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DESIGN REVIEW GUIDELINES AND RULES AND REGULATIONS OF THE BOARD OF DIRECTORS, SITTING AS THE ARCHITECTURAL CONTROL COMMITTEE OF THE EBY CREEK MESA SUBDIVISION

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WHEREAS, Eby Creek Mesa Homeowners Association, Inc., a Colorado not-for-profit corporation, recorded by virtue of the Declaration of Covenants of Eby Creek Mesa in the office of the Clerk and Recorder of Eagle County, Colorado on November 4, 1981 in Book 321 at Page 641 (reception no. 227999) as amended by documents recorded on July 20, 1982 in Book 343 at Page 145, on April 15, 1985 in Book 411 at Page 807, and on July 30, 1985 in Book 421 at Page 171, has been designated and assigned the powers of maintaining and administering and enforcing the covenants and restrictions found therein and collecting and disbursing the assessments and charges thereby created; and

WHEREAS, Article VI of the Declaration states that no improvements of any kind, including but not limited to dwelling units, shall be constructed, nor may any vegetation be altered or destroyed nor any landscaping performed on any tract within the subdivision unless the complete plans therefore have been approved in writing by the Architectural Committee; and

WHEREAS, said Article VI establishes the Board of Directors of the Association or any Committee appointed by the Board numbering between three (3) and seven (7) persons, to act as said Architectural Committee; and

WHEREAS, Eby Creek Mesa Subdivision is an urban residential development extending into the rural Eby Creek Mesa area of Eagle County; and

WHEREAS, care has been taken to ensure that each lot within the development has good solar exposure, and access to common areas and recreational activities; and

WHEREAS, careful design and material selection will ensure the harmonious development of the Subdivision; and

WHEREAS, the Board of Directors of the Eby Creek Mesa Homeowners Association has previously adopted and recorded Design Review Guidelines dated November 19, 2003; and

WHEREAS, the Board of Directors wishes to revoke the Design Review Guidelines dated November 19, 2003 and to replace them with the within Design Review Guidelines;

NOW, THEREFORE, the Board of Directors of the Eby Creek Mesa Homeowners' Association, acting as it's Architectural Committee, being desirous of protecting property values and in order to promote the welfare of the members of the Association, hereby revokes the Design Review Guidelines dated November 19, 2003 and adopts the following design review guidelines in their place and stead:

1.0 GENERAL REQUIREMENTS.

A. The Design Review Committee shall exercise its best judgment to see that all improvements, construction, grading, landscaping, and alterations on the lands within the Subdivision conform and harmonize with the natural surroundings and existing structures as to quality, exterior design, material colors, siting, height, size, topography, grade and finished ground elevation.

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B. The Committee shall protect the seclusion of each home site from other home sites insofar as possible. The Committee will consider the following before approving or disapproving any plans or specifications:

- (i) suitability of the improvement and material from which it is to be constructed to the site upon which it is to be located;
- (ii) the nature of adjacent and neighboring improvements;
- (iii) the quality of materials to be used in the proposed improvements, and
- (iv) the effect of the proposed improvements on the views of adjacent neighboring properties.
- (v) if the Committee determines that the height, shape or location of the proposed improvements may negatively impact any property adjacent to the applicant's property, it may require that the applicant obtain the written approval of the applicant's plans by such adjoining owners as a condition of Committee approval.

C. In order to expedite the approval process for both the Committee and the applicant, upon completion of the documents which an applicant is required to submit to the Committee, including a complete set of plans and specifications for the Committee, the applicant shall contact any member of the Design Review Committee to ascertain the date, time and location of the Committee's next meeting, and shall present such documents to the Committee at that meeting; the applicant and/or the applicant's representative shall personally attend such meeting. In the event that neither the applicant nor the applicant's representative attend such meeting, the Committee may consider the application or it may continue its consideration of the application to a subsequent date convenient to the Committee. The Committee shall render its decision at that meeting so long as the applicant or the applicant's duly-authorized representative shall attend such meeting and so long as a complete set of plans and specifications shall have been presented to the Committee at or prior to such time.

