

IX. Dispute Resolution

9.01 Policy: It is the general policy of the Association to encourage the use of alternative dispute resolution to resolve disputes between the Association and its Members when such disputes cannot be resolved through the ordinary course of business and communication.

9.02 Procedure:

- (a) Claims. All “claims” will be subject to and resolved in accordance with the terms of this policy. “Claims” includes all claims, disputes, and other controversies between a Member or Members and the Association, including those Claims that are subject to Section 2.11 of the Declaration, and that arise from, relate to or concern:
- (i) compliance with any provision of the Declaration, mandatory or injunctive relief, damages for noncompliance with the Declaration and any other right or remedy for enforcement of the Declaration permitted by law.
 - (ii) interpretation, application or enforcement of the Declaration or policies, procedures, rules,
 - (iii) or regulations of the Association; or
 - (iv) rights, obligations, and duties arising under the Declaration, the policies, procedures, rules or regulations of the Association or applicable Colorado law, or the breach of the same, of or by the Association, the Association's Board, or any member thereof, or any Member.
- (b) Claims Subject to Procedure. Unless Owners entitled to cast at least 67% of the votes in the Association agree otherwise, the following shall not be “Claims” subject to this procedure:
- (i) any suit between or among Members, which does not include the Association as a party; and
 - (ii) any suit in which there is a necessary party who is neither a member nor the Association.
- (c) Notice of Claim. All Claims must be initiated by the party having a Claim (the “Claimant”) within a reasonable time after the Claim has arisen, and in no event may a Claim be initiated after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations or repose. When the Association or any Member has a Claim, as defined above, the Claimant will submit all of their Claims in writing to the other party (the “Respondent”), stating plainly and concisely:

- (i) the nature of the Claim, including persons involved and the Respondent's role in the Claim.
 - (ii) the legal basis or other specific authority out of which the Claim arises; and
 - (iii) the specific relief or proposed remedy sought.
- (d) **Mediation.** The parties shall proceed in good faith with mediation of the claim. Within fourteen (14) days following the Notice of Claim, the parties will jointly select an acceptable professional mediator. Mediation will be completed using a trained independent mediator familiar with the governance of common interest communities acceptable to both parties. In the event that the parties cannot agree on a mediator, each party will select a qualified mediator. The mediators so selected will select a third mediator by mutual agreement, which mediator will conduct the mediation. If the Claimant does not appear for the mediation, or fails to select a mediator as provided above, the Claimant will be deemed to have waived the Claim, and the Respondent will be released and discharged from any and all liability on the Claim. The mediator cannot impose a binding decision; the parties to a dispute must agree before any mediation is binding. Unless otherwise agreed, the mediation shall terminate in the event the Claim is not resolved within thirty (30) days after the date the mediator is selected.
- (e) **Costs.** If the mediation is successful, the costs of mediation will be split equally between the parties, with each party bearing the cost of their own attorney fees, if any. If the Claim is not resolved by mediation and proceeds to litigation, the losing party in the litigation shall pay the prevailing party's costs of mediation and the prevailing party's attorneys' fees and costs. In the event that a member fails to pay their share of the cost, the unpaid amount will be considered an assessment against that Member's property, and may be collected as provided by the Declaration, the Policies of the Association, and applicable Colorado law.
- (f) **Mediation Agreement.** Any settlement or resolution of the Claim through mediation will be documented in writing by the mediator and signed by the parties (the "Mediation Agreement"). If any party fails to abide by the terms of the Mediation Agreement, then any party affected by the breach may file suit or initiate other proceedings to enforce the Mediation Agreement without the need to again comply with this policy. Any suit to enforce the terms of the Mediation Agreement must be brought in the state or federal courts of the State of Colorado, with venue in Mesa County, Colorado. The Mediation Agreement may be presented to the Court as a stipulation of the

parties either before or after the breach of its terms. In the event of a suit to enforce the Mediation Agreement, the party taking action to enforce the Mediation Agreement shall be entitled to recover from the non-complying party all costs incurred in enforcing the Mediation Agreement, including, but not limited to, attorney fees and court costs.

- (g) Mediation Certificate. If the parties do not settle the Claim within thirty (30) days of selection of the mediator, or within such other time as determined by the mediator or agreed to by the parties, the mediator will issue a certificate, signed by the **mediator** (the “Mediation Certificate”). The Mediation Certificate will state that the parties have attempted to mediate a resolution of the Claim, the parties are at an impasse, the date on which mediation was terminated, and any other matter the mediator deems appropriate.

- (h) Litigation. Either party may commence a judicial or administrative proceeding regarding the Claim after issuance of the Mediation Certificate. If the parties have not obtained a Mediation Certificate, as provided in this policy, that will serve as a bar to commencing judicial or administrative proceedings and any such proceedings may be stayed by the opposing party pending compliance with this policy.

The foregoing Policies, Procedures, Rules and Regulations are:

Adopted Effective as of July 17, 2023


_____, Secretary