

RESOLUTION NO. _____ OF THE BOARD OF DIRECTORS
OF

AMENDING ALTERNATE DISPUTE RESOLUTION PROCEDURES

[This provision tracks UCIOA and would be re-worked to utilize existing Covenants Committee and current procedures where possible.]

Section 1 - Purpose

The Association shall provide a fair and efficient procedure for the resolution of disputes between individual unit owners and the Association, and between different unit owners, that shall be readily available as an alternative to litigation. The procedures to be followed in providing this alternative are as follows.

Section 2 - General Procedures

- (a) Any unit owner, tenant, other resident, Director or the General Manager of the Association who believes that a unit owner, tenant, other resident, or the Association is engaging in conduct that violates the Association's Certificate of Incorporation, By-Laws, and/or Rules and Regulations (the "Governing Documents"), shall be entitled to file a written complaint with the Association or the Association's General Manager. The complaint shall be on a form prescribed by the Association, signed and dated by the person complaining.
- (b) The General Manager will attempt to resolve the complaint informally. If the General Manager is not able to resolve the complaint informally, the General Manager shall promptly provide a copy of each complaint to the Board of Directors.
- (c) If the Board determines that a complaint that alleges a violation of the Governing Documents against unit owner, tenant, or other resident has validity, the Board may:

(1) direct the General Manager to notify the respondent (i.e., the person against whom a complaint is made, and the actual unit owner, if different), that a complaint has been filed and demand that the conduct complained of cease by a specified date, advise the respondent that if the conduct does not cease by that date the Association may impose a fine (or fines for a continuing violation), and advise the respondent whether mediation of the dispute is available pursuant to the Association's Alternate Dispute Resolution Procedures; or

(2) impose a fine (or fines for a continuing violation) on the respondent, and direct the General Manager to notify the respondent of the fine(s), the basis for the fine(s) and the respondent's right to seek mediation of the fine(s).

(3) Any fine(s) imposed by the Board shall be reasonable and shall not exceed the maximum fine(s) allowed by the Association's Governing Documents, or the maximum monetary penalty permitted to be imposed for a violation or a continuing violation under section 19 of the "Hotel and Multiple Dwelling Law" N.J.S.A. 55:13A-19. Any fine(s) imposed shall be added to the unit owner's account and shall be additional rent due to the Association.

(d) If a dispute between unit owners and/or tenants or other residents is referred to mediation, the Board shall hold in abeyance any fine(s) or other covenants enforcement pending the completion of the mediation.

- (e) Whenever a complaint is required to be served on a respondent under these procedures, the General Manager shall serve a copy of the complaint (together with the notice required by subparagraphs (c)(1) and (2) above) on the respondent personally, or by simultaneous certified mail, return receipt requested and regular mail. Service by mail shall be deemed effective upon mailing. If the Board has imposed a fine, the notice shall also include the amount of the fine, and shall advise the respondent that he/she has ten days in which to request mediation of the fine.

Section 3 - Mediation Procedures

- (a) The Board shall promptly refer a dispute to mediation if the complaint involves:
 - (1) a housing-related dispute between two or more unit owners and/or tenants or other residents who all agree to mediation, that has not been informally resolved by the General Manager; or
 - (2) a dispute between the Board and a unit owner and/or tenant or other resident who requests mediation that involves an alleged violation by the Board of the Governing Documents. Mediation shall not be available for certain kinds of disputes with the Association; however, including but not necessarily limited to Board action that is discretionary in the management and operation of the Association, Board action that is protected from challenge by the business judgment rule, collection of past due arrears owed by a unit owner and similar disputes for which the Association is not legally required to offer alternative dispute resolution between itself and unit owners; or
 - (3) a request by a respondent for mediation of a fine imposed by the Association.
- (b) The Association is not required to offer alternative dispute resolution proceedings for a dispute that is exclusively a personal dispute between two or more

parties and which is unrelated to the common elements, or for a dispute regarding collection of an unpaid assessment, or for a dispute that does not involve the actual or prospective imposition of a fine or loss or denial of privileges. