

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

### MALLARD SPRINGS SUBDIVISION

(Third Revision)

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WHEREAS, the developer, FIRST BIG TIMBER CORPORATION, a Montana corporation, was the owner of certain property, located in the County of Sweet Grass, State of Montana, more particularly described as follows:

A tract of land in the South Half Northeast Quarter (S1/2NE1/4) and North Half Southeast Quarter (N1/2SE1/4) of Section 21, Township One North, Range Fifteen East, PMM, designated and more particularly described as "Tract 3" on Certificate of Survey No. 97112, filed in the office of the Clerk and Recorder of Sweet Grass County, Montana, on the 30<sup>th</sup> day of March, 1976, at 11:57 o'clock AM of said date; and

WHEREAS, on the 8<sup>th</sup> day of December, 1976, the developer filed a plat of Mallard Springs Subdivision, a subdivision located on said tract, which plate is Document No. 97905 in the records of Sweet Grass County, Montana; and

WHEREAS, on the 8<sup>th</sup> day of December, 1976, the developer filed a "Declaration of Covenants, Conditions, and Restrictions" for said Mallard Springs Subdivision, which is Document No. 97904 and appears of record in Book 50 of Miscellaneous Records at pages 908-917 in the records of Sweet Grass County, Montana; and

WHEREAS, on the 8<sup>th</sup> day of December, 1976, the developer deeded all but Lots 1-35, inclusive, of said Mallard Springs Subdivision to Mallard Springs Owners' Association, a Montana domestic non-profit corporation, as provided by Article V of the aforementioned "Declaration of Covenants, Conditions, and Restrictions", by deed which appears of record in Book 57 of Deeds at page 431 in the records of Sweet Grass County, Montana; and

WHEREAS, on May 26, 1977 the Developer signed the "First Revision" of the Declaration of Covenants, Conditions, and Restrictions, Mallard Springs Subdivision, which "First Revision" was recorded in Sweet Grass County, Montana on May 26, 1977 at 3:00 o'clock PM as Document No. 98443; and

WHEREAS, on June 28, 1993 Richard W. Josephson, owner and director, signed the "Second Revision" of the Declaration of Covenants, Conditions and Restrictions, Mallard Springs Subdivision, which "Second Revision" was recorded on June 28, 1993 in Misc. Book 60 on Page 856 of the Records of Sweet Grass County, Montana; and.

WHEREAS, 75% of the lot owners of Mallard Springs Subdivision desire to amend said Covenants, Conditions and Restrictions and have executed written consents to such amendment.

NOW THEREFORE, the aforesaid "Second Revision" "Declaration of Covenants, Conditions and Restrictions" of said Mallard Springs Subdivision is amended to read as follows:

## ARTICLE I.

### DEFINITIONS

Section 1. "Association" shall mean and refer to Mallard Springs Owners' Association, a Montana non-profit corporation and its successors and assigns.

Section 2. "Common properties" shall mean all common open space and common facilities as shown on the recorded plat of Mallard Springs Subdivision and all of those items as provided by the developer, including roads and utility easements.

Section 3. "Lot", except as otherwise herein provided, shall refer to any parcel of land shown on the recorded plat of Mallard Springs Subdivision and designated as a lot by its specified number.

Section 4. "May" is permissive.

Section 5. "Owner" shall mean or refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot situated upon the properties, but notwithstanding the applicable theory of the mortgage, it shall not mean and refer to the mortgagee unless and until such mortgagee has acquired title pursuant to the foreclosure of the mortgage or any proceeding in lieu thereof. A buyer of a lot under a contract for deed, or other arrangement whereby the buyer does not have record title, is not considered an "owner" for purposes of this declaration. Recording of an Abstract of Contract for Deed shall be sufficient to have the Contract for Deed Buyer recognized as the "Owner".

Section 6. "Shall" is mandatory.

## ARTICLE II.

### PROPERTY RIGHTS

Section 1. Every owner shall have a right and easement of enjoyment in and to the common areas and shall have use of all common facilities. Said rights and easements shall lie appurtenant to and shall pass with the title to every lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any facility situation upon the common area;
- (b) The right of the Association to establish rules and regulations for use of any and all common facilities and open space;
- (c) The right of the Association to suspend the voting rights and right to use of common facilities by an owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;
- (d) The right of the Association to dedicate or transfer all or any part of the common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members; no such dedication or transfer shall be effective, unless by an instrument signed by the owners of two-thirds (2/3) of all lots agreeing to such dedication or transfer has been recorded.

Section 2. Any owner may delegate, in accordance with the by-laws of the Association, his right of enjoyment of the common area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Each lot and the common properties shall be subject to such rights-of-way and easements as the developer (and the Association after it has acquired title to the common properties) may grant for installation and maintenance of water lines, including lines for irrigation water, sewage disposal, power lines, telephone lines and other utilities. The developer specifically reserved the right and power to grant such easements, while title to the common properties remained in the developer and the said Association shall have such right and power after transfer to it of title to the common properties. If the developer or the Association enters into an agreement with any utility company for the installation of trunk telephone lines or primary power lines to serve a lot or groups of lots, the developer or the Association shall have the power to assess the proportional cost of such utilities to each lot served thereby and shall also have the power, if required by the utility company, to assess and collect the actual proportional cost of any fee required to provide service to such lot.

### ARTICLE III.

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of any lot.

Section 2. The Association shall have one class of voting membership:

Members shall be all owners and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot, in the case of multiple ownership, shall be exercised as the owners among themselves decide, but in no event shall more than one vote be cast with respect to that lot.

### ARTICLE IV.

#### MAINTENANCE ASSESSMENTS

Section 1. Each owner of any lot, by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the lot against which each such assessment is made from the date of such assessment. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the record owner of such lot at the time when the assessment fell due.

Section 2. The assessments levied by the Association shall be used exclusively to promote the enjoyment, recreation, health, safety and welfare of the residents and guests of the property above-described and for the improvement and maintenance of the common area and common facilities on said property. The Association shall be responsible for and may levy assessments for liability insurance, local taxes and the maintenance of recreational and other facilities in the common area.

Section 3. The Association, through the Board of Directors, may make annual assessments not to exceed, in the first year \$250.00 per lot. Thereafter, the maximum annual assessments may be increased each year by not more than 10 percent above the maximum assessment for the previous year without a vote of the membership. However, the annual assessments may exceed the amount set forth hereinabove, if approved by two-thirds (2/3) of the Lot Owners voting in person or by proxy, at a meeting duly called for this purpose.

Section 4. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction or repair, or replacement of a capital improvement upon the common area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the Lot Owners voting in person or by proxy, at a meeting duly called for this purpose.

Section 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or proxies entitled to cast forty percent (40%) of all the votes of members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.

Section 7. The Board of Directors shall fix the amount of the annual assessment against each lot at least 30 days in advance of the due date of each annual assessment. Written notice of the annual assessment shall be sent to every owner or member subject thereto. The due date shall be established by the Board of Directors. The Association shall, on demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid.

Section 8. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 10% per annum. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the lot. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the common area or abandonment of his lot.

## ARTICLE V.

### COMMON FACILITIES

The developer, in designing said Mallard Springs Subdivision, deemed it necessary and advantageous for the welfare of the residents of said subdivision to provide the following common facilities. The common area and roads, hereinafter referred to, have been deeded to the Association by deed appearing of record in Book 57 of Deeds at page 431, records of Sweet Grass County, Montana, subject to the terms and provisions thereof. The reservation of the common property is perpetual.

- (a) Common Area: All areas within the platted Mallard Springs Subdivision except the area within each platted, numbered lot, shall be common area and available to use by all owners, subject to the restrictions expressed in this declaration and the by-laws of the Association. The Association shall be responsible for the maintenance and repair of the Pioneer Ditch as it flows through the subdivision and shall maintain the same so as to reasonably prevent the same from leaking onto adjacent lands.
- (b) Roads: All roads shown on the plat of Mallard Springs Subdivision, except those expressly dedicated, shall be available to the common use of all owners, subject to control and maintenance by the Association. Provided, however, that the owners of Lots 2, 3, 4 and 5 shall not have vehicular access across the boundaries of said lots north to Mallard Springs Road. The developer will also provide access, if necessary, to the subdivision across the north eighty (80) feet of that parcel of land designated as "Tract 2" in the aforementioned Certificate of Survey No. 97112. The Association shall make provisions, if necessary, for fire apparatus and other emergency vehicles to use the common area between the end of the road serving Lots 17 and 18 and the end of the road serving Lot 35, for travel.
- (c) Water: Owners may drill wells which could be suitable for providing a water supply to one or more of the lots in the subdivision. In such event, the lot or lots which can be served from such well or wells shall be allowed to obtain water from the wells, upon such terms as owners may agree. In the event of use of one well by more than one lot, the well shall be common to the lots using it and the lot owners using said well shall grant reciprocal easements necessary for the common use of the well and shall commonly maintain such well.

- (d) Sewer: The developer will not construct or maintain a common sanitary sewer system. It shall be the responsibility of each lot owner to provide for sewage disposal for that lot. Several lot owners may provide for a sanitary sewer system common to their lots.
- (e) Solid Waste: Each owner shall be responsible for the disposal of solid waste, subject to the restrictions contained in this declaration.

## ARTICLE VI.

### USES

Section 1. No portion of a lot shall be used except for a purpose or use as hereafter specified, and no structure shall be erected or maintained on any lot or portion thereof, except a structure herein specifically permitted.

- (a) Single family: All lots shall be used for single-family residences only.
- (b) Signs: No signs, billboards, posters or other advertising devices of any kind or character may be erected or displayed upon any of the lots, except subdivision promotion signs, signs displayed to identify the occupants of a dwelling, and such direction signs and identification signs deemed necessary by the Association.
- (c) Livestock and pets: Except as herein provided, no chickens, swine, poultry, goats, horses, cattle, or other livestock shall be raised, kept or cared for on any lot or on the common area. The Association may provide for the issuance of revocable permits, under such rules as the Association may prescribe, for an owner to keep and maintain one or more saddle horses on the lot or lots owned by that person. Dogs, cats, or other common household pets may be kept on the owner's premises, subject to such rules as may be prescribed by the Association, provided they are under the control of the owner at all times and provided further they are not bred or maintained for commercial purposes.
- (d) Firearms: Except in an emergency situation when necessary for the preservation of life or property, the discharge of firearms is prohibited.

- (e) Use of Vehicles in Common Area: Motorized vehicles may be used only on established roads. Rules for use may be established by the Association to protect the common areas from degradation.
- (f) Noisy Equipment: Use and operation of chain saws, power mowers, and other noisy equipment, including sound amplifiers, shall be governed by rules of the Association. Until such rules are established, such equipment shall not be operated between the hours of 9:00 o'clock PM and 8:00 o'clock AM.
- (g) Fireworks: Use of fireworks is allowed by adults or with adult supervision, unless county burn restrictions are in effect. Use of any other explosive is prohibited.
- (h) Plans for improvements on each lot shall provide for off-street parking with at least two parking places for each lot, which may be in the driveway.
- (i) No residential lot shall be further subdivided in any manner.
- (j) No camping or recreational vehicles, trailers or boats shall be parked on any street in the subdivision for more than three (3) consecutive days.
- (k) Any structure placed or erected on any lot shall be of new construction, and no building, mobile home, or other structure shall be moved onto any of said lots, without specific written approval, in advance, from the Architectural Committee.
- (l) No trash, debris, organic or inorganic waste shall be permitted to accumulate on any lot or on any street adjacent thereto, but shall be promptly and efficiently disposed of, and no vacant or other lot shall be used as a dump ground or burial pit. Outside trash or refuse cans or containers shall have lids to prevent littering. Outside incinerators must be covered with a screen.
- (m) Mining, quarrying, excavation, oil drilling and development of any kind shall not be allowed on any lot or common area except for such excavation as may be necessary in connection with the construction or placement of improvements thereon in accordance with this declaration. All mineral, oil and gas rights shall be reserved by the developer.



- (n) All construction shall comply with provisions of the following standard codes or their current amendments: The Uniform Building Code, the Uniform Plumbing Code, the Uniform Mechanical Code and the National Electrical Code and in accordance with all applicable state, federal and local laws.
- (o) Outside illumination equipment or fixtures shall not be allowed, unless attached to the main residential structure or garage, or unless attached to a pole not to exceed eight (8) feet in height, which pole shall conform with the general architectural plan of the residence. Any connection between the residence or garage and any other outside illuminations, if such illuminations are not attached to such residence or garage, will be underground. No outside illumination shall be allowed which shall cast bright light outside the lot of the owner. No aerials for the transmission of electronic signals shall be erected, placed or permitted to remain anywhere in said subdivision except indoors or on vehicles. Placement of reception aerials for electronic transmissions, when required, are subject to approval of the Architectural Committee. Satellite dishes are specifically allowed.
- (p) The exterior of all buildings shall be complete and enclosed, except for porches, carports and gazebos, with doors and windows, and all dwellings shall have modern inside plumbing with sanitary toilet and running water connected with sanitary septic tank or other sanitary sewage system, approved by necessary governmental authority, before they can be occupied.
- (q) Storage and use of flammable liquids, gases and fuels shall be in accordance with the requirements of the Uniform Fire Code, as currently amended, and all containers of flammable liquids or gases shall be painted at all times so that no rust can form thereon.
- (r) If irrigation water is used on any lot, it must be controlled by the user to insure that it is not wasted nor allowed to flood onto adjoining lots or roads.

