

COMPLIANCE AGREEMENT

by and between Lot Owner and Ruedi Shores Homeowners' Association

This Compliance Agreement ("Agreement") dated _____ day of _____, 200____ is made by and between the Ruedi Shores Homeowners' Association, Inc. (hereinafter "Association") a Colorado nonprofit corporation, acting through its Architectural Committee (hereinafter "Architectural Committee" or "AC") and _____ ("Owner").

RECITALS

WHEREAS, Owner is the record owner of real property located in Eagle County, Colorado described as: Lot ____, Ruedi Shores Subdivision, Filing No. _____, according to the Plat recorded June 9, 1969 at Book 215 Page 358, and the Filing 2 Plat recorded July 22, 1970, in Book 218 at Page 265, also known by street address as _____, Basalt, Colorado 81621 (the "Property"); and

WHEREAS, Owner acknowledges that such Property is subject to certain Protective Covenants (hereinafter, the "Covenants"), administered by the Association, as set forth in that certain Deed Restriction filed on June 9, 1964, in Book 215 page 357 and as amended in that certain Amended and Restated Protective Covenants for Ruedi Shores Subdivision, recorded and filed on November 8, 1991, in the records of the Clerk and Recorder for Eagle County, Colorado in Book 566 at Page 625, as Reception No. 462748, and as the Covenants may be amended and/or supplemented from time to time; and

WHEREAS, Owner acknowledges that such Covenants authorize the adoption and enforcement by the Association of Design Guidelines, which Design Guidelines set forth, among other things, Construction Rules and Regulations, adopted and approved by the Board of Directors and that all further references in this Agreement to Covenants shall be deemed to include all guidelines, rules and regulations described in the Design Guidelines; and

WHEREAS, the Board of Directors has administrative and enforcement authority to enforce the Covenants, including but not limited to those Covenants which are specifically applicable to the planning, design, construction and completion of improvements (and alterations thereof) and landscaping on real property subject to the Association's jurisdiction, and issues pertaining to same (which specific Covenants shall be referred to herein as the "Design Covenants"); and

WHEREAS, the Architectural Committee granted approval to Owner's Construction Management Plan, as defined in Section 1.b., below, on _____, 200____, and that a true and correct copy of the approved Construction Management Plan, including all plans and specifications which are a part thereof, are attached hereto as Exhibit A; and

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WHEREAS, Owner paid the Architectural Review Fee, determined pursuant to the Schedule of Fees attached as Exhibit B on _____, 200__ and the Road Impact Fee of \$1,500.00 on _____, 200__, which amounts reimburse the Association for fees incurred on the Owner's behalf; and

WHEREAS, the Architectural Committee requires all Owners, to enter into an Agreement to comply with the Design Covenants as a condition prior to commencing construction activity on any property within the Association's jurisdiction. Owners are additionally required to furnish a monetary deposit (hereinafter "Compliance Deposit") to secure Owner's compliance with same.

AGREEMENT

NOW THEREFORE, in consideration of the following mutual promises and agreements, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Association, its Architectural Committee and Owner agree as follows:

1. Proposed Construction Activity, Construction Management Plan and Requirements of the Architectural Committee.

- a. The term "Construction Activity" as used in this Agreement shall include all phases and aspects of site work, excavation, construction of improvements and alterations, landscaping, revegetation, and site reclamation proposed by the Owner in his Construction Management Plan and all materials submitted therewith to the Architectural Committee. Owner's signature below on this Agreement and provision of the Compliance Deposit described below in paragraph 5 are preconditions of approval for Owner's commencement of construction activity on the Property.
- b. The term "Construction Management Plan" as used in this Agreement shall include all materials required to be submitted to and subsequently approved by the Architectural Committee in the design review process described in the Design Guidelines and Construction Rules and Regulations, including but not limited to a topographic survey of the Property, site plans, floor plans, roof plans, landscape plans, drawings of exterior elevations, drawings of building sections, building height calculations, exterior finish details, scale models, erosion control and revegetation plan, perspective sketches, blueprints, the construction schedule and any other documents or materials as may be reasonably required by the Architectural Committee.
- c. The term "Improvements" as used herein shall mean means any improvement, structural or otherwise, alteration, addition, repair, excavation,

