Approved by ACC XXXXXX XX, XXXX

Approved by POA BOD XXXXXXX XX, XXXX

**Architectural Control Committee**

**Rules Procedures**

**Emory Creek Ranch Property Owners Association**

State Hwy 248 and Emory Creek Blvd

Branson, MO

April 16, 2024

**Introduction**

Protective covenants and restrictions serve to ensure that subdivisions are aesthetically pleasing and help property values stay as high as possible by requiring all property owners to follow the same set of rules. Protective covenants and restrictions for Emory Creek Ranch Titled the Declaration of Covenants, Conditions and Restrictions for Emory Creek Ranch (hereafter the “Declaration” or “CCRs”) were recorded by the Developer in the office of the Taney County Recorder.

The Architectural Control Committee (“ACC”) is appointed by the Board of Directors to monitor and enforce compliance with the CCRs. Committee members must own property in Emory Creek Ranch.

Pursuant to the authority provided by the CCRs, the POA Board of Directors may adopt, amend, and repeal rules. **These Rules and Procedures in no case make the Declaration Less Restrictive**. Rules may be updated periodically. Please check with the POA for the most recent edition.

The ACC has the authority to issue two types of permits: 1) a construction application for new construction homes and 2) a project permit for exterior structures and other projects requiring prior ACC Approval (See CCRs Article VI, Section 6.2).

The ACC is not responsible for technical design, quality of workmanship, or conformance with building or other codes. In the event that these Rules and Procedures conflict with those of government authorities, the stricter of the rules and regulations will apply.

Ther Board and the ACC acknowledge that every situation is different, that any set rules cannot contemplate every circumstance, and that any written document cannot address every possible contingency. ACC members exercise their best judgment to see that all improvements, construction, landscaping, and alterations on properties in the subdivision conform to and harmonize with existing surroundings and structures. All questions concerning the CCRs or this document should be addressed to the POA Board or ACC.

The Rules and Procedures published herein shall have the same force and effect as if they were set forth in and were part of the Declaration and may be enforced in the same manner as any violation of the Declaration.

This document shall refer to the same definitions as the governing Declaration of Covenants, Conditions, and Restrictions for Emory Creek Ranch, LLC.

**Purpose**

The purpose of this document is two-fold:

1. To incorporate into one document a record of the changes to the CCRs made by the Developer prior to January 2011, and
2. To document ACC policies and practices established to supplement and support the Declaration. These rules are intended to provide guidance to current and future ACC members thereby ensuring consistency in applying the CCRs from year to year despite changes in Committee and Board members.

**Architectural Control Committee Rules**

The following Architectural Control Committee Rules supplement supports the protective covenants and restrictions outlined in the Declaration (CCRs). This rules document established ACC policies and practices.

BE SURE TO READ THIS DOCUMENT ALONG WITH A COMPLETE COPY OF THE CCRs.

PROJECTS APPROVED BY THE ACC AND COMPLETED PRIOR TO THE DATE OF BOARD ADOPTION OF THESE RULES NEED NOT BE REVISED TO COMPLY WITH THE RULES STATED HEREIN.

**Section 1 Governing Rules**

**R1.1 Single Family Use**

Each Single-Family Residence Lot shall be used, improved, and devoted exclusively for single family residential use in accordance with the restrictions, conditions, and covenants set forth in the Declaration. No duplex, flat, boarding house, rooming house, apartment house, or other multi-family or multi-unit residential structures, or any nonresidential structures or other improvement (except Exterior Structures approved by the Architectural Control Committee as set forth in the Declaration) may be erected on any Single-Family Residence Lot. All residential structures shall be of new construction on-site; no residential building or structure which has previously been at another location shall be moved onto any Lot, and no “prefabricated”, or “modular”, or “manufactured” or otherwise pre-assembled or pre-constructed homes or structures of any nature or kind whatsoever (except Exterior Structures approved by the Architectural Control Committee) shall be erected, stored, or placed on any Single-Family Residential Lot. No camper, trailer, mobile home, vehicle, tent, outbuilding, Exterior Structure or any other apparatus or structure whatsoever except a permanent residence (the Plans and Specifications for which have been approved by the Architectural Control Committee as set forth herein and in the Declaration) shall at any time be used for human habitation, temporarily, or permanently, nor shall any residence or other structure or improvement of a temporary character be erected, moved onto or maintained upon any Single-Family Residential Lot or any Common Areas. Notwithstanding the foregoing, nothing herein shall prevent or prohibit the Developer, or its designees authorized by the Developer from placing and using temporary buildings, structures, or any residence for model, office, sales or storage purposes prior to the end of the Control Period. Further, nothing shall be deemed to prevent the leasing of any single- family residence from time to time by the Owner thereof, subject to all of the provisions of These Rules and the Declaration.

**R1.2 New Construction**

No more than one (1) single-family residence shall be located on any Lot and no such residence shall exceed two (2) stories in height. Each such residential structure shall have an attached garage for not less than two motor vehicles and shall have a driveway at least 18 feet wide.

**R1.3 New Construction Materials**

The front exterior face (side facing roadway) on all building shall be comprised of at least forty percent (40%) brick, stone, stucco or other material specifically approved by the Architectural Control Committee. Vinyl materials will be allowed only on the sides and rear of any building.