- (s) No outhouse or privy shall be constructed or maintained on any lot.
- (t) All water supply systems, for domestic use, and all sewage disposal facilities shall be constructed, located and maintained at all times in compliance with requirements and standards established by the Montana Department of Environmental Quality and by any other governmental agency having jurisdiction.
- (u) Noxious weeds and other unsightly vegetation shall not be allowed to grow or accumulate on any lot. The lot owner shall periodically mow his/her property to minimize fire hazard and to maintain reasonable aesthetics. In the event the owner neglects or refuses to do this, the Association may cause it to be done and assess the cost thereof against the owner and property in the same manner as other assessments as provided herein.
- (v) The exterior of all buildings shall be maintained in a neat, orderly fashion and kept in good repair by the owner. In addition to all other remedies, in the event an owner neglects or refuses to do this, the Association may cause it to be done and assess the cost thereof against the owner and property in the same manner as other assessments as provided herein.

## ARTICLE VII.

### ARCHITECTURAL COMMITTEE

Section 1. There is created an Architectural Committee which is herein referred to as the "Committee" which shall consist of three persons who are members of the Association. The three persons shall be appointed by the Board of Directors of the Association.

Committee members shall serve a term of two (2) years each and can be appointed for successive terms. Each committee member shall have one (1) vote and a majority will control any decisions made by the Committee.

Section 2. The Committee may make such reasonable rules and by-laws and adopt such procedures as it deems necessary to carry out its function, which rules, by-laws and procedures may not be inconsistent with the provisions of these covenants.

Section 3. No building, construction, reconstruction, remodeling, or earth moving, wall or other improvement shall be placed, erected, constructed, repaired, restored, reconstructed, altered, remodeled, added to, or maintained on any lot until building and site plans and specifications and such other information as the Committee may reasonably require, including without being limited to,

colors, building materials, and models, have been submitted to and approved by a majority of the Committee in writing, nor may any of the same be commenced until the Committee shall have issued a permit allowing for such an improvement.

Section 4. The Committee shall require that all the construction of any dwelling located on any lot complies with the provisions of the following standard codes or their current amendments: The Uniform Building Code, the Uniform Plumbing Code, the Uniform Mechanical Code and the National Electrical Code. No sheet, galvanized nor corrugated iron siding or roofing, tar paper nor imitation brick siding shall be used on the outside of any structure. Mobile homes or "double-wide" mobile homes are not permitted. Pre-built or modular homes meeting Federal Housing Administration and Uniform Building Code standards are permitted.

Section 5. Unless otherwise specified in these covenants, the Committee may designate setbacks for and location of any structure as in its discretion best suits the requirements of the site.

Section 6. The Committee shall have the authority to reject materials, designs and colors submitted with plans or the plans themselves if they are not compatible with the rest of the development and the intent of the developer.

Section 7. The Committee shall have authority to grant variances to any building codes or construction requirements as set forth in this declaration.

Section 8. All improvements, construction, reconstruction, alterations, or remodeling or any activity requiring the approval of the Committee must be completed in substantial compliance with the plans and specifications initially approved by the Committee and completed within 365 days from the starting date of construction. For good cause, the Board of Directors may extend this time period. No lot shall be used as the location of any structure, temporary or permanent, until there is installed for the use of such lot an approved method of sanitary sewage disposal. The Committee shall have the power, authority, standing right to enforce these covenants in any court of law or equity when it reasonably believes that the same has been violated.

Section 9. The Committee shall require complete plans of construction, including, but not limited to, building plans and specifications and site plans. The Committee may also require reasonable fees to be paid with the filing of the plans and specifications and the issuance of building permits. All applications for building permits shall be accompanied by a statement, in writing, by the builder, covenanting and agreeing that he will carry out the improvements, construction, reconstruction, alterations, or remodeling in strict accordance with the plans and specifications submitted and that, in the event that he shall not do so, he shall, at his own expense, correct such noncompliance.

Section 10. The Committee shall be governed by the following guidelines in its consideration of plans and specifications submitted for its approval:

- (a) It must recognize that this is a development planned for quality, desirable residential purposes and that all improvements, including the erection of buildings, landscaping, etc., should be consistent with the overall suitability and desirability of the area.
- (b) In considering any plans and specifications, the Committee shall examine the suitability of the same to the lot, including the materials of which it is to be constructed and the relationship of the same to the neighborhood and adjacent properties. In addition, the Committee shall consider the location of the same upon the lot and the features thereof, including height, in relationship to the view from dwellings upon adjacent properties.
- (c) All plans shall be approved according to the guidelines as set forth in this declaration as well as by considering aesthetic values of the area.

Section 11. The Committee, or the individual members thereof, may not be held liable by any person for any damages for any Committee action taken pursuant to these covenants, including, but not by way of limitation, damages which may result from correction, amendment, changes or rejection of plans, the issuance of building permits or any delays associated with such action on the part of the Committee.

Section 12. In reviewing the plans, especially the site plans as presented by the owner, the Committee shall attempt to preserve and protect the environment and the aesthetic value of the area.

Section 13. The Committee may not act in any unreasonable or arbitrary manner. If a decision of the Committee is deemed by any lot owner to be unreasonable or arbitrary, such lot owner may appeal such decision to the Directors of the Association, following such appeal procedure as the Directors may prescribe. Upon consideration of such appeal, the Directors may affirm, overrule or modify the decision of the Committee. The decision of the Directors shall be conclusive and binding upon all parties.

## ARTICLE VIII.

### GENERAL PROVISIONS

Section 1. The Association, the Committee or any owner shall have the right to enforce by proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens, and charges, now or hereinafter imposed by the provisions of this Declaration. Failure by the Association, the Committee or any owner to enforce any covenant or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter. In case of suit to enforce this declaration, the party who is successful in said suit shall be entitled to recover from the other party, as part of its costs and disbursements, a reasonable attorneys' fee.

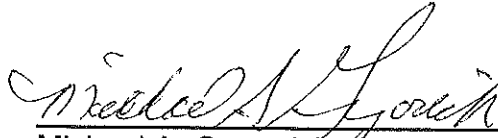
Section 2. Invalidation of any one of these covenants or restrictions by judgment or court order shall in nowise effect any other provisions which shall remain in full force and effect.

Section 3. The covenants and restrictions of this declaration shall run with the land and shall bind the land for a term of fifty (50) years from the date this declaration is recorded, after which time they shall be automatically extended for successive periods of ten years. This declaration may be amended during the first 50 years by any instrument signed by not less than the owners of seventy-five percent (75%) of all lots and thereafter by an instrument signed by not less than the owners of sixty percent (60%) of all lots. Any amendment must be recorded in the County Clerk and Recorder's office.

Section 4. Should any of the lots hereafter become subject to any zoning ordinance or regulations, passed by a governmental body with jurisdiction, the provisions herein which are more restrictive than such zoning regulation shall remain in full force and effect.

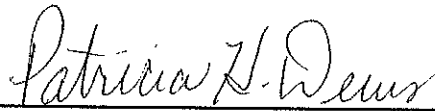
This amendment may be executed in several counterparts and all so executed shall constitute one agreement, binding on all parties hereto, notwithstanding that all the parties are not signatory to the original or the same counterpart.

IN WITNESS WHEREOF, the undersigned hereby certifies that 75% of the lot owners have signed consents to this amended declaration and said consents are on file in the records of Mallard Springs Owners' Association and copies can be seen at the principal office which shall be the address of the Secretary of the Association, Big Timber, Montana 59011.



Michael A. Gregorich  
President, Owner, and Director of  
Mallard Springs Subdivision

ATTEST:



Patricia H. Dews  
Secretary and Owner  
Mallard Springs Subdivision

This instrument was acknowledged before me on 11/13/2011  
\_\_\_\_\_ (date) by Michael A. Gregorich and Patricia H. Dews  
as President and Secretary, respectively, of Mallard Springs Subdivision.



SEAL:

