

Section 12.1. *General Provisions.* Until the expiration of the Period of Declarant Control, Declarant will have the following Special Declarant Rights:

12.1.1. *Completion of Improvements.* The right to complete Improvements as indicated on any Plat filed with respect to the Property.

12.1.2. *Development Rights.* The right to exercise all Development Rights in connection with the development of the Stillwater at Whitefish Project, including without limitation the right or combination of rights hereby reserved by Declarant, as follows:

- (i) The right to create Lots, common areas, pedestrian and bike trails, and private roadways on the Property.
- (ii) The right to subdivide Lots and convert Lots into common area or private roadways on any part of the Property.
- (iii) The right to withdraw real estate from the Stillwater at Whitefish subdivision.

12.1.3. *Sales Activities.* The right to maintain sales and management offices, signs advertising Stillwater at Whitefish and model residences on the Common Area and on Lots owned by Declarant.

12.1.4. *Easements.* The right to use easements through the Common Area on the Property for the purpose of making Improvements on the Property.

12.1.5. *Association Directors and Officers.* The right to appoint any officer or Director of the Association, as provided in this Declaration or the Bylaws.

12.1.6. *Order of Exercise of Declarant's Rights.* Declarant makes no representations and gives no assurances regarding the legal description of the boundaries of any phase of the Property or the order or time in which the phases of the Property may be developed or incorporated in Stillwater at Whitefish, or whether or to what extent any of the Property will be developed or incorporated into the Project. Further, the fact that Declarant may exercise one or more of Declarant's Development Rights or other Special Declarant Rights on one portion of the Property will not operate to require Declarant to exercise a Development Right or other Special Declarant Right with respect to any other portion of the Property.

Section 12.2. *Supplemental Provisions Regarding Declarant's Rights.* Without limiting the generality of the foregoing, certain of these Special Declarant Rights are explained more fully in this Article below. Further, Declarant reserves the right to amend this Declaration and any Plat in connection with the exercise of any Development Right or any other Special Declarant Right, and Declarant also reserves the additional rights retained for the benefit of Declarant in this Article and in other provisions of this Declaration.

Section 12.3. *Utility Easements.* There is hereby created an easement upon, across, over, in, and under the Common Area and the areas designated on the final Plat Stillwater at Whitefish as utility easements for the installation, replacement, repair and maintenance of all utilities, including but not limited to water, sewer, gas, telephone, electrical, television and other communications systems. By virtue of this easement, it will be expressly permissible and proper for the companies providing utility services to install and maintain necessary equipment on and under the Common Area and the areas designated on the final plat of Stillwater at Whitefish as utility easements and to affix and maintain utility pipes, wires, circuits, conduits and other equipment under those areas. Any utility company using this easement will use its best efforts to install and maintain the utilities provided for without disturbing the uses of the Owners, the Association and Declarant; will prosecute its installation and maintenance activities as promptly and expeditiously as reasonably possible; and will restore the surface to its original condition as soon as possible after completion of its work. Should any utility company furnishing a service covered by the easement granted above request a specific easement by separate recordable document, either Declarant or the Association will have, and are hereby given, the right and authority to grant such easement upon, across, over, or under any part or all of the Common Area and the areas designated on the final Plat or Plats of Stillwater at Whitefish as utility easements without conflicting with the terms of this Declaration. This easement will in no way affect, avoid, extinguish, or modify any other recorded easement on the Property.

Section 12.4. *Reservation for Expansion and Construction.* Declarant hereby reserves for itself and its successors and assigns and for Owners in all future phases of Stillwater at Whitefish, a perpetual easement and right-of-way for access over, upon, and across the Property for construction, utilities, drainage, ingress and egress, and for use of the Common Area. The location of these easements and rights-of-way may be made certain by Declarant or the Association by instruments recorded in Flathead County, Montana.

Declarant further reserves the right to establish from time to time, by dedication or otherwise, utility, ingress and egress, and other easements over and across the Common Area, and to create other reservations, exemptions, and exclusions convenient or necessary for the use and operation of any other property of Declarant.

Section 12.5. *Reservation of Easements, Exceptions, and Exclusions for Utilities, Infrastructure, and Access.* Declarant reserves for itself and its successors and assigns and hereby grants to the Association, acting through the Board of Directors, the concurrent right to establish from time to time, by declaration or otherwise, utility and other easements, permits, or licenses over the Common Area, for purposes including but not limited to streets, paths, walkways, drainage, recreational areas and parking areas, and to create other reservations, exceptions, and exclusions in the interest of the Owners and the Association.

