

After Recording Return To:  
Sullivan, Tabaracci & Rhoades, P.C.  
Chris Johnson  
1821 South Avenue West, 3<sup>rd</sup> Floor  
Missoula, MT 59801

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Paula Robinson, Flathead County Montana

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
BUFFALO MOUNTAIN**

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This Declaration is made this 5<sup>th</sup> day of December, 2007, by Buffalo Mountain, L.L.C., (Declarant) a Montana limited liability company, of 19 Appleway, Kalispell, MT 59901, and provides as follows:

RECITALS

1. Buffalo Mountain, L.L.C. is the developer of certain Real Property, located in Section 21 and 22 of Township 28N, Range 22W, P.M.M., being the first phase of a platted subdivision, and comprising 36 platted lots, designated as Lots 67 through 101, inclusive, and Lot 151, together with designated Common Areas or Open Space, namely Buffalo Mountain, Phase 1.
2. The portions of the Real Property, comprising Buffalo Mountain, Phase 1, are subject to certain limitations and restrictions required as a condition of the plat, and contain certain open areas as designated on the plat. Additional phases of said development are anticipated, and it is the intent of the Declarant that those phases will also be governed by the covenants, conditions, restrictions, and easements identified herein.
3. NOW THEREFORE, Buffalo Mountain, L.L.C. hereby declares that all the Real Property identified in this Declaration shall be held, sold, and conveyed subject to the following restrictions, covenants, conditions, and easements, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Real Property as a desirable residential development. These restrictions, covenants, conditions and easements shall run with the Real Property and shall be binding upon all parties having or acquiring any right, title or interest in the described Real Property, or any part thereof, and shall inure to the benefit of and be binding upon each successor in interest to the Owner thereof.

ARTICLE I: DEFINITIONS

Section 1. Association. "Association" shall mean and refer to the Buffalo Mountain Homeowners Association, Inc., a Montana non-profit corporation, as the same may exist from time to time of record with the office of the Secretary of State, Helena, Montana, and its successors or assigns.

Section 2. BMDRC. "BMDRC" shall mean and refer to the Buffalo Mountain Design Review Committee

Section 3. Common Area. "Common Area" shall mean all that area shown on the plat of Buffalo Mountain and the various phases thereof and upon the subdivision plats for subsequent phases thereof or as may be shown on any other plat of any subdivision or property coming within the jurisdiction and authority of this Declaration.

Section 4. Declarant. "Declarant" shall mean and refer to Buffalo Mountain, L.L.C., a Montana limited liability company, its successors and assigns if such successors or assigns should expressly acquire its rights as Declarant.

Section 5. Lot. "Lot" shall mean and refer to any plot of land shown upon the recorded plat map of the Real Property subject to this Declaration with the exception of the Common Areas, Open Space, and all roads dedicated or private. In the event a plot of land other than a Lot as shown on the recorded plat map is utilized as a building site, as hereinafter authorized, such building site shall be considered as a Lot. Declarant reserves the right to have any lot, upon which common buildings and amenities are constructed, to be dedicated as common area or a common area lot.

Section 6. Member. "Member" shall mean and refer to every person or entity who is a Member of the Association as described in Article II.

Section 7. Open Space. "Open Space" shall mean and refer to those portions of common area described as "Open Space" on the face of the plat, which areas may contain trails and walking trails, and may be subject to further restrictions on use and/or conservation easements.

Section 8. Owner. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of any Lot which is a part of the Real Property, including buyers under a contract for deed, but excluding those having such interest merely as security for the performance of an obligation.

Section 9. Real Property. "Real Property" shall mean and refer to that certain Real Property described as Buffalo Mountain, Phase 1, and such other Real Property as



is now or may hereafter be brought within the jurisdiction of this Declaration and the Association.

ARTICLE II: MEMBERSHIP & VOTING RIGHTS

Section 1. Membership. Every person or entity who is a record Owner of any Lot, including buyers under a contract for deed, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Acceptance of title to any Lot whether by deed or other form of conveyance shall be deemed a consent to membership in the Association. Membership shall be appurtenant to and may not be separated from Ownership of the Lot. Ownership of such Lot shall be the sole qualification for membership, except all members of the Declarant shall be considered as Lot Owners for purposes of Association membership, and shall therefore be Members of the Association, so long as the Declarant owns one or more Lots. The Association if it acquires an interest in a Lot, which would otherwise qualify it for membership, shall not be considered a member either for voting or assessment purposes.

Section 2. Voting Rights. As to this Declaration, the Owners of Lots shall be entitled to one vote for each Lot in which they hold an ownership interest, except for so long as the Declarant is the Owner of four or more Lots it shall be entitled to ten votes for each Lot it owns. When more than one person or entity owns an interest in any Lot, the vote for such Lot shall be exercised as such persons or entities determine, but in no event may more than one vote per Lot be cast, except as previously stated.

ARTICLE III: HOMEOWNERS ASSOCIATION

The Declarant has created a Montana non-profit corporation to act as the Homeowners Association in conjunction with the administration of this Declaration. The Association shall administer the terms and provisions of this Declaration and take such action as may be reasonable or necessary to carry out the functions of a homeowners association.