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grading, landscaping or other work which in any way alters any property within the Ruedi Shores Subdivision, or the improvements located thereon, from its natural or improved state existing on the effective date of this Agreements, including, but not limited to, dwelling units, buildings, outbuildings, additions, patio covers, awnings, the painting, staining or other change of any exterior surfaces of any visible structure, walkways, outdoor sculptures or artwork, sprinkler or irrigation systems, garages, carports, roads, driveways, parking areas, ponds, ditches, fences, screening walls, retaining walls, stairs, decks, flag poles, fixtures, landscaping (including the addition, alteration or removal of any tree, shrub or other vegetation), hedges, windbreaks, plantings, planted trees and shrubs, gardens, poles, signs, tanks, solar equipment, wind harnessing or other energy generating equipment, exterior air conditioning, water softener fixtures, utilities, antennae and satellite dishes or receivers. Once an Improvement has been constructed or accomplished on a property within the Subdivision, any subsequent alteration of or addition to or removal of that Improvement shall also constitute an Improvement hereunder.

- d. The term "Requirements of the Architectural Committee" as used herein shall include, without limitation, the right of the Architectural Committee to require, at its discretion, completion of one or more of the following tests at the sole cost and expense of Owner, with the results thereof being immediately provided to the Architectural Committee:
 - i. "Line grade verification" before the foundation is poured.
 - ii. A ILC Survey prior to the issuance by the Architectural Committee of a Certificate of Compliance to the Owner.

Such requirements, if imposed upon the Owner by the Architectural Committee, shall not be deemed to be arbitrary or capricious.

2. Compliance by Owner.

- a. Owner acknowledges and agrees his Property is subject to the authority of the Architectural Committee as described in the Design Covenants. Owner agrees to fully and timely comply with the Design Covenants, the Construction Management Plan as approved by the Architectural Committee, and all terms and conditions of this Agreement.
- b. Owner has retained or intends to retain _____ as his general contractor (referred to herein as the "GC") to coordinate and oversee the proposed Construction Activity. Owner shall provide a copy of

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this Agreement to the GC. Owner shall be fully responsible for such GC's compliance with the Design Covenants and this Agreement.

Or Owner has chosen to act as the General Contractor ("Owner-Contractor") to coordinate and oversee the proposed Construction Activity. Owner acknowledges that his/her decision to act as an Owner-Contractor may increase the administrative, review, and inspection burden on the Architectural Committee. Thus, in consideration of acting as an Owner-Contractor, Owner agrees to post a higher Compliance Deposit, as described in Section 5.

- c. Owner authorizes the Architectural Committee to: (i) provide to the members of the Association who own real property contiguous with Owner's Property, written notification that the Architectural Committee has approved commencement of construction on the Property; and (ii) upon request of an Association member responding to the notice, permit such member to inspect the approved Construction Management Plan.

3. **Construction Timeline.** Owner acknowledges that Section 24 (Prompt Completion of Structures) of the Covenants requires that all Construction Activity be complete within eighteen (18) months of the Architectural Committee's approval of the Construction Management Plan. For the purposes of this Agreement, and the Covenants, Owner agrees that "Completion of Construction Activity" means completion of all site work; excavation; grading; construction or remodeling of any structure or improvement, including all punch list items; landscaping and irrigation systems; revegetation, and reclamation of all disturbed areas. Further, Owner understands that issuance of a Certificate of Occupancy by Eagle County does not constitute Completion of Construction Activity.

4. **Landscaping.** Owner acknowledges that he must submit a Landscaping Plan as part of the Construction Management Plan, which must be approved by the Architectural Committee. Owner agrees to incorporate xeriscaping and other landscaping of drought resistant and native trees and grasses into his Landscaping Plan, to the extent possible. Further, Owner understands that review and written approval by the Architectural Committee is required prior to cutting, trimming, or removing any mature, live trees or brush; clearing any natural areas; constructing or installing irrigation systems or formal lawn areas; or otherwise performing any landscaping on any Lot.