D. When reviewing any plans and specifications, it shall be an objective of the Committee to make certain that no improvements will be so similar or dissimilar to others in the vicinity that values, monetary or aesthetic, will be impaired and to maintain for the benefit of all individual lot owners, the natural character of the land and to require that all man-made structures blend in with the natural background rather than stand out against it.

E. A site clean-up and re-vegetation deposit in the amount of \$200.00 per dwelling unit must be paid prior to final review and approval. This deposit is refundable when your construction has been completed per the approved plans and specifications, and after removal of excess construction materials and machinery and preliminary landscape grading. If your site has not been cleaned up and re-vegetated in accordance with the plans and specifications approved by the Architectural Control Committee within a reasonable time after the substantial completion of construction, the Committee, may, after written notice to the owner of the property, complete the cleanup and/or re-vegetation of the property at the owner's expense and apply all or part of the \$200.00 deposit to the costs thereof. In all cases, the re-vegetation of the lot must be completed not later than one year after substantial completion of construction. For the purposes of this paragraph, "substantial completion" shall mean the issuance of a temporary certificate of occupancy.

F. If the cost of such cleanup or re-vegetation exceeds the amount of the deposit, owner shall promptly pay to the Association an amount equal to such excess. If any owner fails to pay any such amounts, that owner shall be liable and shall pay all costs of collection as well as a reasonable amount as attorneys' fees, together with an interest

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amount at the rate of 18% per annum. Such fees shall be placed in a separate escrow account and any interest accruing on account thereof shall become the separate property of the Association. Upon the issuance of temporary certificate of occupancy and satisfactory compliance with the requirements of this section, the homeowner may make written application for the return of the cleanup and re-vegetation deposit and the Association, upon its determination that a temporary certificate of occupancy has been issued and that the homeowner is entitled to the return of the cleanup and re-vegetation deposit, shall promptly return such sum as may be properly refundable to the homeowner. In no event shall any property owner be allowed to use his cleanup and re-vegetation deposit in lieu of payment of Association's dues.

2.0 STAKING AND RIDGE POLE INSPECTION.

A. In order to certify that all new construction will be properly and accurately sited in accordance with approved plans, the foundation plan for the Lot must be laid out by staking it in an appropriate manner. Such staking does not have to be done by a surveyor but must be reasonably accurate, and an inspection must be performed by at least three members of the Architectural Control Committee prior to the commencement of construction, who must certify that the proposed location of the foundation and other improvements are in accordance with such plans.

B. Prior to approval of your plans, you may be required to establish the proposed height of your home by placing a ridge pole at the approximate location of the highest elevation of your home, in which case and an inspection must be performed by at least three (3) members of the Architectural Control Committee.

3.0 USES. No Lots within the Subdivision shall ever be occupied or used for any commercial, business or industrial purpose nor for any noxious activity. Except for the Subdivision sales office, no store, office or any other place of professional or commercial business of any kind, shall be constructed or operated from within the Subdivision.

4.0 NUMBER AND LOCATION OF BUILDINGS. No buildings or structures shall be placed, erected, altered or permitted to remain on any Lot other than:

- A. One detached single family dwelling house;
- B. One attached or detached garage for not more than three (3) cars; and,
- C. In that portion of the Subdivision east of Eby Creek Road, one barn, stable, greenhouse or other nonresidential outbuilding other than a garage (if permitted by County Subdivision and Zoning Regulations).

5.0 PLANS TO BE SUBMITTED.

A. Three sets of plans shall be submitted to the Committee for approval prior to any construction or alteration, which shall be architectural plans with front, side and rear elevations and floor plans for each floor and basement level. One copy may be a reduced copy which will be retained in the Association's files; such plans or application shall include the applicant's telephone number.

B. A site plan indicating the square footage of your lot, the square footage of the footprint of the house, the ratio of the footprint to the size of the lot, the exact location lines thereof, the height of the house, complete landscaping plans for all landscaping and complete grading plans for any grading. The site plan must also show the setbacks and the distance of the house from the road. The Committee may also require a rendering or model of any proposed building.