ARTICLE IV: PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment. Every Member shall have a right and easement of enjoyment in and to the Common Areas and Open Spaces, subject to any further restrictions as may exist in subsequent conservation easements which may attach to said Open Spaces, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- a. The right of the Association to provide reasonable rules and



restrictions on use of the Common Areas and Open Spaces for the overall benefit of its members and for the management of Open Spaces and Common Areas. This right extends to the possible formation of a separate Open Space Management Committee, charged with the promulgation of rules, if desired, governing use and Management of the Common Areas and Open Spaces, or ensuring compliance with any conservation easement that may be established. Such rules may not conflict with this Declaration, unless amended. Said Committee may include non-Association members, provided such Committee members represent an interested party and possess some element of expertise relative to management of the Common Areas, e.g. a representative of the Montana Department of Fish, Wildlife, and Parks, a representative of local government, a representative of an adjacent property owner, etc.;

- b. The right of the Association to charge reasonable and pro rata fees for the repair, maintenance, dust abatement, and snow removal in the roadways within the plat, and other fees for the use of the Common Areas and common facilities located thereon, and fees associated with the maintenance and management of Open Spaces. The Common Areas and Open Spaces shall not be maintained nor any alteration made to the same by the Owners of any Lot;
- c. The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Real Property, and the rights of such mortgagees in said Real Property shall be subordinate to the rights of the Homeowners hereunder;
- d. To the extent permitted or authorized by the appropriate governing body, the right of the Association or Declarant to dedicate or transfer all or any part of the Common Areas and Open Spaces to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon under the Bylaws of the Association;
- e. The right of the Association and Declarant to grant easements under any Common Area to any public agency, authority, or utility without charge, and the right to grant conservation easement rights in any designated Open

Space;

- f. The right of the Association or Declarant to run utility service lines or connections including a water or sewer system that serves any portion of the Real Property under or through any Common Areas or Open Spaces; and
- g. Certain Lots may be subject to drainage swale easements as depicted on the plats. No Lot shall be developed or landscaped in such a manner as to interfere with the purpose of the drainage swale easement.

Section 2. Assignment of Use. Any Member may assign, in accordance with this Declaration, his right of enjoyment to the Common Areas and common facilities or to Open Spaces to the members of his family or others who reside on the Real Property.

Section 3. Maintenance Easement. An easement is hereby declared, granted, and reserved to the Declarant and the Association for access onto any Common Area for the purpose of installation, service, maintenance, or replacement of any common utility service. Further, the Declarant and the Association reserve the right to make additional grant of easement to any private or public utility provider over any Common Area as may be required for the provision of such service.

ARTICLE V: SERVICES PROVIDED BY ASSOCIATION

Section 1. Common Areas. The Association shall mow, water or otherwise maintain the Common Areas (as identified in the plat of Buffalo Mountain, Phase 1 subdivision and as subsequently identified or amended in recorded plats of future phases) as is reasonably necessary. The Association shall be responsible for the maintenance of all private roads within the subdivisions subject to the jurisdiction of this Declaration, and shall assess Owners for such maintenance on a pro-rata basis, based on the number of houses built in the subdivision. Such maintenance shall include necessary repairs, snow removal, and dust mitigation. Neither the County of Flathead nor other public agencies are responsible for maintenance of the private roads until such time as the private roads are designed and constructed to the then existing public road standards and are accepted by the County as dedicated public streets. The Association shall maintain and manage any common amenities located on the common areas, inclusive of any common area buildings or improvements, and inclusive of any common or shared utilities, and excepting such facilities and common utilities that may be under the authority of any water or sewer district that may be established.

Section 2. Open Spaces. The Declarant may and reserves the right to enter into



a conservation easement relative to the identified Open Spaces as identified on the plat for Buffalo Mountain, Phase 1, namely Buffalo Mountain Parkland Preserve. Maintenance and management of Open Spaces shall be subject to the terms and conditions of said conservation easement. Buffalo Mountain Meadowlands are excluded from the Open Space Management Plan, and will be mowed and maintained by the Buffalo Mountain Homeowners Association.

Section 3. Exterior/Lawn Maintenance. Individual Lot Owners shall be responsible for all exterior maintenance on their lots, such as painting, repair of walls, roofs, driveways, lawns and shrubs. Homeowners are notified of the potential for vegetation damage by wildlife, and should when possible plant vegetation less desirable to deer and other wild animals to avoid problems.

Section 4. Water and Sanitary Sewer.

- a. Each Lot shall be served by sanitary sewer service. Declarant shall be responsible for the initial construction of the sewer or effluent mains, the service line check and shutoff valve(s) at the property line of each Lot, the service line running between the sewer main and these valves, and any off-lot lift or pump station that may be required to move effluent. Each Owner shall be responsible for the installation of a septic tank conforming to the specifications supplied by the Declarant and subject to review by the BMDRC, and the construction of all other sewer facilities located on a Lot. Each Owner shall install, use, operate, maintain and repair the sewer facilities for which the Owner is responsible in a good and workmanlike manner such that it causes no harm or injury to other property or the overall system, and will be in compliance with all pertinent ordinances, rules and regulations contained herein or properly promulgated by a governmental entity. Regular septic tank pumping will be performed by the Association, and such expense shall be a portion of the regular assessment of individual Lots. Declarant hereby reserves to itself and grants to the Association access, ingress and egress, for the purpose of septic tank pumping and possible maintenance, as called for herein. Should it come to the attention of the Declarant or the Association, in the course of such pumping or otherwise, that a particular septic tank or related line or lines are in need of repair or maintenance, and such repair or maintenance is the responsibility of the homeowner, Declarant or the Association may give written notice to the Owner of such needed repair. Upon such notice, the Owner shall conduct such repair or maintenance as is necessary to keep the septic tank and related facilities in good operating condition, curing the noted defect or problem, and such repair or maintenance shall be completed in a reasonable time, given the scope of

the noted problem and seasonal or other factors. If such repair or maintenance is not completed by the Owner within a reasonable time, the Declarant or Association may conduct such repair, and the Owner shall be billed for such work, with said bill treated as a special assessment.

- b. On completion, the main or common sewer lines shall be maintained, owned, and operated by Declarant, until such time as 75 Lots (encompassing multiple phases) are sold or conveyed, whereupon such sewer system may be transferred to the Homeowners Association along with such responsibility for maintenance and operation. Nothing herein shall preclude transfer of such sewer system to any sewer and water district that may be established.
  
- c. Each Lot shall be served by a water system owned and operated initially by the Declarant. Declarant shall be responsible for the initial construction of the water mains, curb stops or shutoff valves located near the Lot line, and service lines between mains and curb stops. Each Lot Owner shall be responsible for the installation of all remaining water system elements located on a Lot, inclusive of any pressure reducing valve desired or required, and inclusive of meters, which are required for all Lots. Each Owner shall install, use, operate, maintain and repair the water provision facilities for which the Owner is responsible in a good and workmanlike manner such that it causes no harm or injury to other property or the overall system, and will be in compliance with all pertinent ordinances, rules and regulations contained herein or properly promulgated by a governmental entity. Water efficient faucets and facilities should be used on all new construction, and lawn and garden irrigation is limited to May 1<sup>st</sup> through September 30<sup>th</sup> of each year. Should it come to the attention of the Declarant or the Association, in the course of managing the water system, that a particular property served has leaks or lines in need of repair or maintenance, and such repair or maintenance is the responsibility of the homeowner, Declarant or the Association may give written notice to the Owner of such needed repair. Upon such notice, the Owner shall conduct such repair or maintenance as is necessary to keep the water lines and related facilities in good operating condition, curing the noted leak or problem, and such repair or maintenance shall be completed in a reasonable time, given the scope of the noted problem and seasonal or other factors. If such repair or maintenance is not completed by the Owner within a reasonable time, the Declarant or Association may conduct such repair, and the Owner shall be billed for such work, with said bill treated as a special assessment. Declarant hereby reserves to itself and grants to the Association access, ingress and egress, for the



purpose of conducting repairs or maintenance on water lines, as called for herein.

- d. On completion, the water mains, water sources, wells, pump and pressure facilities will be operated and maintained by the Declarant until such time as 75 Lots (encompassing multiple phases) are sold or conveyed, whereupon such water system may be transferred to the Homeowners Association along with such responsibility for maintenance and operation. Nothing herein shall prevent the Declarant from retaining a licensed or certified system operator, and such a party shall be retained by the Association upon transfer to the Association. In such event, the Declarant or the Association shall not be liable for any omission or improper exercise by an operator of any such responsibility so delegated. Declarant and the Association reserve the right to make future dedication or transfer of said water system to any municipality, public agency or utility authorized to operate a water system, subject to such conditions as may be agreed to by the party making such transfer. Nothing herein shall preclude transfer of such water system to any sewer and water district that may be established.
  
- e. The Declarant, and its successor Homeowners Association, shall include in the monthly assessment called for herein a charge for water use and sewer system use sufficient to cover costs of system maintenance. Other required or desired improvements to the system beyond such assessment shall be treated as a special assessment, as provided for herein. As it is a material portion of the regular monthly assessment, the Declarant or successor Association may, upon at least 15 days' written notice, disconnect water service for the non-payment of assessments. Such notice shall be deemed given when mailed to the Owner by certified mail, return receipt requested.

Section 5. Additional Services. The Association may provide additional services as it sees fit or as may be required as a condition of the plat, including, but not limited to, participation in a neighborhood well monitoring program and reporting the results of such monitoring as may be required. The Association may provide such services for all or a portion of the Real Property within its jurisdiction or with which it may contract and levy assessments on such portion of its Members or others as derive benefits from services concerned.

Section 6. Fees. The Association shall establish a fee schedule for providing



these services, which fees shall be considered as assessments, as set forth above. Such schedule may include the assessment of:

- a. Charges for availability of a service even though it is not used by the Owner of a Lot.
- b. Charges for use based on a flat rate.
- c. Additional charges for excess use.
- d. Such other charges as may be required to maintain the private roads within the Real Property.

#### ARTICLE VI: RULES AND REGULATIONS

Section 1. Association to Establish Rules. The Association, inclusive of any design review committee that may be established, may promulgate such rules and regulations as it deems necessary and appropriate for the use of the Common Areas, Common Area improvements, Open Spaces (subject to terms of any conservation easement), community facilities, and private roads as identified on the plat of the Real Property. Rules and regulations promulgated by the Association shall only be effective upon the Association's receipt of the affirmative vote of 60% of the Lot Owners, except as otherwise provided for herein. (See Article II: Membership and Voting Rights).

Section 2. Rules for Maintenance and Repairs. The Association may also promulgate reasonable rules and regulations for the maintenance, repair or improvement of the Real Property. Such rules must be uniformly and evenly applied.

#### ARTICLE VII: ASSESSMENTS

Section 1. Assessments. The general assessments levied by the Association shall be used for such purposes as are deemed desirable by the Association including but not limited to expenditures for construction, reconstruction, repair or replacement of any capital improvement; maintenance, repair and upkeep of drainage facilities; maintenance, upkeep, real property taxes, hazard and liability insurance, and related expenses in regard to any Common Area or Open Space or common utility or service, administrative costs of the Association incurred in its day to day activities and any costs or expenses, including attorneys fees, incurred in enforcing the conditions, restrictions or charges set forth in this Declaration.



Section 2. Rate of Assessments. Assessments for services may be based on either a flat rate or on usage. As to charges for private roads or other services that directly benefit only certain parcels, the Association may assess those service costs to the Real Property Owners who benefit directly from the services. All other assessments, including those for capital improvements on systems utilized to provide services, shall be fixed at a uniform rate per Lot. Undeveloped Lots owned by Declarant shall be subject to assessment at one-fourth (that is, 25%) of the amount of assessments fixed for other Lots.

Section 3. Special Assessments. Upon determination by the Board of Directors of the Association, assessments may be levied for special or particular purposes. Such assessments may include related administration costs and such other costs or charges as are reasonably required. The assessments shall be fixed, established and collected in the amount and manner as the Association might determine but in any event they shall be separately treated from other assessments provided for by this Article. Funds used for special assessments shall be accounted for separately.

Section 4. Commencement of Assessments. The Association is authorized to commence initial assessments as herein authorized at such time as it determines appropriate. Written notice of assessments shall be sent to every Lot Owner. The due dates shall be established by the Association. If Assessments are not paid by such due date then interest shall begin to accrue on them at a rate as determined by the Association.

Section 5. Certificate of Payment. The Secretary of the Association shall upon demand furnish a written statement signed by an officer of the Association setting forth the status of any assessments relative to a specific Lot. The statement shall, as applicable, identify any delinquent assessments, the amount owed, the amount of any current assessments or accruing assessments or indicate that all assessments are current and paid. A reasonable charge may be made by the Association for the issuance of the statement. Such statement shall be conclusive evidence of payment of any assessment therein stated to have been paid. In addition, the Secretary of the Association shall maintain a roster of the individual Lots and the assessments due thereon.

Section 6. Nonpayment of Assessments. Any assessments or installment payments on assessments which are not paid when due shall be delinquent. The Association may bring an action at law to collect the amount of the delinquent assessment together with all interest, costs, and reasonable attorney's fees incurred in such action, or may take action to perfect and foreclose the lien for assessments, or may take such other action as provided for herein. Partial payments shall be first applied to water and sewer assessment portions of the general assessment, but the



Association is not required to show an assessment breakdown in individual bills. If water and sewer portion of an assessment is paid for, but a portion of the assessment remains unpaid, the Association may not avail itself of the remedy provided for in section V 4(e).

Section 7. Obligation of Payment. All Lots are subject to the assessments set forth in this Declaration. Each Lot Owner hereby covenants and agrees to pay to the Association the amount of all assessments, as such assessments are fixed, established and billed. The Association shall bill the Property Owner for the amount of any assessment and that Property Owner shall be responsible for any accruing assessments until and unless such Property Owner has provided to the Association's secretary a true and correct copy of a recorded deed or other document of conveyance transferring title of a Lot to another Owner.

Section 8. Creation of Lien. All assessments both current and delinquent, together with interest and cost of collection as herein provided for, shall be a charge upon the land and shall constitute a lien upon the Lot against which assessments are made. Such lien shall be deemed perfected upon filing with the County Clerk and Recorder of Flathead County an account of the assessments due together with a correct description of the Real Property to be charged with such lien and shall continue until all unpaid assessments, interest and costs of collection shall have been fully paid. The priority of such lien shall be determined as of the time of filing with the Clerk and Recorder, and it shall be deemed subordinate to all previously recorded or filed interests. Conveyance of title to any Lot shall not be effective to avoid the obligation for payment of any sums then due and owing whether or not reduced to the status of a lien. The Association may establish such procedures for collection of obligations and perfecting of liens for payment of assessments as it deems necessary and appropriate.

Section 9. Property Subject to Assessment. All Lots shall be subject to assessments by the Association as herein provided except those Lots acquired by the Association.

ARTICLE VIII: PROTECTIVE COVENANTS

The following protective covenants are designed to provide a uniform plan for the development of the Real Property. They shall constitute a covenant running with the land for each Lot within the Real Property.

Section 1. Design Review Committee. The Association shall establish and maintain the Buffalo Mountain Design Review Committee (BMDRC) to serve the functions as described in this Article and shall establish criteria specifically for the Real



Property subject to the jurisdiction of this Declaration. Separate criteria may be established for the construction of Common Area improvements, and for dwellings from phase to phase. Members of the BMDRC shall be appointed and serve as set forth in the Bylaws of the Association.

The criteria by which the BMDRC will review any proposed plans for the construction of improvements or exterior modifications on any Lot shall be made available to the purchaser of any Lot. It is the obligation of the Owner of any Lot to obtain current versions of the criteria prior to preparation of plans or specifications for construction of improvements or exterior modifications and prior to submission of materials for review by the BMDRC. The BMDRC will evaluate proposed plans for construction of improvements or exterior modifications based upon the most recent criteria for review as may be in effect as of the time the plans are submitted for review and is not obligated to use the criteria in effect at the time the Lot was purchased. While the review criteria must be reasonably designed to enhance and protect the nature of the Real Property in the area, purchasers of Lots need to be aware that the BMDRC may from time to time adopt more stringent criteria than what existed at the time a Lot was purchased.

The BMDRC may require payment of fees, application, review of proposed plans, review of complaints or protests alleging violation of this Declaration as to matters within the jurisdiction of the BMDRC. The fees as set by the BMDRC shall be in an amount sufficient to reasonably compensate the BMDRC for its administrative costs and expenses likely to be incurred in connection with its activities. The BMDRC may require payment of the fee in advance as a condition of making its review or determination. Unless waived by the BMDRC, failure to pay any fee required for BMDRC review or action shall be interpreted as the matter was not present for review and no action of the BMDRC is required.

Section 2. Design Review Committee Approval. Approval or disapproval by the BMDRC shall be in writing. In the event the Committee fails to act within thirty (30) days after the proposed plans and specifications of any structure and required fees are accepted, no specific approval shall be required for such structure and the pertinent provisions of this Declaration shall be deemed to have been fully complied with. The BMDRC will notify all applicants of the date such acceptance of submitted plans and specifications.