Section 12.6. *Maintenance Easement.* An easement is hereby reserved to Declarant for itself and its successors and assigns and granted to the Association, and any member of the Board of Directors, and their respective officers, agents, employees, and assigns, upon, across, over, in and under the Property and a right to make such use of the Property as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Stillwater at Whitefish Documents.

Section 12.7. *Drainage Easement.* An easement is hereby reserved to Declarant for itself and its successors and assigns and granted to the Association, its officers, agents, employees, successors and assigns to enter upon, across, over, in, and under any portion of the Property for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the Property so as to improve the drainage of water. Reasonable efforts will be made to use this easement so as not to disturb the uses of the Owners, the Association and Declarant, as applicable, to the extent possible; to prosecute such drainage work promptly and expeditiously; and to restore any areas affected by such work to a sightly and usable condition as soon as reasonably possible following such work.

Section 12.8. *Declarant's Rights Incident to Construction.* Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Area and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Property or other real property owned by Declarant; provided, however, that no such rights will be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access to an Owner's Lot by that Owner or his family, tenants, employees, guests, or invites.

Section 12.9. *Easements Deemed Created.* All conveyances of Lots hereafter made, whether by Declarant or otherwise, will be construed to grant and reserve the easements contained in this Declaration, even though no specific reference to such easements or to this Article appears in the instrument for such conveyance.

ARTICLE XIII EXPANSION AND WITHDRAWAL

Section 13.1. *Reservation of Right to Expand.* Declarant reserves the right, but will not be obligated, to expand the effect of this Declaration to include all or part of the Expansion Property. The consent of the existing Lot Owners and Mortgagees will not be required for any such expansion, and Declarant may proceed with such expansion without limitation at its sole option. Declarant will have the unilateral right to transfer to any other person this right to expand by an instrument duly recorded.

Section 13.2. *Completion of Expansion.* When Declarant has determined that no further property shall be added to the Project, Declarant shall notify the Association in writing. Until

such notice is given, Declarant retains the right to designate additional property as Expansion Property.

Section 13.3. *Declaration of Annexation.* Any expansion of the Project may be accomplished by recording a Declaration of Annexation and one or more supplemental Plats in the records of the Clerk and Recorder of Flathead County, Montana, before the expiration of the Period of Declarant Control. The Declaration of Annexation will describe the real property to be expanded, submitting it to these Covenants and provide for voting rights and Assessment allocations as provided in this Declaration. Specifically, each new Lot in the annexed area will be allocated one vote and liability for the Common Expenses equal to the liability allocated to each of the other Lots, and the proportionate voting interest and allocation of Common Expenses for the other Lots will be adjusted accordingly. Such Declaration of Annexation will not require the consent of Owners, the Association, or the Board of Directors. Any such expansion will be effective upon the filing for record of such Declaration of Annexation, unless otherwise provided therein. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion.

Upon the recordation of any such Declaration of Annexation, the definitions used in this Declaration will be expanded automatically to encompass and refer to Stillwater at Whitefish as expanded. Such Declaration of Annexation may add supplemental covenants peculiar to the Expansion Property in question, or delete or modify provisions of this Declaration as it applies to the Expansion Property added. However, this Declaration may not be modified with respect to that portion of the Property already subject to this Declaration, except as provided below for amendment.

Section 13.4. *Withdrawal of Property.* Declarant reserves the right to withdraw from the jurisdiction of these Covenants any parcel of the Property (including the Expansion Property), provided, however, that no parcel may be withdrawn after it has been conveyed to a purchaser.

ARTICLE XIV INSURANCE

Section 14.1. *Authority to Purchase.* All insurance policies relating to the Common Area will be purchased by the Board of Directors or its duly authorized agent. The Board of Directors and the Declarant will not be liable for failure to obtain any coverage required by this Article or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverage from reputable insurance companies, or if such coverage is available only at demonstrably unreasonable costs.

Section 14.2. *General Insurance Provisions.* All such insurance coverage obtained by the Board of Directors will be governed by the following provisions:

14.2.1. As long as Declarant owns any Lot, Declarant will be protected by all such policies in the same manner as any other Owner.

14.2.2. The deductible, if any, on any insurance policy purchased by the Board of Directors may be treated as a Common Expense payable from Annual Assessments or Special Assessments (allocable to all of the Lots or to only some of the Lots, if the claims for damages arise from the negligence of particular Owners, or if the repairs benefit only particular Owners), or as an item to be paid from working capital reserves established by the Board of Directors.

Section 14.3. *Physical Damage Insurance on Common Area.* The Association will obtain insurance for such insurable Improvements and with such coverages, limits, deductibles and other terms and conditions as the Board may determine from time to time.

Section 14.4. *Liability Insurance.* The Association may obtain a comprehensive policy of public liability insurance and property damage insurance with such coverages and limits as the Board of Directors may from time to time determine, insuring each member of the Board of Directors, the Association, and the respective employees, agents, and all persons acting as agents against any liability to the public or the Owners (and their guests, invites, tenants, agents, and employees) arising in connection with the ownership, operation, maintenance or use of the Common Area within Stillwater at Whitefish and any other areas under the control of the Association. Declarant will be included in the coverage as an additional insured in Declarant's capacity as an Owner or Director.

ARTICLE XV ENFORCEMENT OF COVENANTS

Section 15.1. *Violations Deemed a Nuisance.* Every violation of this Declaration or any other violation of the Stillwater at Whitefish Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed at law or equity against anyone in violation of these Covenants will be available.

Section 15.2. *Compliance.* Each Owner or other occupant of any part of the Property will comply with the provisions of the Stillwater at Whitefish Documents as the same may be amended from time to time.

Section 15.3. *Failure to Comply.* Failure to comply with the Stillwater at Whitefish Documents will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing as provided in the Bylaws will be given to the delinquent party prior to commencing any legal proceedings.

Section 15.4. *Who may Enforce.* Any action to enforce the Stillwater at Whitefish Documents may be brought by Declarant or the Board in the name of the Stillwater at Whitefish Homeowners' Association on behalf of the Owners. If, after a written request from an aggrieved

Owner, none of the foregoing persons or entities commences an action to enforce the Stillwater at Whitefish Documents, then the aggrieved Owner may bring such an action.

Section 15.5. *Nonexclusive Remedies.* All the remedies set forth herein are cumulative and not exclusive.

Section 15.6. *No Waiver.* The failure of the Board of Directors, Declarant, or any aggrieved Owner to enforce the Stillwater at Whitefish Documents in any one or more instances will not be deemed a waiver of the right to do so for any subsequent violations or of the right to enforce any other part of the Stillwater at Whitefish Documents at any future time.

Section 15.7. *No Liability.* No member of the Board of Directors, the Declarant or any Owner will be liable to any other Owner for the failure to enforce any of the Stillwater at Whitefish Documents at any time.

Section 15.8. *Recovery of Costs.* If legal assistance is obtained to enforce any of the provisions of the Stillwater at Whitefish Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Stillwater at Whitefish Documents or the restraint of violations of the Stillwater at Whitefish Documents, the prevailing party will be entitled to recover all costs incurred by it in such action, including reasonable attorneys' fees (and legal assistant's fees) as may be incurred, or if suit is brought, as may be determined by the court.

ARTICLE XVI RESOLUTION OF DISPUTES

If any dispute or question arises between Members or between Members and the Association or relating to the interpretation, performance or nonperformance, violation, or enforcement of the Stillwater at Whitefish Documents, such dispute or violation may be subject to a hearing and determination by the Board in accordance with the procedures set forth in the Bylaws.

ARTICLE XVII DURATION OF THESE COVENANTS AND AMENDMENT

Section 17.1 *Term.* This Declaration and any amendments or supplements hereto will remain in effect from the date of recordation until the 30th anniversary of the date this Declaration is first recorded in the office of the Clerk and Recorder of Flathead County, Montana. Thereafter these Covenants will be automatically extended for five successive periods of 10 years each, unless otherwise terminated or modified as provided below.

Section 17.2. *Amendment.* Subject to Section 16.3, this Declaration, or any provision of it, may be terminated, extended, modified or amended, or revoked as to the whole or any portion of the Property as follows:

17.2.1. *Prior to Sale of Lots.* Prior to the sale of any Lot, the Declarant (including a Successor Declarant) may terminate, extend, modify, amend or revoke this Declaration as to the whole or any portion of the Property by recording in the records of Flathead County, Montana, a document signed by the Declarant stating the action taken.