C. A landscaping plan which complies with the requirements of section 21.0 hereof, showing all landscaping, including plants, grass and trees, must be submitted to the Committee for approval prior to the completion of any landscaping or removal of any



vegetation, including heights of trees or bushes to be planted and their location with respect to the footprint of the house and the lot lines and set-backs. In the event that a landscaping plan is not submitted, it will be conclusively presumed that the applicant does not intend to plant any vegetation, ornamental shrubbery or trees and that the applicant has and does agree to restore the applicant's lot to its original condition including replacement of any vegetation which is damaged or removed during the course of construction, within one year after obtaining a temporary certificate of occupancy.

D. Pursuant to Section 12.0 A of these Guidelines, the application must include color selections for the roof, fascia, siding, stucco and color and type of any exterior stone work;

6.0 MAXIMUM BUILDING HEIGHT. Maximum building height shall be thirty-five (35) feet, as measured from the mid-point between the eaves to the ridge, in accordance with Eagle County requirements.

7.0 ZONING. RESIDENTIAL/SUBURBAN/LOW DENSITY. The subdivision is presently zoned as Under the Eagle County Zoning Ordinance, maximum building lot coverage is restricted to 20% of "net developable land". The building lot coverage, combined with coverage by all impervious materials (driveway, etc.) may not exceed 35% of net developable land.

8.0 SIZE OF DWELLINGS. Subject to the foregoing, the minimum size of any dwelling constructed in the subdivision shall be 1250 square feet, not including any decks, porches, garages or walkways, on Lots 1-190, and 2,000 square feet, including not less than 700 square feet of floor area on the ground floor, exclusive of decks, porches, garages or walkways, on Lots 191-215. The maximum size permitted shall be 4,000 square feet on Lots 1-190 and 10,000 square feet on Lots 191-215. Notwithstanding the foregoing, if the proposed dwelling will exceed the maximum size limitations imposed pursuant to the provisions of this article 8.0, if such dwelling complies with the Eagle County Zoning Ordinance, the applicant may apply to the Architectural Control Committee for a variance to allow such increased size.

9.0 SETBACK. Subject to any restrictions imposed by the Eagle County Zoning Ordinance, the minimum set-backs of any dwelling units or garages from the property lines of any Lot shall be as follows:

A. **Front Property Line.** Twenty-five (25) feet from the front property line of any lot; for the purposes of this subparagraph, the "front property line" shall mean the line where the property abuts the adjacent street, roadway or right-of-way.

B. **Rear Yard.** Twelve and one-half (12-1/2) feet or half the height of any building on the Lot, whichever is greater.

C. **Side Yard.** Twelve and one-half (12-1/2) feet or half the height of any building on the Lot, whichever is greater.

10.0 MODULAR HOMES; MOBILE HOMES.

A. The construction of modular homes is discouraged, but such homes may be constructed on any Lot, upon prior Architectural Control Committee approval, which approval may be withheld in its sole discretion, so long as minimum roof pitch shall be not less than four in twelve. In the event that modular housing is approved, the Committee shall require the installation of roofing shingles upgraded to an architectural grade shingle and roof lines may be required to be altered to create additional variation and height in the proposed roof lines.

B. Mobile homes may be located on a Lot in the subdivision only if screened from view from the adjacent roadway.



11.0 ROOF MATERIALS.

A. The following roofing materials shall not be used: any shiny materials, paper, asbestos, and tar and gravel, except that tar and gravel may be permitted if the rock used is specifically approved by the Committee and the roof has adequate pitch.

B. The following roofing material shall be permitted: wood shingles, wood shakes, architectural grade asphalt; fiberglass shingles, glass, copper, slate, sod, and flat profile concrete or clay tile in charcoal, brown or gray colors.