Section 3. Land Use and Building Type: (a) New dwellings. No Lot shall be used except for residential purposes, and no business, trade, or manufacture shall be conducted thereon, except as provided for in Section 4, below. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one attached or detached single-family dwelling not to exceed the specific height restrictions established

by the BMDRC, and a private garage for no less than two (2) cars and accessory buildings, as permitted herein. No structure such as the residential dwelling, accessory buildings, fences, kennels, garages, antennas, signs, mailboxes and newspaper holders or any other structure may be located upon any Lot unless the plans and specifications for such structures have been reviewed and approved by the BMDRC. The fencing of Lot boundaries is prohibited. The BMDRC shall also have jurisdiction to determine and approve proposed grades of lawn, landscaping plans including seeding and planting and all other and similar items relating to the development and improvement of any Lot, inclusive of requiring that all landscaping incorporate Defensible Space Standards for wildfires. All structures shall be constructed of new materials and roofs shall be of class A or B fire rated materials. However, suitable used materials such as used brick or beams may be utilized provided that advance approval has been obtained from the BMDRC as herein provided. No old structures, whether intended for use in whole or in part as the main dwelling house or as a garage or other structure shall be moved upon any Lot. No mobile homes, either double or single wide, or other pre-manufactured homes constructed primarily away from the Lot on which they would be situated shall be permitted. Provided, Declarant shall not be restricted by this section or this Declaration from manufacturing or assembling components of structures on a site other than the Lot on which the building is to be located. The BMDRC of the Association is authorized in its discretion to approve exceptions to this section so that structures intended to serve the residents of the adjoining dwelling house may be constructed. No such additional structure shall be utilized as an additional dwelling house or for purposes other than to serve the residents of the dwelling house.

(b) Remodeling or Alteration. No remodeling or other alteration of any existing structure which alteration or remodeling or the results thereof, will be visible from the exterior of the structure shall be undertaken, commenced or completed without the plans for such remodeling or alteration having first been approved by the BMDRC.

Section 4. Commercial Usage Prohibited. No store, office, business, manufacture, commercial enterprise, hospital, sanitarium, rest home, theater, or saloon of any kind, or anything of the nature thereof, shall be carried on or conducted on any Lot. However, the Declarant or its designee shall be permitted to maintain a sales office in either a model home or a specially constructed building, to be used to promote the development of and facilitate resale of Lots and homes in the Buffalo Mountain area. Home occupations that do not result in significant increased traffic of either customers/clients or of delivery vehicles are permitted, subject to all applicable zoning and other applicable restrictions imposed by the County of Flathead.

Section 5. Setback Requirements. No structure shall be placed within the described setback area on said Lots. Any setback requirement may be waived or altered by the BMDRC on a case by case basis, provided that all setbacks will minimally

be controlled by Flathead County regulations. Any waiver or alteration of a setback requirement as to any Lot shall not be deemed to have waived the setback requirement set forth herein, nor shall it set a precedent that in any way obligates the BMDRC to make subsequent waivers or make adjustments to setback requirements for other Lots. Setback requirements may be established that differ for specific Lots, or in the alternative, specific corner lots may be established as fronting a particular road. Such setback requirements are as follows:

- a. Front Setbacks. The front setback shall be a minimum of 20 feet from the roadway.
- b. Side Setbacks. Side setbacks shall be a minimum of 10 feet from the side boundary line of any Lot.
- c. Back Setbacks. The back setback shall be a minimum of 20 feet from the back of the lot, opposite the fronting roadway.

Section 6. Exterior Maintenance. The Owner of each Lot upon which a single family residential structure may be or is located shall provide exterior maintenance upon such Lot and structures, if any, to include painting and repairing the structures; maintaining the lawn and grounds to preclude weeds, underbrush, and other unsightly growths; and not permitting refuse piles or other unsightly objects to accumulate or remain on the grounds. No fruit trees, vegetable gardens, or non-native berry producing trees and shrubs are allowed on the Lots, provided that ornamental, flowering trees and shrubs that do not produce fruit are permitted. All areas disturbed during development shall be restored and re-vegetated in accordance with any existing BMDRC rule or plan, and in accordance with any revegetation plan approved and/or required by the Flathead County Weed Department. In providing such exterior maintenance, the Owner shall maintain the exterior color, design and appearance, including landscaping, as originally approved by the BMDRC. In the event any Owner shall fail or neglect to provide such exterior maintenance, the Association shall notify such Owner in writing specifying the failure and demanding that it be remedied within thirty (30) days. If the Owner shall fail or refuse to provide such exterior maintenance within the thirty (30) day period, the Association may then enter such Lot and provide required maintenance at the expense of the Owner. The full amount shall be due and payable within thirty (30) days after the Owner is billed therefor and shall become a special assessment upon that Lot. The Association may exercise all rights to collect that assessment. Such entry on the Lot by the Association shall not be deemed a trespass.



Section 7. Utilities. All utility lines shall be underground. The Owner of each Lot shall pay all initial connecting costs for cable television and telephone service, together with all subsequent charges for all utilities.

Section 8. Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. No permanent building of any kind shall be erected, placed, or permitted to remain on such easements.

Section 9. Boundary Control Monuments. The Declarant has caused survey monuments to be placed on the corners of each Lot. It shall be the responsibility of the Owner of each Lot to provide for immediate professional replacement of any survey monuments that are removed or become lost or obliterated from his or her Lot.

Section 10. Garbage. No Lot shall be used or maintained as a dumping ground, nor shall any rubbish, trash, garbage or other waste be allowed to accumulate except in sanitary containers which shall be emptied on at least a weekly basis by a local garbage collection firm. This provision does not prohibit temporary storage of gravel, topsoil or building materials on Lots if such items are to be used in further construction. No such materials or receptacles shall be placed outside the boundary of the Lot for which they are being used, or within a roadway. On garbage collection days, garbage cans may be placed in a location convenient for collection. All garbage shall be stored in animal proof containers of metal, plastic, or other suitable material which also have sufficiently tight-fitting covers to prevent the escape of noxious odors and to prevent entrance by pets and wild animals. Garbage cans shall otherwise be stored indoors, and may not be set out for collection until the morning of garbage pickup, and must be brought in no later than that evening. If homes are occupied seasonally or the occupants are to be away from the home for 7 days or more, garbage from the home, other buildings, or containers must be removed from the property prior to their departure. Compost piles are prohibited.

Section 11. Burning of Trash. There shall be no burning of household trash. 'Open burning' (leaves, branches, and yard waste) is permitted in accordance with Flathead County regulations.

Section 12. Animals and Pets. No animals or fowl, domestic or wild, except for a total of up to three (3) dogs and/or cats, in any combination, shall be permitted on any Lot. Other small domestic animals that are kept solely indoors in cages or terrariums may be kept. These animals will be kept within the Lot of their Owner unless leashed and under the immediate control of their Owner. Such animals shall not be allowed at large or permitted to become a nuisance or annoyance to the neighborhood. All animals kept on any Lot shall be properly fed, watered, and sheltered from the



elements in such a manner as shall be consistent with their good health. Pets should be fed indoors or within approved kennel areas only, and food dishes not be allowed to remain outdoors. This will reduce the conflicts with wild animals. Each Owner or person responsible shall treat and care for such animals in a humane and merciful fashion, so that other persons in the area shall not be required to tolerate or condone inhumane treatment of the animals. All animals kept on the Real Property must be kept within an approved fenced enclosure, approved kennel or within the dwelling house, except when accompanied by their Owner, as provided above. No kennels are permitted, other than kennels approved by the BMDRC as to construction, materials and location. All animals shall be kept in a humane manner and not chained as a mechanism to prevent being at large. Animal manure shall be removed from the Real Property, immediately following deposit, so as not to become obnoxious, offensive, or a nuisance to surrounding residents. All carcasses of dead animals shall be removed immediately. No commercial breeding or sales of any animals shall be permitted. No bird feeders may be placed or installed on any Lot or on a Common Area. Violations of these requirements regarding animals shall be considered a complete breach of these protective and restrictive covenants, giving rise to such remedies as are allowed by law for the breach of any other covenants contained herein.

To reduce the possibility of attracting bears, beehives are not allowed within the plat. Barbecue grills must be kept clean and stored indoors to avoid attracting wild animals, and permanent outdoor barbecue grills are prohibited. Do not feed wildlife or offer supplements (such as salt or mineral blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that can lead to overuse of vegetation, disease transmission, and other adverse effects (such as the foundering of deer). Such actions unnaturally accustom wild animals to humans, which can be dangerous to both. It is against state law (MCA 87-3-130) to purposely or knowingly attract bears with supplemental food attractants (any food, garbage, or other attractants for game animals) or to provide supplemental feed attractants in a manner that results in "an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners must be aware that deer concentrations might attract mountain lions to the area.

Lot Owners are thus advised of and alerted to the presence of large and potentially dangerous wildlife in the area and are on notice that feeding big game is illegal. Owners are encouraged to contact the Montana Department of Fish, Wildlife, and Parks to obtain information on safely living near wildlife and minimizing habitat impact.

**Section 13. Firearms.** There shall be no discharge of firearms, nor shall there be any hunting by any means carried out on the Lots. This provision does not prohibit



action by the Association, in conjunction and consultation with the Montana Department of Fish, Wildlife and Parks, regarding the culling or removal of problem wild animals.

Section 14. Vehicles. There shall be no repairing of vehicles in the street. Each Lot shall contain a sufficient area for two off-street parking spaces, excluding the garage. There shall be no parking of vehicles on the street fronting any Lot except on a temporary basis, which is defined for these purposes and less than 24 hours and being an irregular occurrence. Guest parking is otherwise permitted only on driveways. No motor homes, trailers, trucks exceeding one ton capacity, pickups carrying campers, campers, boats, boat trailers, or unsightly vehicles shall be parked or allowed to remain on any of the Lots or the adjoining streets. However, an exception is allowed if they are stored in a garage or Accessory Building. Vehicle parking restrictions provided by this Declaration will be strictly enforced, including but not limited to ticketing and towing of vehicles in violation. Snowmobiles, trail bikes, ATVs, chainsaws and other noisy vehicles and equipment may not be used on any of the Real Property within the subdivisions without permission of the Association. This provision is not intended to preclude the entry of construction, maintenance, delivery, moving, or other such service vehicles while they are being used in connection with services for the Real Property.

Section 15. Signs. No advertising signs, billboards, or unsightly objects shall be erected, placed, or permitted to remain on any Lot with the following exceptions:

- a. Signs specifically permitted in any Buffalo Mountain Design Guidelines Manual;
- b. Signs erected within the subdivision(s) by the Declarant promoting the development of the Property and other phases;
- c. Such other signs as may be permitted or approved by the BMDRC.
- d. All improved Lots shall have the address of such Lot installed on the property, either at the entrance or on the house, which address shall be visible from the road and at the driveway entrance.

Section 16. Damaged Property. Any dwelling damaged by fire or other casualty must be removed from the premises and repairs commenced within one hundred twenty (120) days unless an extension of time for such removal and repair is granted by the BMDRC. Any damaged dwelling not so removed and repaired may be removed at the Owner's expense and the BMDRC may pursue any and all legal and equitable remedies to enforce compliance and to recover any expenses incurred in connection herewith. Any cost incurred by the Association under this section shall become a

special assessment upon the Lot of the Owner. The Association may exercise all rights to collect that assessment.

Section 17. Access and Roadways. Except for Declarant or specific shared driveway easements shown on the plat, no Owner shall use part of any Lot to provide access to any adjacent land. No roadway shall be used or constructed on any Lot for any purpose except one driveway for access to the dwelling facilities, and such driveways shall be paved in accordance with the Buffalo Mountain Design Guideline Manual. No Owner of any Lot nor their guests or invitees shall use any access designated as emergency access, except in the case of an emergency.

Section 18. Sanitary Restrictions. The Owners of every Lot shall comply with all governing laws and regulations relating to water supply, sanitation, sewage disposal, and air pollution. All Owners shall keep their septic systems in good working order, and may be held liable for damages to community sewer systems caused by such failure to maintain.

Section 19. Accessory Buildings. The only accessory building or outbuilding permitted on any Lot is one free standing or detached storage facility, which shall be compatible in design and color with the primary residence. Materials, size, color, appearance and location shall be approved by the BMDRC.

Section 20. Imperiling of Insurance. Nothing shall be done within the plat, Common Areas or Open Spaces, or on any individual Lot, that would result in an increase in the premiums for insurance maintained by the Association or which might cause cancellation of such insurance.

Section 21. Construction Liens. No labor performed or materials furnished with the consent or at the request of an Owner, his agent, contractor or subcontractor shall create any right to file a construction lien against the Real Property of the Association or any other Owner, who does not request or consent to the same. Each contracting or consenting Owner shall indemnify, defend and hold harmless the Association and each of the other Owners from and against liability arising from the claim of any lien holder for labor performed or materials furnished at the request of the contracting or consenting Owner. At the written request of any Owner, the Association shall enforce such indemnity by collecting from the contracting or consenting Owner the amount necessary to discharge any such lien and all costs incidental thereto including attorney's fees and expenses. Said expenses may be added to such Owner's regular assessments.

Section 22. Alteration. As stated above, no alteration of the exterior of an improvement or visible portion of a Lot may be made without advance approval of the BMDRC.



Section 23. Insurance. Each Owner shall maintain insurance as to the improvements constructed on that Owner's Lot.

Section 24. Rentals. No residence, nor any portion thereof may be rented for less than a thirty day minimum period. This restriction is intended to prohibit overnight, daily and weekly rentals.

Section 25. Defensible Space. Landscaping shall include and consider the possibility of fire danger, and shall be conducted in a manner that reduces fire danger and minimizes the possible spread of fire to adjacent tracts. Such landscaping and maintenance activities shall comply with Flathead County Subdivision Regulations, Appendix G, Vegetation Reduction Guidelines, and should consider fuels reduction, slope, and the elimination of 'ladder fuels'. Owners should also consult recommended practices as promulgated or referenced by the Montana Department of Natural Resources and Conservation for additional information on the creation of defensible space and maintenance of natural vegetation.

ARTICLE IX: OPEN SPACES AND COMMUNITY CENTER

Section 1. Open Spaces/Common Areas. Neither the Association, Owners of any Lot, nor their guests or invitees shall:

- a. Construct improvements or landscaping on Open Spaces;
- b. Use any motorized vehicle on Open Spaces or walking trails, unless such use is specifically approved by the Buffalo Mountain Homeowners Association;
- c. Use the Open Space areas except between the hours of 6:00 a.m. to 11:00 p.m.;

Section 2. Hunting. Bow or archery hunting only may be permitted within the designated Open Spaces/Common Areas. Declarant and/or the Association may promulgate specific rules, in consultation with the Montana Department of Fish Wildlife and Parks, for this use, including, but not limited to, the designation of areas within the Open Space open to such hunting, a limitation on hours open to hunting, a limitation of the number of hunters allowed on any given day, a limitation on dates on which such activities are allowed, and a permitting or permission procedure requiring application to the Association by hunters proposing such hunting. The Association may also alter or amend Open Space Use hours for the purposes of hunting. No rule promulgated under this provision may conflict with or be less restrictive than general hunting regulations



promulgated by an authorized governmental body. It shall be a violation of this provision while hunting for any shot arrow to land on or encroach on a Lot.

Section 3. Community Center. Lot 151 is excluded and exempt from the design provisions and requirements of Article VIII, of this Declaration, provided that all such common area improvements and amenities shall be reviewed and approved by the BMDRC, and shall otherwise comply with building codes, conditions contained in the approval of the plat, and any other County requirements. Declarant reserves the right to redesignate or relocate the proposed community center as part of future phases.

a. Purpose. Lot 151 shall be owned by the Association and shall be used as the site for a Community Center. The Declarant or its designee may use a portion of the Community Center building as a sales office so long as Declarant desires. Neither Lot 151 nor the improvements located thereon shall be considered common elements of the subdivision, even if located on a designated common area.

b. Use. The use of such improvements and amenities located on Lot 151 are restricted by the terms and provisions of this Section. Any portion of the Community Center used by the Declarant for its sales office shall be under the control and direction of the Declarant. The remainder of such improvement shall be controlled and administered by the Association for the use and benefit of the Lot Owners who are entitled to use the facilities, per the terms of this Section. The Declarant shall be responsible to the Association for the payment of construction costs, maintenance assessments and similar fees or charges for the portion of the building and or facility that it occupies as a sales facility. The Association shall establish such rules and regulations for the use of the community improvements or facilities as it deems necessary and appropriate.

c. Entitlements. Subject to the rules and regulations as may from time to time be established by the Association, the Owners, (including their guests and invitees) of Lots included among the Real Property shall be entitled to use the such community improvements or facilities.

d. Assessments. The Association shall determine the assessments to be charged to the owners of each Lot and property entitled to the use of such community improvements as per the preceding subsection. The Association shall administer the assessments in the same or similar manner as is provided for in Article VII: Assessments. The assessments shall consist of the costs of maintenance of such community facilities. Maintenance costs shall include, but are not limited to, insurance

premiums and operational/ administrative expenses. As an exception to the provisions of Section 2, Rate of Assessments, set forth in Article VII of this Declaration, the assessments levied by the Association pursuant to this Section, shall not be prorated or discounted. Declarant shall be responsible for paying 100% of all assessments under this section applicable to any lots owned by Declarant, limited to the term of its ownership. The Association may restrict access to the community improvements or facilities for those Owners, who are not current in paying the assessments provided herein.

e. Voting by Association. Only those members of the Association who are owners of Lots and properties entitled to use the community improvements or facilities per this Section (whether by specific reference or by subsequent declaration) shall be entitled to vote as an Association member, director or officer on any issue affecting such facilities thereon.

f. Storm Water Drainage. The Association shall be solely responsible for maintenance of any storm water drainage system as may be installed.