**R1.4 Sewer Systems**

Emory Creek Ranch no longer provides sewer service for this subdivision. This responsibility was transferred from Emory Creek Ranch Property Owners Association to Taney County in May of 2021.

For all new construction, the sewer system on each lot in all Phases of the subdivision except Phase 6 shall utilize a Septic Effluent Pumping (STEP) 2021system with a minimum 1,500-gallon STEP tank, sewage effluent pump, and alarm panel (or equivalent system). The Owner of each lot shall be responsible for payment of the cost (including installation) of the components of the Step system on the Owner’s lot, including the collection line running to the street.

**R1.5 Exterior Finish Material/Colors**

Complementary color schemes can add value to the community which helps to retain current owners, attract new owners, and showcase the community as a desirable place to live.

All exterior finish materials and colors require ACC approval prior to installation.

Exterior finish colors for siding and trim shall be natural tones such as tans, grays, and browns. Subdued gray-green, gray-blue, and other softened shades of traditional residential colors may be considered.

Any contractor or homeowner, desiring to do exterior home maintenance painting or siding replacement that involves a change to the existing color scheme shall obtain approval from the ACC Prior to painting or siding replacement.

The same color requirements shall apply to Exterior Structures as defined by the CCRs in Article 1, Section 1.14 which includes, among other things, decks, outbuildings, retaining walls, storage sheds, playhouses, swing sets, and other play structures.

Roofing shingles shall be shades of brown, gray, or black as approved in advance by the ACC. Metal, Tile, slate, and wood roofs will not be approved.

**R1.6 Dwelling Size**

The Architectural Control Committee shall exercise its best judgement to see that all structures, as to size, conform and harmonize with existing surroundings and structures. No permanent residence to be constructed on a Lot shall contain less than:

 1,600 square feet (phases 1, 3, 5A and Lots 302, 303,

And 305 of Phase 5C

1,200 square feet (Phases5B and lots 299, 300, and 301 of Phase 5C

1,800 Square feet (Phase 6)

**R1.7 Construction of Residence, Improvements and Alterations**

No building, residence, fence, wall, swimming pool, drive, Exterior Structure or other structure or improvement shall be commenced, constructed, improved, or altered, without prior written approval of the Architectural Control Committee as set forth herein and in the Declaration.

**R1.8 Fences**

The approval requirements outlined in R1.1 for approval of structures shall apply to fences. Fencing of the front yard is prohibited. Fencing on corner lots may extend to, but not beyond, the exterior side setback lines established herein. Chain link and other forms of wire fencing are prohibited.

Fenced areas adjoining houses shall be used to conceal above-ground propane tanks and may be used to conceal trash cans, trailers, wheelbarrows, yard carts, grills, and other similar items from view from Neighboring properties and/or the street. A project permit shall be reviewed and approved by the ACC prior to installation of fences regardless of size.

All fences shall be constructed of wood or composite fence materials that look like wood such as those manufactured by Trex. Pickets (the vertical boards) shall be dog-eared style (no pointed ends), 6 feet high, and constructed in a shadow box design, other types of fencing may be approved. Wood fences shall be finished with natural wood-tone stain or sealed.

Fences may be placed on the property lines (front lot line excluded) or set back 3 feet or more from the property lines. When placed on the property lines, a professional stake survey is required.

**R1.9 Propane Tanks**

In 2009 the developer relaxed the CCR requirements concerning propane tanks to allow above ground propane tanks provided they are concealed behind a fence that is in compliance with Rule R1.8 of these rules.

Small propane tanks located behind the house may qualify as an exception depending on the location of the lot and view from Neighboring Properties. ACC approval is required.

**R1.10 Swimming Pools**

1. Accessory buildings, in-ground swimming pools, cabana structures, and gazebos may be built in the back of the building area (i.e., within setbacks) of any Lot, after approval of the ACC under Rule R1.7 of these Rules. For such structures, the requirements listed in R1.1 also apply.
2. Permanent above-ground pools with a water surface area of at least 144 square feet are permitted, subject to the requirement that the rear yard containing the pool be fully enclosed with a fence meeting the criteria established in these rules. This fence requirement is not intended to meet any requirement that the Lot owner’s insurance company may require for a safety fence.
3. Lot owners and occupants shall solely responsible for compliance with all local, state, and federal regulations and laws relating to swimming pools.
4. The Association will not consider “kiddie pools,” flexible plastic or inflatable, to be in violation of these Rules as long as they are no more than 60 inches in diameter and are not kept on the front Lawns. They must be used in driveways and not be left out for more than 7 consecutive days.

**R1.11 Solar Facilities**

Under Missouri laws, the right to sunlight is a property right. The Association has the right under the Declaration and these Rules to regulate the construction, installation, and maintenance of solar systems for the generation of electricity or capturing heat. The Association and the ACC will depend on the designers and installers as to the technical aspects of the design and installation and will focus on the appearance of the solar facilities.