5. Compliance Deposit.

- a. Payment. Owner shall deposit with the Association, along with the Agreement, a Compliance Deposit in the amount of _____ Thousand and no/100 dollars U.S. (\$____,000.00) (“Compliance Deposit”). The purpose of the Compliance Deposit is to secure and assure Owner’s compliance with the Design Covenants, the Construction Management Plan and this Agreement throughout the duration of Owner’s Construction Activity until Completion of Construction Activity. The Compliance Deposit shall be made payable to the “Ruedi Shores Homeowners Association” and shall be in the form of a cashier’s check, which shall be deposited by the Association in an insured account at an insured depository institution. The Association shall not be obligated to keep the Compliance Deposit separate from other moneys of the Association.

- b. Use of deposit. Owner agrees that if Owner (and/or its employees, agents, or other representatives, including contractors and subcontractors) fails to cure any violation of, or noncompliance with, the Design Covenants or the Construction Management Plan or this Agreement, or to pay any fine levied by the Architectural Committee in connection with such violation or noncompliance, the Architectural Committee may, without further notice to Owner, deduct from the Compliance Deposit all unpaid fines and all costs and expenses, including but not limited to administrative costs, court costs and attorneys’ fees, incurred by the Architectural Committee in connection with enforcement of compliance. If Owner fails to timely correct any violation or noncompliance, the Architectural Committee may draw upon the Compliance Deposit to pay the costs incurred by the Association to remedy the circumstances creating the violation or noncompliance. Owner is not entitled to reimbursement for any costs incurred by the Architectural Committee in enforcing compliance with this Agreement. To the extent Owner’s Compliance Deposit is insufficient to reimburse the Architectural Committee for such expenses, Owner agrees to timely replenish the deposit in the amount reasonably required by the Architectural Committee after written demand therefore.

- c. Return of deposit. Upon the Board of Director’s issuance of a Certificate of Compliance to Owner, the Compliance Deposit (or such unused portion of the Compliance Deposit, if any, as remains upon issuance of such Certificate) shall be returned to Owner upon Owner’s written request. If, however, the Architectural Committee has determined not to return to Owner all or any part of the Compliance Deposit for reasons permitted herein, the Owner shall have a period of six (6) months following its notice of that decision in which to file with the Architectural Committee a written Notice of

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Intent to Sue Architectural Committee and may thereafter file suit no more than six (6) months after said Notice of Intent is sent to the Architectural Committee. Should a Notice of Intent to Sue be filed with the Architectural Committee the parties shall be required to engage in mediation and shall attend a mediation session in person with a mediator selected by the Architectural Committee. The cost of mediation shall be shared equally by the Association and the Owner. The mediator shall be a licensed attorney. The mediation session shall be completed before a suit is filed.

6. **Duration of Agreement.** This Agreement shall remain in effect until one year after all improvements and alterations proposed by Owner for the Property and approved by the Architectural Committee are substantially completed and the Architectural Committee has issued a Certificate of Compliance together with a written accounting for disposition of the Compliance Deposit. Time is of the essence in the completion of all performance required by this Agreement. This Agreement shall terminate after the expiration of the one-year period established above.

7. **Enforcement of Compliance by Architectural Committee.**

- a. Authority to enforce compliance. Owner acknowledges that the Architectural Committee, including the officers, employees and agents of the Association, is the authorized agent of the Association to administer and enforce the Design Covenants, this Agreement and any and all other agreements in connection with Owner's Construction Activity.
- b. Determination of noncompliance. The Architectural Committee, on its own initiative or in response to a complaint or report filed by any person, is authorized to determine whether Owner's Construction Activity complies with, the Design Covenants, the approved Construction Management Plan and/or this Agreement. Any determination of noncompliance by the Architectural Committee of an Owner's Construction Activity shall be reasonable and not arbitrary or capricious.
- c. Remedies and Fines for noncompliance. The Association is authorized to enforce Owner's compliance with the Design Covenants, the Construction Management Plan and/or this Agreement by imposing one or more monetary fines upon Owner for violations or any noncompliance. Such fines may include any unpaid fines, as well as associated administrative and legal costs incurred by the Association, all of which may be withdrawn directly from Owner's Compliance Deposit. The Association, by and through its Architectural Committee, officers, employees or other agents) shall be entitled to enter upon the Property to remove nonconforming improvements and may exclude Owner's agents from entry to the Ruedi Shores community. Additionally, the Association may pursue any other available legal and/or