ARTICLE X: ANNEXATION OF ADDITIONAL PROPERTY

Section 1. By Declarant. Declarant, at Declarant's sole discretion, may deem it desirable to annex additional real property to the Property covered by this Declaration. Additional real property may be annexed to the Property and brought within the provisions of this Declaration as provided herein by Declarant, its successors or assigns, at any time, and from time to time, without the approval of any Owner or the Association. This right shall also include bringing in additional properties to the provision of services by existing water and sewer systems, even though management of such systems may have been transferred to the Association. The use and development of such additional real property shall conform to all applicable land use regulations, as such regulations are modified by variances.

Section 2. By the Association. In addition to the provisions concerning annexations by Declarant specified in Section 1 above, additional real property may be annexed to the Property, subject to the same conditions by the Association upon the exercise by Members of at least seventy five percent (75%) of the votes of the Association.

Section 3. Rights and Obligations of Owners of Annexed Property. Subject to the provisions hereof, upon recording of a Supplemental Declaration as to any additional real property, all provisions contained in this Declaration shall, to the extent



practicable and allowed by law, apply to the additional real property in the same manner as if it were originally covered by this Declaration.

Section 4. Method of Annexation. The addition of additional real property to the Property authorized under Sections 1 and 2 shall be made by filing of record a Supplemental Declaration or other similar instrument with respect to the annexed property, which shall be executed by Declarant or the Owner thereof and which shall annex such property to the Property.

ARTICLE XI: GENERAL PROVISIONS

Section 1. Duration. The covenants, conditions, charges and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association, the Declarant or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, or assigns in perpetuity.

Section 2. Enforcement. Any Owner of a Lot , the Declarant or the Association shall have the option and right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, and charges now or hereafter imposed by the provisions of this Declaration, inclusive of rules such as design guidelines promulgated by the BMDRC or other properly constituted committee of the Association. Each Owner may submit to the Association any complaint regarding alleged violation of this Declaration by any other Owner. Upon receipt of such complaint to Association shall conduct a reasonable investigation of the alleged violation. If the Association, in its sole discretion, deems that the complaint has merit it may elect to seek enforcement of this Declaration pursuant to this section. In any event the decision of the Association as to the merit of the complaint or its decision to pursue or not pursue enforcement of this Declaration, shall not limit or restrict in any way any individual Owner's pursuit of enforcement of this Declaration. The method of enforcement may include legal action seeking an injunction or prohibit any violation, to recover damages, or both. Failure by any Owner, or by the Declarant, to enforce any such provisions shall in no event be deemed a waiver of the right to do so thereafter. Should any law suit or other legal proceeding be instituted against an Owner who is alleged to have violated one or more of the provisions of this Declaration, or a rule promulgated by the BMDRC, the prevailing party in such proceeding shall be entitled to reimbursement for the costs of such proceeding, including reasonable attorney's fees.

Section 3. Severability. Invalidation of any of the terms, covenants, conditions or restrictions as established by this Declaration or restrictions by judgment or court

order shall in no way affect any other provisions, which shall remain in full force and effect.

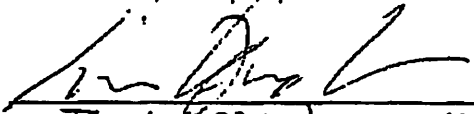
Section 4. Amendment. The Declarant reserves the sole right to amend, modify, make additions to or deletions from this Declaration it alone deems appropriate. This right of the Declarant to make such amendments shall continue for so long as Declarant is a Member in the Association. After that time the right to amend shall pass to the Association to be exercised only upon a concurrence of seventy-five (75) percent of the Lot Owners of Real Property in Buffalo Mountain, Phase 1, or with the concurrence of the same percentage of Lot Owners of this and subsequent phases that may be brought under the jurisdiction of this Declaration. In no event may those provisions of this Declaration required by a preliminary plat approval letter from the County of Flathead to Declarant be amended or deleted except with the express written consent of the County of Flathead, its successors or assigns.

Section 5. Waiver of Protest: Participation in Special Improvement District. Declarant, and its successors and assigns, hereby waives any and all right to protest which it may have in regard to any attempt to be made by a local governmental entity, to initiate a Special Improvement District which includes Buffalo Mountain, Phase 1 subdivision, shown on the plat therefor, for any of the purposes related to roads, water facilities and systems, and sewer facilities and systems, set forth in Sections 7-12-2102 and 7-12-4102, M.C.A.; provided that Declarant, and its successors and assigns, understands that it retains the ability to object to the amount of assessment imposed as a result of the formation of a Special Improvement District, including the right to object on the basis that the property is not benefitted by the Special Improvement District. Declarant agrees that this covenant shall run with and be binding on the Real Property described herein, and shall be binding on all Owners, successors, and assigns, and any subsequent holders or Owners of the Real Property shown on the plat for Buffalo Mountain, Phase 1.

Section 6. Liability of Declarant. The Declarant shall have no liability for any of its actions or failures to act, or for any action or failure to act of any Owner of any Lot.

IN WITNESS WHEREOF, the Declarant has executed the foregoing Declaration on the day and year first above written.

Buffalo Mountain, L.L.C.,  
a limited liability company

By:   
TIM HENDERMAN, Managing Member

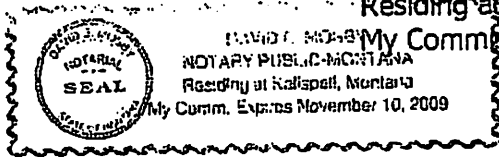
STATE OF MONTANA )  
 : ss.  
County of FLATHEAD )

This instrument was acknowledged before on the 18th day of DECEMBER 2007, by TIM HENDERMAN, as Managing Member of Buffalo Mountain, L.L.C., a Montana limited liability company.

*David E Mosby*

Notary Public for the State of MONTANA  
Printed Name: DAVID E MOSBY  
Residing at: KALISPELL, MT  
My Commission expires: NOV 10, 2009

(seal)



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