17.2.2. *After Sale of Lots but During Period of Declarant Control.* After the sale of a Lot but before expiration of the Period of Declarant Control, Declarant (including any Successor Declarant) may terminate, extend, modify, amend or revoke this Declaration as to the whole or any portion of the Property. A copy of the document stating the action intended to be taken by the Declarant and a notice of the Owners' rights under this Section shall be mailed to each Owner by first class mail, postage prepaid, to the address of the Owner on the records of the Association. Unless written objection is received by the Declarant from the Owners holding 80% or more of the votes within 30 days of the mailing of the notice to the Owners, the action proposed to be taken by the Declarant shall be considered approved and shall become final. The Declarant shall then record in the records of Flathead County, Montana, a document stating the action taken, together with a certificate certifying that notice was given to the Owners as required herein and that fewer than 80% of the Owners objected to the action.

17.2.3. *After the Period of Declarant Control.* After the Period of Declarant Control, this Declaration, or any provision of it, may be terminated, extended, modified or amended, or revoked as to the whole or any portion of the Property upon the written consent of Owners holding 67% or more of the votes in the Association. Any document will be immediately effective upon recording in the records of Flathead County, Montana, a copy of such executed and acknowledged by the necessary number of Owners, or alternatively, upon the recording in the records of Flathead County, Montana, of a copy of the document together with a certificate signed by an officer of the Association stating that the required number of consents of Owners were obtained.

Section 17.3. *Declarant's Approval.* Notwithstanding the provisions of Section 17.2, no termination, extension, modification or amendment of this Declaration will be effective in any event during the Period of Declarant Control unless the written approval of Declarant is first obtained.

Section 17.4. *Effect of Amendments.* Amendments made pursuant to this Section will inure to the benefit of and be binding upon all Owners, their families, guests, invitees and employees, and their respective heirs, successors, and assigns. Joinder of the first mortgagees shall not be required in order to effect an amendment.

ARTICLE XVIII MISCELLANEOUS PROVISIONS

Section 18.1. *Severability.* This Declaration, to the extent possible, will be construed or reformed so as to give validity to all of its provisions. Any provision of this Declaration found to

be prohibited by law or unenforceable will be ineffective to the extent of such prohibition or unenforceability without invalidating any other part hereof.

Section 18.2. *Construction.* In interpreting words in this Declaration, unless the context will otherwise provide or require, the singular will include the plural, the plural will include the singular, and the use of any gender will include all genders.

Section 18.3. *Headings.* The headings are included only for purposes of convenient reference, and they will not affect the meaning or interpretation of this Declaration.

Section 18.4. *Waiver.* No failure on the part of the Association or the Board to give notice or default or to exercise or to delay in exercising any right or remedy will operate as a waiver, except as specifically provided above in the event the Board fails to respond to certain requests. No waiver will be effective unless it is in writing and signed by the President or Vice President of the Board on behalf of the Association.

Section 18.5. *Limitation of Liability.* Neither the Declarant, the Association nor any partner, officer or member of either the Declarant or the Board will be liable to any party for any action or for any failure to act with respect to any matter arising by, through, or under the Stillwater at Whitefish Documents if the action or failure was made in good faith. The Association will indemnify all of the officers and Board members with respect to any act taken in their official capacity to the extent provided in this Declaration and by law and in the Articles of Incorporation and Bylaws.

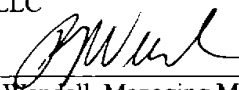
Section 18.6. *Conflicts Between Documents.* In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration will control. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation will control.

Section 18.7. *Assignment.* Declarant may assign all or any part of the Special Declarant Rights or any of Declarant's other rights and reservations hereunder to any successor who takes title to all or part of the Property in a bulk purchase for the purpose of development and sale. Such successor will be identified, the particular rights being assigned will be specified, and, to the extent required, concomitant obligations will be expressly assumed by such successor, all in a written instrument duly recorded in the records of the Clerk and Recorder of Flathead County, Montana.

IN WITNESS WHEREOF, Declarant has signed this Declaration on the Date shown above.

DKRW, LLC

FTIRS, LLC



Roger J. Wendell, Managing Member of FTIRS, LLC, Managing Member of DKRW, LLC

STATE OF WA)
)
) :SS
County of Clark)

This instrument was acknowledged before me on this 28th day of December, 2006 by Roger J. Wendell as Managing Member of FTIRS, LLC the Managing Member of DKRW, LLC.