equitable remedies. Such remedies shall be cumulative and not exclusive. The Architectural Committee may, in its discretion and after notice to Owner, declare each day that a violation or noncompliance continues as a separate violation or event of noncompliance.

- d. Notice of noncompliance. If the Architectural Committee determines that a violation of the Design Covenants and/or the Construction Management Plan and/or this Agreement has occurred in connection with Owner's Construction Activity, the Architectural Committee (or its authorized employee or agent) shall provide Owner with written notice of the violation (delivered to Owner as provided in this Agreement for "Notices"), and may impose a fine in the amount set forth in the Rules and Regulations of the Architectural Committee, as they may be amended from time to time. Owner shall have no less than ten (10) days written notice prior to the "due date" for the payment of said fines within which Owner may cure such violation and/or request in writing a hearing before the Architectural Committee, or its designee. The notice from the Architectural Committee shall include (1) a statement of the violation, (2) a description of the sanction proposed to be imposed or other remedy to be pursued by the Association, and (3) a statement informing the Owner of its right to seek a hearing as set forth above. If Owner cures the violation prior to the expiration of said 10-day period (referred to herein as the "Cure Period", payment of the fine shall be waived by the Association. The Cure Period may be extended upon a showing by Owner that it is making good faith efforts to cure the violation, which decision to extend shall be at the sole reasonable discretion of the Architectural Committee.
- e. Recorded Notice of Noncompliance. Owner acknowledges and agrees that if the Architectural Committee imposes a fine or other sanction against Owner as described above in subparagraph (d) of this paragraph 3, and such fine remains unpaid and/or the violation or noncompliance giving rise to such fine and/or sanction remains unresolved by Owner, then after the Owner's right to a hearing has expired or no further appeal is available, whichever comes first, the Architectural Committee may record in the records of the Clerk and Recorder for Eagle County, Colorado, with reference to the Property, a public notice of such violation or noncompliance.

8. **Indemnification.** Owner hereby indemnifies and holds harmless the Association, the Architectural Committee, and all officers, employees and agents thereof, from all liability for any and all losses, claims and demands whatsoever, made by any person or entity, for damage or injury to person or property, arising from or connected with Owner's Construction Activity on the Property and/or the Board's approval thereof and/or enforcement of compliance with this Agreement. Owner shall reimburse the Association for all reasonable costs and expenses incurred by the Association, the Architectural

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Committee, and any officer, agent and employee thereof, in defending against any claim or demand alleged to arise out of Owner's Construction Activity. Such indemnification and reimbursement shall include reasonable attorneys' fees and court costs, regardless of whether court proceedings are commenced or concluded.

9. **Insurance.** Owner shall at all times bear responsibility for liability and hazard insurance necessary to fully insure the Property and all Construction Activity conducted thereon. Owner shall use Owner's best efforts to cause the Association to be named as an additional insured on all liability coverage under such policies of insurance and shall submit proof thereof to the Architectural Committee in the form of one or more certificates of insurance at the time the Compliance Deposit is made and upon request from the Architectural Committee.

10. **Architectural Committee Right of Entry.** In addition to the right of entry created in Section 5.c., above and the right of entry provided to the Board of Directors in the Protective Covenants of Ruedi Shores Subdivision, Owner hereby grants to the Architectural Committee and its employees, agents and other representatives the right to enter upon the Property at such reasonable times for the purpose of inspecting Construction Activity to confirm compliance with the Design Covenants, the Construction Management Plan and this Agreement. In the event of an emergency, the Architectural Committee and its authorized agents are authorized to take such measures as they may deem necessary to prevent an unreasonable risk of harm to person and/or property that arises out of the Construction Activity or condition of the Property.

11. **Joint and Several Liability.** If Owner consists of more than one person or entity, each such person and/or entity shall be fully responsible for all obligations imposed by this Agreement. All references herein to "Owner" in the singular shall include the plural, and shall apply to all owners regardless of gender and regardless of whether an owner is a natural person or an entity.

12. **Notices.** All communications and notices required or permitted by this Agreement shall be in writing and shall be deemed effective when received by either Owner or the Architectural Committee (as applicable) via personal delivery, facsimile transmission, United States mail, postage prepaid, return receipt requested, by messenger or by overnight delivery service, in all cases addressed to the address and/or facsimile number(s) set forth below or to such other address as a party shall have designated by notice in writing to the other party:

If to Owner: _____

With a copy to: _____

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If to the Association: Ruedi Shores Homeowners Association
Attn: Architectural Committee
100 McLaughlin
Basalt, CO 81621

13. **Waiver of Limitation on Actions.** The parties agree and acknowledge that enforcement of the commitments and other obligations established in this Agreement are not subject to the 180-day limitation on actions established in Section 27.D. of the Amended and Restated Protective Covenants of Ruedi Shores Subdivision, recorded in the real property records of Eagle County, Colorado on November 8, 1991, in Book 566 at Page 625. The commitments and other obligations of Owner created herein are established in connection with and in consideration of the approval of the Construction Management Plan by the Architectural Committee. Owner waives any claim that enforcement of this Agreement by the Architectural Committee is subject to said 180-day limitation on actions.

14. **Modification/Amendment.** This Agreement may be modified or amended only in a writing signed by Owner and the duly authorized representative of the Architectural Committee.

15. **Counterparts and Facsimile Signatures.** This Agreement may be signed in counterparts, in which case all counterparts together shall constitute one and the same instrument binding upon all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterpart. Facsimile signatures shall be treated as original signatures hereon and on any notices given hereunder.

16. **Severability.** If any provision of this Agreement shall be held invalid, illegal or unenforceable by a court of competent jurisdiction, it shall not affect or impair the validity, legality or enforceability of this Agreement itself or of any other provision hereof.

17. **Choice of Law.** Any and all disputes arising out of or in connection with this Agreement shall be governed by the laws of the state of Colorado. Both parties agree venue shall be in Eagle County, Colorado.

18. **Attorneys' Fees and Costs.** In the event that the either party incurs legal fees in order to enforce this Agreement, the Court shall award to the prevailing party reasonable costs and expenses, including, without limitation, administrative costs, attorneys' fees and other expenses reasonably incurred in such action..

19. **Binding on Agents, etc.** This Agreement is binding upon Owner, its agents, employees, contractors, subcontractors, assigns, descendants and other representatives. All consents given under this Agreement by Owner are deemed given also by Owner's

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agents, employees, contractors, subcontractors, assigns, descendants and other representatives.

20. **Incorporation by reference.** The Design Covenants (as may be amended and/or supplemented from time to time), are hereby incorporated by reference into this Agreement and made a part hereof, and together with the Construction Management Plan shall be interpreted as a whole to further the objectives of the Design Covenants.

21. **Authorization to Bind & Guaranty.** If Owner is an entity and not a natural person, the undersigned signatory on Owner's behalf warrants that he/she is authorized to sign on behalf of Owner and furthermore personally and unconditionally guarantees Owner's performance under this Agreement.

22. **Conflict with Covenants.** If any provision of this Agreement conflicts with any provision of the Covenants, this Agreement shall control.

OWNER

**RUEDI SHORES ARCHITECTURAL
COMMITTEE, RUEDI SHORES
HOMEOWNERS' ASSOCIATION, INC.**

(date)

By: _____
NAME, TITLE (date)

(date)

RECEIPT BY GENERAL CONTRACTOR (if applicable)

I, _____, the GC referred to in the Agreement memorialized above, hereby acknowledge receipt of the Agreement.

GENERAL CONTRACTOR

Name (date)

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