

Beaver Bench Condominium Owners Association, Inc.

Alternative Dispute Resolution Policy

Effective 08/03, 2021

1. Alternative Method for Resolving Disputes The Association, its officers, directors, and committee members; any Owner; all persons subject to the Condominium Declaration, as amended ("Declaration"); and any person or entity not otherwise subject to the Declaration who agrees to submit to this Policy (each such entity being referred to as a "Bound Party") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in this Policy (each, a "Claim"), to the procedures set forth below.

2. Claims. Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application or enforcement of the Declaration and Articles of Incorporation, Bylaws, rules, regulations, policies and procedures of the Association (collectively, "Governing Documents") or applicable law, or the rights, obligations and duties of any Bound Party under the Governing Documents or applicable law, or relating to the design or construction of the Units or the Common Elements will be subject to the provisions of this Policy.

Notwithstanding the above, the following will not be Claims and will not be subject to the provisions of this Policy, except as otherwise provided below:

- (a) Any suit by the Association against any Bound Party to collect or enforce Assessments;
- (b) Any suit by the Association, to obtain injunctive relief under or to enforce Governing Documents including those in which monetary damages or penalties are also sought, unless the Association elects to be submit the suit to some or all of the alternative dispute resolution procedures set forth in this Policy; and
- (c) Any suit between or among Owners, to the extent such suit asserts a Claim which would constitute a cause of action independent of the Governing Document, unless all parties thereto elect and agree to submit the suit to some or all of the alternative dispute resolution procedures set forth in this Policy.

3. Mandatory Procedures.

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (Claimant and Respondent are hereinafter referred to individually, as a "Party," or, collectively, as the "Parties") will notify each Respondent in writing (the "Notice"), stating plainly and concisely (i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim; (ii) the legal basis of the Claim (*i.e.*,

the specific authority out of which the Claim arises); (iii) the proposed remedy; and (iv) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation and Mediation.

(i) The Parties will make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

(ii) If the Parties do not resolve the Claim within 30 days after the date of the Notice (or within such other period as may be agreed upon by the Association) ("Termination of Negotiations"), Claimant will have 30 additional days to submit the Claim to mediation under the auspices of an independent mediation service designated by the Parties, or if the Parties cannot agree then as designated and appointed by and from Judicial Arbitrator Group. The mediation shall be held in Eagle County unless all Parties thereto agree to a different location.

(iii) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant will be deemed to have waived the Claim, and Respondent will be released and discharged from any and all liability to Claimant on account of such Claim; *provided, however*, that nothing herein will release or discharge Respondent from any liability to any Person other than Claimant.

(iv) Any settlement of the Claim through mediation will be documented in writing and signed by the Parties. If the Parties do not settle the Claim within 30 days after the mediation occurs, or within such other time as determined by the mediator or agreed to by the Parties, the mediation will be deemed terminated and unsuccessful ("Termination of Mediation"). The mediator may issue a notice of termination of the mediation proceedings setting forth that the Parties are at an impasse and the date that mediation was terminated.

(c) Litigation or Binding Arbitration

(i) If the Parties do not agree in writing to a settlement of the Claim within 15 days of the Termination of Mediation, Claimant will have 30 additional days to file and commence a judicial civil action or binding arbitration in accordance with this Policy. Notwithstanding anything to the contrary, the Association, at its sole discretion and option, may elect and require that the Claim be filed and adjudicated as either such civil action or binding arbitration regardless of whether the Claimant initially files or commences a civil action or arbitration.

The Association may by written notice to the Claimant on or before 30 days after of service of the Complaint or Arbitration Demand upon the Association require that the Claim be filed and adjudicated as either such civil action or binding arbitration (“Litigation Notice”), and Claimant shall comply with the Litigation Notice, including by promptly re-filing the Claim as a civil action or arbitration as requested in the Litigation Notice if the proceeding has already been filed. The Association waives its right to elect the forum where the Claim will be adjudicated if a Litigation Notice is not timely provided to Claimant.

(ii) Exclusive jurisdiction and venue for any civil action shall lie in the state courts in and for Eagle County, Colorado.

(iii) Any arbitration shall be submitted in accordance with the rules of arbitration as may be required by the agency providing the arbitrator. Judicial Arbitrator Group shall provide the arbitration, unless the Parties agree otherwise. The arbitration shall be held in Eagle County unless all Parties thereto agree to a different location.

(iv) If a civil action or arbitration is not timely filed or if Claimant fails to appear for the civil or arbitration proceeding, the Claim will be deemed abandoned, and Respondent will be released and discharged from any and all liability to Claimant arising out of such Claim; *provided, however*, that nothing herein will release or discharge Respondent from any liability to Persons other than Claimant.

(v) This subsection 3(c) is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Colorado. Any arbitration award (the "Award") will be final and binding with no right to appeal except as otherwise provided by law, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

(d) Allocation of Costs of Resolving Claims. If the Claim is resolved through negotiation or mediation as provided above, each Party shall bear all of its own costs incurred in resolving the claim, including its attorney fees, unless the Parties otherwise agree. Except as provided for below, each Party, including, without limitation, any Owner and the Association, will share equally all charges for mediator. If the Claim is not resolved through negotiation or mediation and the Claim goes to litigation or binding arbitration, the prevailing Party shall receive as a part of its judgement or award from and against the opposing Party all of its costs, including reasonable attorney fees, and any expenses incurred as a result of the dispute resolution procedures of this Policy, including for negotiation and mediation, in accordance with the Governing Documents and applicable law.

- (e) Limitation on Damages. No Party, including, without limitation, any Owner and the Association, will be entitled to receive any award of damages in connection with the litigation or arbitration of a Claim other than such Party's actual damages, and the Association and any Owner will be deemed to have waived their right to receive any damages in a dispute other than actual damages, including, without limitation, special damages, consequential damages, and punitive or exemplary damages.
- (f) Enforcement of Resolution. If the Parties agree to a resolution of any Claim through negotiation or mediation and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with an arbitration award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or award without the need to again comply with the procedures set forth in this Policy. In such event, the Party taking action to enforce an agreement or award will be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

4. Legal Proceedings. Subject to the provisions of the Policy, the Association will have the right, but not the obligation, to institute legal proceedings to enforce all rights under the Governing Documents.

5. Deviations. The Association, acting through its Board, may deviate from the procedures set forth in this policy if, in its sole discretion, such deviation is reasonable under the circumstances.

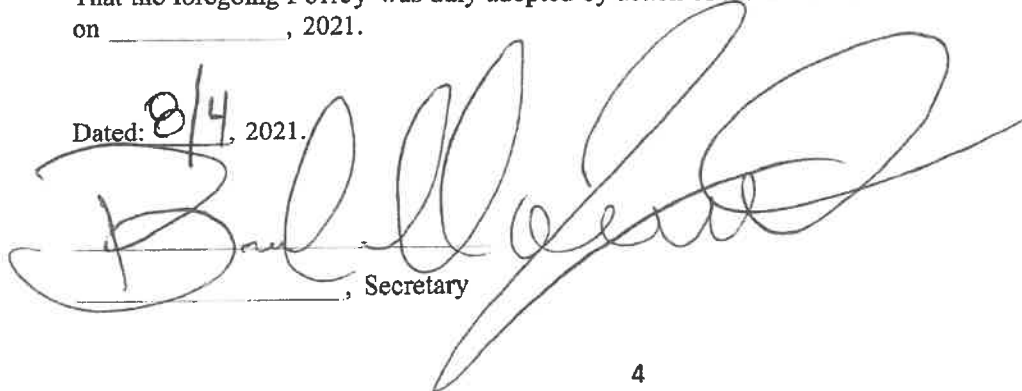
6. Amendment. This policy may be amended from time to time by the Board of Directors. This Policy replaces and supersedes all prior dispute resolution policies.

CERTIFICATION

I, the undersigned, do hereby certify: That I am a duly elected and acting Secretary of Beaver Bench Condominium Owners Association, Inc., a Colorado nonprofit corporation; and

That the foregoing Policy was duly adopted by action of the Board of Directors of the Association on _____, 2021.

Dated: 8/4, 2021.


_____, Secretary

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I, the undersigned, do hereby certify: That I am a duly elected and acting Secretary of Beaver Bench Condominium Owners Association, Inc., a Colorado nonprofit corporation; and

That the foregoing Policy was duly adopted by action of the Board of Directors of the Association on August 3, 2021.

Dated: 8/3, 2021.

Michelle Townsend
Michelle Townsend, Secretary
HOA President