C. Other materials will be considered but their use shall require the prior written approval of the Committee.

12.0 EXTERIOR WALLS. The exterior walls of the principal buildings and outbuildings shall be as follows:

A. The following are acceptable materials: painted, stained or natural wood siding, stucco in off-white or earth-tone colors, brick in muted earth-tone, and stone.

B. The following are not acceptable materials: plywood as the finish exterior surface, reflective glazing (mirror coated), exposed concrete block or concrete (with the exception of a maximum of 10" where the foundation sill meets finished grade), asbestos, composition materials, paper or tar paper, and any material with bright colors.

13.0 USE OF EXTERIOR COLORS. A complete exterior color scheme shall be submitted to the Committee with the plans for each structure and such color scheme shall include a description of all visible materials to be used and all artificial coloring to be applied thereto, including paints, stains, varnish or any other surfacing whatsoever. It is the intention of the Committee to encourage use of colors which shall blend in with the site. Earth tones are recommended although occasional accent colors used judiciously will be permitted. All exposed metal such as gutters, flashings, chimney caps, etc. shall be painted or coated to blend with the structure. In addition, the owner shall furnish actual color samples, i.e. stain sample on wood to be used, if so required by the Committee.

14.0 PRELIMINARY APPROVAL. Persons who anticipate constructing improvements on any Lot within the Subdivision, whether or not they already own a Lot within the Subdivision, may submit preliminary plans for such improvements to the Architectural Committee for preliminary approval, but the Committee shall not be finally bound by any preliminary approval until such time as complete architectural plans have been submitted to and approved or disapproved by the Committee.

15.0 COMPLETION OF CONSTRUCTION. The owner of any Lot shall complete exterior finish construction and preliminary site cleanup of any structures erected within one (1) year from commencement of construction of such structure. Commencement of construction shall be considered to be the start of excavation.

16.0 NEW CONSTRUCTION.

A. No building shall be placed upon the Lot by any means other than new construction, it being the purpose of this guideline to insure that buildings will not be moved from previous locations and placed upon any Lot.

B. No construction or construction-related activities shall be conducted except between the hours of 7:00 a.m. and 8:00 p.m.

17.0 INSPECTIONS. The Board or Committee may at any time during normal business hours, upon 24 hours prior written notice to the owner of any Lot or to his agent, inspect any building or property within the Subdivision for the purpose of determining whether or not the building, landscaping, destruction of vegetation,



drainage or grading conforms to the requirements of the Declaration and of these Design Review Guidelines.

18.0 EXTERIOR LIGHTING. The purpose of this section is to prevent or minimize the adverse effects of outdoor lighting, such as, light to trespass (the spread of light into surrounding areas), glare, energy waste and "sky glow", and to establish the individual lots and open space as areas of low ambient brightness appropriate to a residential development.

A. All exterior lighting shall approved by the Architectural Committee;

B. No revolving, flashing, or neon lights, will be permitted;

C. No mercury vapor, sodium vapor lights will be approved;

D. Only shielded exterior lighting will be approved and only if the light is shielded and maintained by using bulbs not exceeding 75 watts;

E. Low voltage UL approved shielded landscaping lighting and lighting highlighting addresses may be approved so long as it will not cause the light to "trespass" on neighboring properties, including common open space areas;

F. Holiday lighting displays may be installed thirty days prior to the holiday to which the lighting display celebrates, and shall be removed not later than thirty days after such holiday.

19.0 UTILITY LINES. All water, gas, electric, telephone and cable television lines shall be buried.

20.0 DRAINAGE. All natural drainage courses traversing any Lot which may drain from other properties shall not be obstructed, damaged, altered or removed without prior approval of the Committee.

21.0 TREES AND LANDSCAPING.

A. All landscaping plans must be approved in advance by the Committee. Landscaping shall be compatible with the natural terrain with the use of trees, plants and shrubs which are in common use in the subdivision; driveways requiring cuts or fills in the land must be landscaped.

B. No trees or brush growing on any Lot shall be felled or materially trimmed, no natural areas shall be cleared, nor shall any natural vegetation, rocks, or soil be damaged or removed, nor any other landscaping performed on any Lot unless first approved by the Architectural Committee.