Jennifer Anne Sigman
Notary Public for the State of WA
Residing at Vancouver, WA
My commission expires: 2-1-10

2007103 13240

After recording return to:

Vincent G. Rieger
Law Office of Vincent G. Rieger, P.C.
4 Meridian Court
Kalispell, MT 59901

BY Rieger
DATE 4.13.07 TIME 1:24
PAGES 2 BY A. Bradford
PAULA ROBINSON FLATHEAD COUNTY MONTANA

FIRST AMENDMENT
TO
DECLARATION
OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR
STILLWATER AT WHITEFISH

This Amendment (the "Amendment") to the Declaration of Covenants, Conditions, Restrictions and Easements for Stillwater at Whitefish (the "Declaration") is made this 13th day of April, 2007, by Wendel Development, Inc., a Washington corporation (hereinafter referred to as the "Successor Declarant") in this Amendment.

RECITALS:

- A. On December 29, 2006, the Declaration was recorded at the office of the Clerk and Recorder of Flathead County, Montana at reception number 200636313030.
- B. Pursuant to Section 17.2 of the Declaration, the Successor Declarant has the right to amend the Declaration.
- C. The Successor Declarant desires to amend the Declaration as set forth below.

NOW THEREFORE, pursuant to the powers granted the Successor Declarant in the Declaration:

- 1. *Modification.* Section 8.5 of the Declaration is hereby modified to read:

Section 8.5. *Temporary Buildings, Square Footage, etc.* No temporary building, shack, tent, house trailer, mobile home or modular structure shall be located on any Lot. All construction, including landscaping, must be completed within eighteen (18) months from the commencement of construction. All residences must be of new construction, built on-site, and

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shall contain no less than 3,000 square feet of living space, exclusive of garages, decks, porches or basements. All two or three-level residences must contain no less than 1,800 square feet of living space on the first level, exclusive of attached garages, basements, decks, porches and basements. Full basements, daylight basements and walkout basements may be located on any Lot on the conditions that there be proper drainage away from the structure and that the basement design be approved by the Design Review Committee.

All other provisions of the Declaration not herein amended or in conflict herewith, are hereby ratified and reaffirmed.

IN WITNESS WHEREOF, an authorized officer of Wendel Development, Inc. has signed this Amendment on the date shown above.

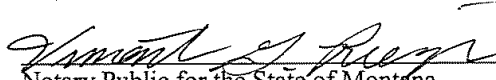
WENDEL DEVELOPMENT, INC.



David Kerr, Vice-President

STATE OF MONTANA)
)
:SS
County of Flathead)

This instrument was acknowledged before me on this 13th day of April, 2007, by David Kerr as Vice-President of Wendel Development, Inc.



Notary Public for the State of Montana
Residing at Kalispell, Montana
My commission expires: April 1, 2008



2007103 13230

After recording please return to:

Vincent G. Rieger
Law Office of Vincent G. Rieger, P.C.
4 Meridian Court
Kalispell, MT 59901

BY Rieger
DATE 4-13-07 TIME 1:23
14 PAGES 2 BY A. Bradford
MAULA ROBINSON FLATHEAD COUNTY MONTANA

ASSIGNMENT
OF
DECLARANT'S RIGHTS
TO
SUCCESSOR DECLARANT
STILLWATER AT WHITEFISH

This Assignment of Declarant's Rights to Successor Declarant (the "Assignment") pursuant to the Declaration of Covenants, Conditions, Restrictions and Easements for Stillwater at Whitefish (the "Declaration") is made this 13th day of April, 2007, by DKRW, LLC., a Washington limited liability company (hereinafter referred to as the "Original Declarant"), and Wendel Development, Inc., a Washington corporation (hereinafter referred to as the "Successor Declarant").

RECITALS:

- A. On December 29, 2006, the Declaration was recorded at the office of the Clerk and Recorder of Flathead County, Montana at reception number 200636313030.
- B. In Sections 2.30 and 18.7 of the Declaration, the Original Declarant reserved the right to assign its reserved rights under the Declaration to a successor declarant.
- C. The Original Declarant desires to assign and the Successor Declarant desires to assume the rights and obligations of the Declarant under the Declaration.

NOW THEREFORE, pursuant to the powers reserved by the Original Declarant in the Declaration:

- 1. Pursuant to Sections 2.30 and 18.7 of the Declaration, the Original Declarant assigns to the Successor Declarant all of the Original Declarant's rights, title, interest and obligations under the Declaration.
- 2. Successor Declarant agrees to accept the above assignment and agrees to fulfill the duties and obligations contained in the Declaration that are to be performed by the Original Declarant.