No installation of a solar system for generating electricity or capturing heat may be installed without the approval of the ACC. The ACC’s approval shall be in compliance with the following criteria and shall be evidenced by a permit issue by the ACC:

1. The plans and specifications for the installation of solar equipment must identify the name of the person who has designed the system and must contain the designer’s statement that the design of the system is in compliance with the current version of the National Electrical Code for solar facilities and that the system will be installed in compliance with the Nation Electrical Code.
2. All solar panels must be installed on roofs of primary residences (including the roofs of attached garages) and may not be installed on any other portion of the housing structure, any outbuilding, or in any portion of the lawn or landscaped area, unless the primary residence has insufficient south facing roof area adequate for the installation. For residences with insufficient south facing roof areas only on the street side of the house and foe lots without south facing roofs, arrays of solar panels may be placed in fenced rear yards within building lines.
3. All installation of solar facilities must be performed by experienced technicians, such as electricians. Electricians holding statewide Missouri licenses shall be presumed to be and qualified to install solar facilities.
4. The panels mounted on roofs shall be at the same pitch as the roof and shall not extend over the roof’s eaves or peak or interfere with drainage in the roof’s valleys.
5. The visible portions of the mounting system for the solar panels must be of anodized aluminum or other metal with a durable coating.
6. If a roof mounted solar system is visible from the street or adjacent lots is removed without replacement within 90 days, the roofing material shall be replaced so that the past installation will not be visually evident.

**R1.12 Building Location**

No building shall be erected on any Lot nearer than: (1) 25 feet to the front lot line; (2) 10 feet to the rear lot line; (3) 7 feet to the interior side lot line. For the purposes of this Rule, Eaves, steps, and open porches shall not be considered as part of the building, providing, however, this shall not be construed to permit any portion of the building on a Lot to encroach upon another Lot. Should any building setback lines shown upon the Plat vary from the setback requirements required herein, the building setback lines shown upon said plat shall control and take precedence over those stated herein. Variances to the setback requirements established herein as may from time to time be permitted by the County shall take precedence and be controlling.

**R1.13 Easements**

Perpetual easements have been reserved, as shown on the Plat, for the construction and maintenance of utilities and drainage, and no permanent structure of any kind shall be erected or maintained upon or over said easements.

**R1.14 Improvements**

Each Owner shall, within one (1) year after the date of commencement of construction of any improvements on their Lot, complete said improvements. If said improvements are not completed within said one (1) year period, the Developer shall have the option to repurchase said Lot (including any improvements constructed thereon) for a sum equal to the original purchase price of the Lot.

**R1.15 Utilities**

All utilities shall be installed beneath the surface and shall be an “underground utilities”. The Developer shall provide utilities (electric, telephone, water, and wastewater) in the utility easement along the street in front of each tract.

**R1.16 Driveways and Culverts**

All driveways shall be constructed of concrete, asphalt, or other material approved by the Architectural Control Committee. The color is subject to approval by the Architectural Control Committee. Each Owner is required, at its expense, to install a culvert under the driveway. The Developer will determine the size of the CMP pipe for the culvert but in no event will it be smaller than 15 inches. Each Owner shall also install, at its expense, concrete or metal bulkheads on each end of the culvert. The culvert on each lot will be a minimum of 24 feet wide.

**R1.17 Roofs**

All roofs shall have an exterior surface that shall be approved by the Architectural Control Committee, in its sole discretion. All roofs must have a pitch of at least 6:12 and consist of architectural roofing shingles or other roofing material specifically approved by the Architectural Control Committee. Thirty-year GAF or equivalent composition or better multi-tab is required. Colors shall be as indicted in R1.5.

**R1.18 Building Limitations**

The building codes of the County, as they presently exist or are herein after amended, shall be made applicable to all Lots. All dwellings and other improvements shall comply with said ordinances as they exist on the date of construction. Any conflict between such ordinances and the provisions of these Rules shall be resolved in favor of the more restrictive provisions.

**R1.19 Building Materials**

No building material of any kind or character shall be placed or stored upon any lot until the owner is ready to commence construction of the improvements requiring such materials. Building materials shall not be placed or stored in the street or between the curb and property lines. Upon completion of the improvements requiring such materials, all remaining building materials and refuse shall be removed from the subdivision.

**R1.20 Restrictions on Further Subdivision**

Except as specifically authorize by the County or the Planned Development District, no Lot shall be further subdivided or separated into smaller Lots or parcels by any Owner, and no portion than all of any such Lot, nor easement or other interest herein, shall be conveyed or transferred by an Owner without prior written approval of the board.

**R1.21 Temporary Structures**

No trailer, tent, shack, garage, barn, or other outbuilding or structure erected on a building site within Emory Creek Ranch Subdivision shall at any time be used for human habitation, temporarily or permanently, nor shall any structure of a temporary character be used for human habitation. This restriction does not prohibit the builders from placing temporary construction trailers and/or storage facilities on Lots as deemed necessary.

**R1.22 Encroachments**

No tree, Shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise encroach upon any sidewalk, street, pedestrian way, or other area from ground level to a height of eight (8) feet, without the prior approval of the Architectural Control Committee. No fence, wall, hedge, or shrub, which obstructs sight lines at intersections within the Emory
Creek Ranch Subdivision shall be permitted.

**R1.23 Repair and Maintenance of Buildings**

No building, residence, or structure within any Lot shall be permitted to fall into a state of disrepair and the same shall at all times be kept in good condition and good repair and adequately painted or finished. The Board may determine violations of this Section to constitute a nuisance within Rule R1.24 below subject to remediation by the Association in the manner for in Rule 1.24(a).

**R1.24 Nuisances**

1. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereupon which may be or may become an annoyance or nuisance to the neighborhood. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors or noxious fumes shall be permitted to emanate therefrom so as to render any Lot, or portion thereof, unsanitary, unsightly, offensive, or detrimental to any other Lot or its occupants. Without limiting the generality of the foregoing, no exterior speakers, excessive exterior lights, horns, whistles, bells, or other sound devices, except those designed solely for security purposes, shall be used, placed, or located on any Lot. The Board in its sole discretion shall have the right to determine whether any of the foregoing conditions or circumstances not specifically describe herein constitutes a nuisance to any other Lot or the Emory Creek Ranch Subdivision and may require the removal or remediation of such condition. Any such Board decision shall be conclusive.
2. Grass, trees, and various vegetation shall be kept neatly cut and maintained. Lawns shall not be allowed to exceed six (6) inches from the ground surface. Fences and other outside structures or outdoor decorations shall be maintained so as not to become unsightly or annoyance or a nuisance to the neighborhood. Upon owner’s failure to comply with this Rule, the Association may perform, or have performed, the necessary action to remedy the problem, and shall be entitled to recover the expense associated with such remedial action from the offending owner.

**R1.25 Animals**

No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats, or other household pets may be kept and maintained provided that they not be kept, bred or maintained for any commercial purpose. Household pets shall be maintained in a clean and sanitary situation and shall not be a noxious or nuisance to the surrounding owners. Each household shall be limited to not more than three (3) dogs and/or cats. Dogs must be considered tame. No reptiles shall be kept as pets. Upon written request of any Owner, the Board shall conclusively determine, in its sole discretion, whether a particular animal is a common household pet, a nuisance, or whether the number of animals kept on any Lot is reasonable. Any decision rendered by the Board on such matters shall be as enforceable and in the same manner as any other restriction contained herein. No pet or animal shall be allowed to run loose or unsupervised within the Emory Creek Ranch Subdivision.

**R1.26 Trailers and Motor Vehicles**

All vehicles, and equipment, owned by Lot owners, shall be parked only in the Lot owner’s garage or driveway. Recreational vehicles and equipment, including but not limited to boats, motor homes, travel trailers, campers and the like shall not be parked or stored within the subdivision. Small boats may be stored in owner’s garage or behind a privacy fence as long as the boat is not visible by neighbors or not visible from the street. The Board may provide in the Rules such other and further restrictions, prohibitions and conditions pertaining to the storage, maintenance, keeping and safe use of such motor vehicles, boats, and watercraft which shall be deemed incorporated herein by reference and as effective and binding as set forth expressly herein.

**R1.27 Inoperative Vehicles**

No vehicle, bus, tractor, or other conveyance or rig, other than a lawn grass apparatus, shall be left inoperative on any Lot for a period of more than 3 days.

**R1.28 Machinery and Equipment**

No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of the improvements on such Lot, and except that which Developer or the Association may require for the operation and maintenance of the Common Area.

**R1.29 Outside Lighting**

Except as may be initially installed by a Builder or Developer, no spotlights, floodlights or similar type high intensity lighting (including mercury vapor, or sodium vapor lighting) shall be placed or utilized upon any Lot which in any way will allow light to be reflected on any other Lot, or the improvements thereon or upon Common Areas or any part thereof without the written authorization of the Architectural Control Committee. Other types of low intensity lighting which do not cast excessive light onto adjoining Lots are allowed. No lighting shall be installed on or around the Common Area, except that deemed necessary by the Developer.

**R1.30 Decorative Lighting**

Christmas lights are approved and encouraged within the Subdivision; however annual Christmas lights must be removed from houses by January 31st each year. Decorative yearlong lighting must be in compliance with R1.29 and will be approved on a case-by-case basis by the Architectural Control Committee.

**R1.31 Mailboxes**

To enhance the appearance of Emory Creek Ranch Subdivision as much as possible with United States Postal Service regulations, mailboxes in the Emory Creek Ranch Subdivision will be located as required by the United States Postal Service. A decorative mailbox shall be supplied and installed by the Builders (of design and materials and specifications approved by the Architectural Control Committee) within 2 feet of the nearest property line. All mailboxes will be the same. With respect to Lots with frontage on a cul-de-sac, Developer may, in its discretion, require that one or more residences located on such Lots locate their respective mailbox on a common pedestal or structure shared with other mailboxes for other residences located on such cal-de-sac.

**R1.32 Common Area Lawns and Plantings**

Developer or the Association shall have the right at any time, to plant, replace, maintain, and cultivate shrubs, trees, grass, and plantings within the Common Areas and on such easements as may be granted to or reserved by the Developer or the Association over and across each Lot. No Owner or Person shall remove, alter, injure, or interfere in any way with such shrubs, trees, and plantings without prior approval of the Developer or the Board. The Developer or the Association shall have the right to enter any Lot at any reasonable time, for the purpose of maintaining, placing or replacing such shrubs, trees, grass, and plantings.

**R1.33 Soil Removal**

Soil may not be removed from any Lot or Common Area without consent of the Developer of the Architectural Control Committee.

**R1.34 Garage Doors**

The doors of all garages shall be kept closed at all times except when necessary for ingress and egress. The doors of all garages shall be installed with electric or battery powered opening and closing devices.

**R1.35 Propane Tanks**

Above ground propane tanks are permitted in the Emory Creek Ranck Subdivision provided they are concealed behind a fence that is in compliance of R1.8 of the ACC Rules. The installation of the Tank and fence require Architectural Control Committee approval prior to the installation.

**R1.36 Tree Removal**

Trees with a diameter of twelve (12) inches or more may not be cut or removed without approval of the Architectural Control Committee.

**R1.37 Home Occupations**

Home occupations and professions shall be prohibited, notwithstanding the allowance of such by the County or other governmental authority.

**R1.38 Garage Sales**

Garage sales shall only be held semiannually. Once in the spring and once in the fall. The days and times shall be determined by the Association.

**R1.39 Signs**

No signs, either permanent or temporary, of any kind, shall be placed or erected on any property, without the consent of the Architectural Control Committee unless signage upon the property advertises the same for sale or rent, and does not exceed 2 feet square in area. Provided, however, that Builders or Developer may erect signs to advertise the Emory Creek Ranch Subdivision and model homes.

**R1.40 Cloths Drying Facilities**

The hanging of laundry from any area within or outside a residence, which places the laundry within public view, is prohibited.

**R1.41 Sound Devices**

No exterior speaker, horn, whistle, bell or other sound device which is unreasonably loud or annoying, except security devices used exclusively for security purposes, shall be located, used or placed upon any Lots. The playing of loud music from porches or decks shall be considered offensive, obnoxious activity constituting a nuisance.

**R1.42 Basketball Goals**

The placement and quality of all basketball goals must be approved by the Association.

**R1.43 Trash Containers and Collection**

No garbage or trash shall be placed, permitted or kept on any Lot except in covered containers of a standard residential type. Such containers shall not be visible from Neighboring Property except at such time as to make same available for collection and then only for the time reasonably necessary to allow for such collection. All rubbish, trash, and garbage shall be removed from each Lot at least once per week by or on behalf of each Owner.

**R1.44 Antennas**

No television, dish, radio receiver, or sender or other similar device shall be attached to or installed on the exterior portion of any dwelling or other structure within the Emery Creek Ranch Subdivision without approval of the Architectural Control Committee; nor shall radio, television signals, nor any other form of electromagnetic radiation be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals upon any other Lot or Common Area, provided, however, that digital satellite system receivers not more than 18 inches diameter shall be allowed provided they are not visible from the street. Those wishing to use Amateur Radio must have a valid license from the Federal Communications Commission (FCC) and approval from the ACC before constructing any outside antenna and shall work with anyone experiencing interference to resolve the issue.

**R1.45 Remedies**

In the event that an Owner (or guest, invitee, licensee, tenant, lessee, family member, agent, or employee thereof) shall violate, or permit to be violated, any of the provisions set forth in this document or in the Declaration, the Board shall cause to be delivered to said Owner a written Notice of Violation. Said Notice of Violation shall set forth the nature of the alleged violation and shall request that the violation be voluntarily terminated and remedied within a reasonable time as determined by the Board from the mailing of said notice. If, after a reasonable time has lapsed from the date of said Notice, the violation has not been voluntarily terminated by the Owner, the Board shall have the authority to pursue and affect any and all procedures which may be calculated as reasonably necessary to remove and/or terminate the cause of said violation. This authority shall include, but shall not be limited to, the power to employ laborers to enter upon the premises of said Owner for the purpose of removing and/or terminating said violation, the collection of said expenses so incurred may be effected in the manner provided in **Article IV** of the Declaration for the collection and enforcement of assessments and shall also include the right to impose a fine as set forth in the Fine Table for the violation. For purposes of administering this Section, the determination of whether a violation has been, or is being committed, and the determination of whether a violation has been, or is being committed, and the determination of what time period constitutes a Reasonable time allowable for voluntary termination of the same, shall be made by the Board after taking into consideration the facts and circumstances surrounding the particular violating situation, condition or occurrence. In the event that the Board does not elect to exercise its authority of enforcement as set forth above, then the Developer or any other Owner or Owners shall have the right to pursue, at law or in equity, any remedy for enforcement of those covenants and Rules, which remedy is hereby specifically granted in this section. In the event that it is necessary for the Association, Developer or any Owner or Owners to retain the services of legal council in an attempt to enforce these Rules and Covenants, the enforcing parties or party shall be entitled to reimbursement of all litigation costs, including reasonable attorneys fees and court costs, with such reimbursement being awarded by way of judgment against the Owner or Owners responsible for any such violation or violations.

**R1.46 Subordination of the Lien to Mortgages**

The lien provided for in R1.45, shall subordinate to the lien of any first mortgage. The sale or transfer of any Lot shall not affect said lien and it shall run with the land.

**Section 2 Architectural Control Committee**

**2.1 Membership**

The Board shall comprise the Architectural Control Committee unless the Board shall see fit to delegate this function to a Committee appointed by the Board which shall be comprised of three (3) Owners.

**2.2 Architectural Control Function**

No structure, whether a residence, Exterior Structure, accessor building, mailbox, awning, swimming pool, fence, wall, lot, drainage works, exterior area lighting or any other improvement whatsoever shall be constructed, reconstructed, repaired or maintained upon any Lot, and no alteration to the exterior of a structure shall be undertaken unless complete Plans and Specifications and site plans (scale 1” = 20’ or larger) therefore showing the exterior design, height, building material and color scheme thereof, the location of the structure on the Lot plotted horizontally and vertically, the location of driveways and fencing, shall have been approved in writing by the Architectural Control Committee and a copy of such Plans and Specifications and plot plans as finally approved shall be deposited with the Architectural Control Committee. 0the Architectural Control Committee shall exercise its best judgements to see that all improvements, construction, landscaping and alterations on properties conform to harmonize with the existing surroundings and structures.

**2.3 Liability**

The Architectural Control Committee shall not be liable for damages to any person who has submitted a request for approval by any reason, failure to act, approval or disapproval, or failure to approve or disapprove such request. No approval of Plans and Specifications by the Architectural Control Committee shall be construed to mean that such Plans and Specifications are technically correct from an architectural or engineering perspective or comply with applicable government requirements.

**2.4 Restrictions on Builders**

The Developer reserves the right to implement and enforce such rules, regulations and policies as may be reasonable and necessary during the developmental stage the Emory Creek Ranch Subdivision regarding the original construction of improvements within the Emory Creek Ranch Subdivision. Any Builder constructing improvements within the Emory Creek Ranch Subdivision shall be bound by such rules, regulations and policies, including, without limitation, the following:

1. Each Builder shall remove rubbish and debris and otherwise clean each Lot at least one (1) time each week;
2. Builder shall construct, at its earliest convenience, a gravel driveway or approach, the purpose of which shall be to prevent Builder’s employees, agents, subcontractors and others under its control from transferring soil and mud from the Lot to the Emory Creek Ranch streets and roads; and
3. Builder shall prevent its employees, agents, subcontractors and all others under its control from parking on a portion of the Lot not specifically designed for parking (e.g. ravel driveway). Unless Builder has constructed an appropriate gravel driveway or approach, Builder and its employees, agents, subcontractors and others under its control shall park only on the paved roadway adjoining the Lot on which Builder is constructing the residence.

**Section 3 Permitted Use And Restrictions As To Common Areas**

**3.1 Maintenance by Association**

The Board of the Association may, at any time, as to any Common Area owned, leased or otherwise controlled by it, take the following actions without any approval of the Owners being required.

1. Reconstruct, repair, replace or refinish any improvement or portion thereof upon any such area in accordance with (1) the last plans approved by the Board, (2) the original plans for improvements, or (3) if neither of the foregoing is applicable and if such improvement was previously in existence, then in accordance with the original design, finish or construction of such improvement as same existed.
2. Construct, reconstruct, repair, replace or refinish any road improvement or any surface upon any portion of such area used as a private road, walk, driveway, or parking area.
3. Replace injured and diseased trees or other vegetation in such area, and plant trees, shrubs, and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes.
4. Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof.
5. Do all such other and further acts which the Board deems necessary to preserve and protect the property and the beauty thereof, in accordance with the general purposes specified in these rules and in the Declaration.
6. The board shall be the sole judge as to the appropriate maintenance of all grounds within and improvement upon the Common Area, including common area fences.

**3.2 Damage or destruction of Common Area by Owners**

In the event any Common Area is willfully or maliciously damaged or destroyed by an Owner or any of their guests, tenants, licensees, agents or members of their family, such Owner does hereby authorize the Association to repair said damaged area, and the Association shall so repair said damaged area in a workmanlike manner in conformance with the original plans and specifications for the area involved or as the area may have been modified or altered subsequently by the Association. The cost for such repairs shall be paid by said Owner, upon demand, to the Associationn and the Association mat enforce collection of same in the same manner as provided elsewhere in this document and in the Declaration for collection and enforcement of assessments.

**Section 4 Emory Creek Ranch Property Owners Association Violation Enforcement Policy and Procedures**

This enforcement policy is written to set forth guidelines and procedures to be followed from the effective date of this policy forward for enforcement of the Declarations of Covenants, Conditions and Restrictions for Emory Creek Ranch (hereafter “CCRs”) and other rules and guidelines not previously addressed in writing. Compliance with this policy will help assure fairness and consistency in enforcement and will avoid claims that an individual is being singled out while other violations are ignored. Components of this policy include identification, investigation, enforcement and an appeal process.

Enforcement of the governing documents is the responsibility of the Board of Directors (the “Board”) of Emory Creek Ranch Property Owners Association, Inc. (the “Association”). The Architectural Control Committee is appointed by the Board to assist in the following areas:

 • Review project permits and construction applications for compliance with the CCRs;

• Assist in identifying new violations of the CCRs and, following direction and approval of the Board, to execute the notice and enforcement process.

**4.1 Identification of Violations**

**a)** Property Inspections

 From time to time, the Board or its agents may do property inspections to determine if violations of the CCRs and Rules have occurred. Inspections shall be in the form of periodic drives through the community by a person or persons designated by the Board and shall occur no more than twice per month (once during the first half of the month and once during the second half) on random days not to coincide with the trash collection day applicable to most residents. Alleged violations identified during such a drive through will be reported to the Board of Directors as a Complaint.

**b). Written Complaints**

Additionally, any member of the Association (“Owner”) may submit a written complaint to the Board by mail or email. The complaining Owner or resident shall have observed the alleged violation and shall identify the complainant (“Complainant”), the address of the property where alleged violation is located and set forth a statement detailing date, time and nature of the violation observed, reference the section of the CCRs allegedly in noncompliance and any other pertinent information. Non-written complaints or written complaints failing to include any information required by this provision might not be investigated at the discretion of the Board. A Complaint Form is available for this purpose.

**4.2 Investigation**

Upon receipt of a written complaint by the Board, if additional information is needed, the complaint may be returned to the Complainant or may be investigated further by an individual or committee designated by the Board to investigate the matter. The Complaint will be investigated as soon as possible.

**4.3 Enforcement**

Unfortunately, enforcement actions and monetary penalties are sometimes necessary to garner cooperation from individuals who choose to violate the CCRs and these Rules. The following outlines a progressive system of notice and enforcement in accordance with the CCRs that involves written notices, fines and ultimately a lien and foreclosure, if necessary. It is the hope of the Board that violations will be remedied quickly and voluntarily and that fines and liens will be rare.

**4.4 Notice and Enforcement Process**

If, after investigation of a written complaint is conducted, it is determined a violation has not occurred, or that the matter is inconclusive and the complaint will not be pursued by the Association, written notice of the decision will be mailed or emailed to the member who filed the complaint. If, after an investigation is conducted, the complaint is found to be valid and determined to be in noncompliance with the CCRs, a violation exists and the following will apply:

1. First Notice When a violation is found to exist, a First Notice of Violation letter shall be sent to the Violator explaining the nature of the alleged violation, description and location of the violation, the section or sections of the CCRs and these rules in noncompliance and allotting a reasonable time period associated with the degree and urgency of such violation to take corrective action. The letter shall request that the violation be voluntarily terminated and remedied and what action must be taken to correct the violation. The letter shall notify the alleged Violator of his right to appeal and invite the alleged Violator to contact the Board or ACC to request a hearing. If an alleged Violator fails to request a hearing within 10 calendar days from the date of the First Notice letter, he is deemed to have waived his right to a hearing, and the Board may proceed with further action without one. Prompt action to correct (and avoid any recurrence) will be sought by the Board for any violation deemed, in its sole discretion, to be serious or cause an immediate risk.

Owners and residents who have moved into the community within the three (3) months prior to the violation will be sent a Special First Notice reminding them of the CCRs or Rules and informing them of the section of the CCRs and Rules that applies to the violation found at their property.

**4.5 Continued Violation After First Notice**

If the Violator does not comply as outlined within the time period provided in the First Notice letter, a Second Notice letter will be sent indicating that a fine may be imposed, which, if not paid, may result in a lien being filed on the property and/or outlining other action(s) that may be taken as authorized by the CCRs and these Rules (4.8 b)below) and deemed necessary by the Board. The Second Notice letter is sent by certified mail, return receipt requested.

**4.6 Legal**

If the violation is not corrected within the time frame provided in the Second Notice letter, or the Violator has not made arrangements with the Association to provide an acceptable solution or timetable, the matter may be turned over to the Association’s legal counsel. Fines might be imposed or other actions taken per 4.8 below. If such action is required, the Association shall be entitled to reimbursement of all costs of collection or foreclosure and reasonable attorneys fees incurred by the Association per **Article IV, Section 4.6 of the CCRs, Page 10** or litigation costs, including reasonable attorneys fees and court costs per R1.45 of the these Rules).

**4.7 Repeat Violations**

If a violation of the same nature reoccurs one (1) year or more after the First Violation letter was sent, the violation will be considered new and the notice and enforcement process will start from the beginning.

If a violation of the same nature is repeated within any one (1) year period after the First Violation letter was sent, the notice and enforcement process will continue uninterrupted. If a violation recurs after a fine or other action has been imposed, no notice will be sent and such repeat violation may trigger a notice of hearing before the Board. Such hearings may be scheduled as soon as possible. At such hearing, an escalating fine schedule or other actions may be imposed, the general guideline to be at least a doubling of the prior penalty.

**4.8 Monetary Penalties and Other Enforcement Actions**

a) Fines If the property remains in noncompliance following expiration of the period provided in the Second Notice letter, legal counsel may be engaged to send notice of a fine to the Owner. Fines of up to $100.00 per day for each day a violation continues, beginning on the fifth day following delivery of the Second Notice of Violation may be imposed. Fines will be imposed for violation of the CCRs and or Rules according to the attached schedule. Any violation which continues for over thirty (30) days will be subject to additional fines which double for each subsequent thirty (30) days that the violation continues. All fines shall be due within 60 days after the second notice was sent or after final determination if an appeal is requested and heard. Payment of fines does not relinquish responsibility to remedy the violation.

b) Other Actions If, after a reasonable time has lapsed from the date of First Notice letter, the violation has not been voluntarily terminated by the Owner, the Board shall have the authority to pursue and effect any and all procedures which may be Page 3 of 5 calculated as reasonably necessary to remove and/or terminate the cause of the violation. This authority shall include, but shall not be limited to, the power to employ laborers to enter upon the premises of said Owner for the purpose of removing and/or terminating said violation, the collection of said expenses incurred shall be in accordance with Article IV of the CCRs.

**4.9 Appeal Process and Hearings**

Any Owner receiving a First Notice letter may submit a written appeal within ten (10) days from the date the First Notice was sent setting forth his position to the Board. The Owner will be given an opportunity for a hearing and no fine will be imposed until after the hearing. If an Owner fails to request a hearing in writing within this 10 day period the Owner is deemed to have waived his right to a hearing.

1. Hearings The Hearing Committee shall be comprised of five individuals with two (2) being Board members. The remaining members shall be members of the ACC. Neither the Complainant nor the alleged Violator is required to attend the hearing. If a complaint is filed against a Board or ACC member, that member shall be prohibited from participating in any Hearing Committee assembled for review of such complaint.

At the beginning of each hearing, the presiding member shall introduce the case by describing the alleged violation and the procedure to be followed during the hearing. Each party or designated representative, may, but is not required to, make an opening statement, present evidence and testimony, present witnesses, and make a closing statement. The presiding member may also impose such other rules of conduct as may be appropriate under the given circumstances. The Board shall base its decision solely on the matters set forth in the Complaint, results of the investigation and such other credible evidence and testimony as may be presented at the hearing. Unless otherwise determined by the Board, all hearings shall be open to attendance by all Owners; however, the Association is not required to send notice of a hearing to the Association membership.

After all testimony and other evidence has been presented at a hearing, the Hearing Committee shall, within a reasonable time, not to exceed 45 days, render its written findings and decision, and impose a fine, if applicable. A decision, either a finding for or against the Owner, shall be by a majority of the Hearing Committee members present at the hearing and shall be binding and final. Failure to strictly follow the hearing procedures set forth above shall not constitute grounds for appeal of the Hearing Committee’s decision absent a showing of denial of due process.

The Violator may file a written appeal to the full Board of Directors of any adverse decision of the Hearing Committee within 14 days of the decision.

**4.10 General**

a) Recovery of expenses and attorney fees In any court action or other proceedings to enforce or defend the CCRs, the rules or otherwise to address a violation by an alleged Violator, the Board shall be entitled to assess and recover its expenses, including that of reimbursement for expenses as well as attorney fees and costs against the Owner, alleged Violator and/or other party in addition to all other rights and remedies.

b) Deviations The Board acknowledges that every situation is different, that any set of guidelines and procedures cannot contemplate every circumstance and that any written document cannot address every possible contingency. As such, these procedures are put forth as a guideline as to how the Board intends to proceed when a complaint is filed but are not to be considered to be mandatory. While the Board intends to follow these guidelines under normal circumstances, the Board retains the right to exercise their discretion to deviate from the procedures when they, in their sole discretion, deem such deviation is reasonable under the circumstances.

c) Amendment The Board of Directors may amend this policy from time to time by majority vote of the entire Board.

This is to certify that the foregoing Enforcement Policy and Procedures were adopted by the Board of Directors of Emory Creek Ranch Property Owners Association, Inc. at its meeting held July 20, 2015, the effective date of this policy. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Jesse Fosnaugh, President

**Section 5 Architectural Control Committee Procedures**

**5.1 New Construction Permits and Project Permits**

**a)** Once a New Construction Permit or Project Permit is received by the Architectural Control Committee the chairperson will check to make sure what Phase the construction will be in and confirm all required documents and samples have been submitted. If there are missing documents and/or samples, the chairperson will contact the Builder or Owner and arrange for the missing items to be submitted.

**b)** Once all documents and samples have been submitted to the ACC, the chairperson will contact the other members of the Committee and will meet with them to review all information regarding the construction. This will be in a timely manner, but bear in mind all members are volunteers. The Architectural Control Committee shall confirm that the new construction or the Project meets the requirements set forth within the Declaration and these Rules.

**c)** Once the Architectural Control Committee has determined that the proposed construction meets all the requirements set forth in the Declaration and the Rules, the chairperson will stamp the permit application and any necessary documents, and each committee member will sign and date the approval stamp. The chairperson will mark whether the permit is approved, approved pending further action or rejected, and place a permit number in the appropriate place on the approval stamp. The permit number shall be the date (month, day, year). Two (2) digits for the month. Two (2) digits for the day, and four (4) digits for the year. If there are multiple permits being approved there shall be a -1, -2, -3 and so on for each individual permit.

**d)** Once action has been taken on the permit, the chairman shall either scan the application in or take a picture of the application and the approval stamp. These two (2) files will then be sent via email to the person named on the application, the Builder or the Owner, and will also email a copy to Emery Creek Ranch POA for the record. All original documents and samples shall be retained by the Architectural Control Committee.

**5.2 Drive Throughs**

Drive-throughs shall take place the week before the Board meeting, or at such other times determined by the Board. The chairperson will attempt to there are at least two (2) committee members present for the drive through. During the Drive Through the committee members will make note of variations from the declarations and these Rules.

Once the drive through is completed, a report shall be generated which shall show the following;

The date and day of the drive through.

The members present for the drive through.

It shall show the address , the Owner, the observed violation, the code or Rule number of said violation.

This report shall be sent to the Board for further action at the upcoming Board meeting.