C. Any grass area which is groomed and maintained as a lawn shall not extend more than 30' beyond the foundation of any structure(s) constructed upon the Lot.

22.0 VIEW CORRIDORS. The provisions of these Design Review Guidelines shall not be construed to establish any rights to a "view corridor".

23.0 TANKS. Any tank used in connection with any dwelling house or other structure on any Lot, including tanks for storage of gas, fuel oil, gasoline, oil or water, shall be buried, or, if located above ground, shall be screened from public view.

24.0 TOWERS AND ANTENNAE. No towers of radio or television antennae shall be erected on any residential tract except with prior written consent of the Committee.

25.0 FIREPLACES. Conventional open hearth wood burning fireplaces are prohibited



by the Eagle County Zoning Ordinance and by these Design Review Guidelines; one wood burning fireplace which meets or exceeds the EPA emission standards for certification of Phase II wood burning devices is allowed (most pellet stoves meet this certification standard); gas open hearth fireplaces are permitted.

26.0 FENCES. The objective of these guidelines is to provide for the free uninhibited movement of all wildlife, and in approving any fences or walls the Committee shall consider such objective. The fencing of entire Lots is discouraged and may be prohibited in order to maintain the objective of this paragraph. Sections of fencing extending more than 25 feet in the same direction shall also be discouraged. Fences shall be constructed of wood and shall not be painted. Chain link fences and metal fences shall not be permitted. Fences enclosing more than a fourth of an acre shall be split rail design with the top rail not over 40" high, and a space of at least 12" between the top rail and the next. Fences shall be of a uniform height and shall in no event be more than six feet in height.

27.0 SIGNS. With the exception of one "For Rent" sign or "For Sale" sign (which shall not be larger than 18" x 32"), one sign bearing the name of the owner or occupant of a Lot, (which shall not be larger than 4" x 18") and an entrance gate sign at each entrance of the Subdivision of a style and design approved by the Architectural Committee, no signs of any kind shall be erected, displayed, or permitted to remain on any Lot.

28.0 PARKING. Each Lot shall have facilities sufficient to accommodate two automobiles for each Dwelling Unit erected thereon. None of these parking facilities shall be within the set-backs.

29.0 STORAGE OF BOATS, TRAILERS, CAMPERS, MOBILE HOMES AND SIMILAR VEHICLES OR EQUIPMENT. Pursuant to the provisions of section 7.10 of Article VII of the Declaration of Covenants of Eby Creek Mesa, no boats, unregistered automobiles, automobile parts, construction equipment, trucks larger than an 3/4 ton pickup truck, buses, mobile homes, trailers or campers shall be placed or stored on or about any lot unless garaged or screened from public view.

30.0 PROHIBITED RESIDENCES. No structure of a temporary character (including, but not limited to, any trailer, tent, shack, garage, barn, or any other outbuilding of any description) shall be used on any Lot as a Residence.

31.0 SEWAGE DISPOSAL. All Lots must utilize the subdivision's sewer system, if made available by the developer to such Lot. All other Lots must use an engineered septic system. No septic sewage treatment facility shall be utilized which may pollute or threaten to pollute ground or surface waters. Neither shall any Lot be used in any manner or for any purpose that would tend to pollute nearby streams or other sources of water.

32.0 TRASH AND TRASH REMOVAL.

A. Open burning of trash, construction materials, brush, debris or of any other materials whatsoever is prohibited on any Lot within the Subdivision without the express prior written consent of the Architectural Control Committee.

B. Trash containers must, at all times, be screened from view or stored inside a Residence, except on the date of trash removal, when trash cans may be made available for pickup from 6:00 am until 6:00 pm.

33.0 ENFORCEMENT. In addition to the remedies specified in Article X of the Declaration of Covenants of Eby Creek Mesa subdivision, the Board of Directors of the Association is hereby authorized to enforce compliance with the Association's governing documents in accordance with the following:

A. Establishment of Rules Committee. The Association's Board of Directors shall appoint a Rules Committee made up of three members of the Board of Directors, which



committee shall be charged with the enforcement of the Association's governing documents. The remaining members of the Association's Board of Directors shall constitute the Association's Appeals Board.

B. Notice. Unless otherwise provided herein, when an alleged violation is reported to the Committee, it shall:

i. place a written Notice of Alleged Violation on the property, stating the nature of the Alleged Violation, and referring the Property Owner to the provisions of this paragraph 33.0.

ii. attempt to contact the homeowner responsible for the alleged violation, within ten (10) days of posting of the Notice of Alleged Violation; however, the failure to do so shall not effect the enforcement of the provisions of this Article 33.0.

iii. after the expiration of the ten (10) day time period commenced by posting the Notice of Alleged Violation, if the alleged violation has not been corrected, the Association will send, by certified mail, return receipt requested, a true copy of the Notice of Alleged Violation to the Property Owner;

iv. should the Alleged Violation not be cured within ten days after the date of mailing of the Notice of Alleged Violation to the property owner, then a further notice shall be mailed to the Property Owner, by certified mail, return receipt requested, informing the Property Owner of the time and place at which the Association's Rules Committee will conduct a hearing to consider whether or not a violation has occurred; notifying the Property Owner that the Property Owner has the opportunity to attend and to be heard at such meeting; and that the Rules Committee has the authority, upon determination that a Violation has occurred, to levy fines, charges, attorney's fees and other monies, and to take such other action as is authorized by the Association's governing documents and by Colorado law. The amount of fines which may be imposed, shall be as follows:

First Violation: \$ 50.00 per day
Second Violation: \$100.00 per day
Third Violation \$200.00 per day.

C. The Rules Committee may consider each day during which a violation continues, after the expiration of the first ten (10) days after posting of the Notice of Alleged Violation, as a separate offense, and continue to fine the offending homeowner on a daily basis, so long as the total fines which accrue on account of any single violation do not exceed the total sum of \$1,000.00, exclusive of any attorney's fees and costs incurred in attempting to obtain compliance with the Association's governing documents, which amounts shall be charged to the owner as additional dues.

D. Any hearings will not be conducted according to technical rules of evidence. Any relevant evidence may be admitted if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of their affairs. All decisions of the Rules Committee are effective ten (10) days after written notice of the decision is sent to the Owner (via certified mail, return receipt requested). Should the Owner desire to appeal the decision of the Rules Committee to the Association's Appeals Board, he or she shall deliver written request to the Board of by certified mail, return receipt requested, no later than fifteen days after mailing of the Rules Committee's decision to such Owner. The Appeals Board shall hear any such appeal at the next regular meeting of the Board of Directors.

E. If any fine imposed by the Rules Committee is not paid in full, the Association may cause the recording of a lien evidencing the amount of fines and other charges imposed against the property, and the Association may undertake any actions authorized by law. No such remedies shall be pursued by the Rules Committee during the course of any appeal by the effected Property Owner.

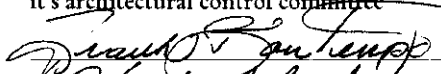
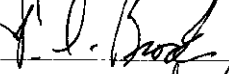

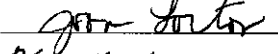
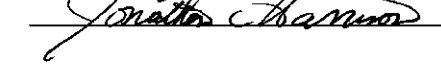
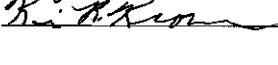


F. Owner's Right to Privacy. At the request of any Owner, any hearing shall be conducted in executive session. If the accusing party fails to attend, or if the accused fails to attend, the hearing shall continue.

34.0 FURTHER RESTRICTIONS. The Eagle County Zoning Ordinance may be more restrictive than these Design Review Guidelines; for further information, contact the Eagle County Planning and Zoning Department.

Dated this 15th day of December, 2004.

Eby Creek Mesa Homeowners Association
by it's Board of Directors acting as
it's architectural control committee

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