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3. Successor Declarant's agreement and assumption shall be binding on its legal representatives, successors, and assigns.

IN WITNESS WHEREOF, an authorized representative of the Original Declarant and of the Successor Declarant has executed this Assignment on the Date shown above.

DKRW, LLC

David Kerr
David Kerr, Member

WENDEL DEVELOPMENT, INC.

David Kerr
David Kerr, Vice-President

STATE OF MONTANA)
 :SS
County of Flathead)

This instrument was acknowledged before me on this 13th day of April, 2007, by David Kerr as a Member of DKRW, LLC and as Vice-President of Wendel Development, Inc.

Vincent G. Rieger
Notary Public for the State of Montana
Residing at Kalispell, Montana
My commission expires: April 1, 2008



After recording please return to:

Vincent G. Rieger
Law Office of Vincent G. Rieger, P.C.
4 Meridian Court
Kalispell, MT 59901



Paula Robinson, Flathead County MT by DD

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Page: 1 of 2
Fees: \$14.00
3/16/2010 3:39 PM

SECOND ASSIGNMENT
OF
DECLARANT'S RIGHTS
TO
2nd SUCCESSOR DECLARANT
STILLWATER AT WHITEFISH

This Second Assignment of Declarant's Rights to Successor Declarant (the "Assignment") pursuant to the Declaration of Covenants, Conditions, Restrictions and Easements for Stillwater at Whitefish (the "Declaration") is made this 9th day of March, 2010, by Wendel Development, Inc., a Washington corporation (hereinafter referred to as the "Successor Declarant") and DKRW, LLC, a Washington limited liability company (hereinafter referred to as either the "Original Declarant" or the "2nd Successor Declarant," as the case may be).

RECITALS:

A. On December 29, 2006, the Declaration was recorded at the office of the Clerk and Recorder of Flathead County, Montana at reception number 200636313030.

B. In Sections 2.30 and 18.7 of the Declaration, the Original Declarant, and any successor declarant, reserved the right to assign the reserved rights of the Declarant under the Declaration to any successor declarant.

C. On April 13, 2007 the Original Declarant assigned its reserved rights to the Successor Declarant via a document entitled "Assignment of Declarant's Rights to Successor Declarant" which was recorded on April 13, 2007 at the office of the Clerk and Recorder of Flathead County, Montana at reception number 200710313230.

D. The Successor Declarant desires to assign and the 2nd Successor Declarant desires to assume the rights and obligations of the Declarant under the Declaration.

NOW THEREFORE, pursuant to the powers reserved by the Declarant in the Declaration:

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★ ★



1. Pursuant to Sections 2.30 and 18.7 of the Declaration, the Successor Declarant assigns to the 2nd Successor Declarant all of the Declarant's rights, title, interest and obligations under the Declaration.

2. 2nd Successor Declarant agrees to accept the above assignment and agrees to fulfill the duties and obligations contained in the Declaration that are to be performed by the Declarant.

3. 2nd Successor Declarant's agreement and assumption shall be binding on its legal representatives, successors, and assigns.

IN WITNESS WHEREOF, an authorized representative of the Successor Declarant and of the 2nd Successor Declarant has executed this Assignment on the Date shown above.

WENDEL DEVELOPMENT, INC.

R. Wendel
Roger Wendel, President

"Successor Declarant"

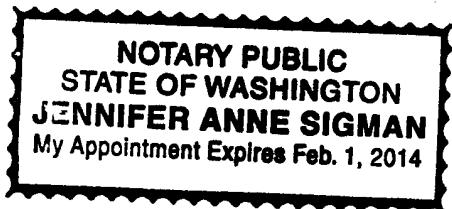
DKRW, LLC

R. Wendel
Roger Wendel, Member

"2nd Successor Declarant"

STATE OF Washington)
County of Clark) :SS

This instrument was acknowledged before me on this 9th day of March, 2010, by Roger Wendel as a Member of DKRW, LLC and as the President of Wendel Development, Inc.



Jennifer Anne Sigman
Printed Name of Notary: Jennifer Anne Sigman
Notary Public for the State of Washington
Residing at 7012 NE 40th St, Vancouver WA 98661
My commission expires: 2-1-14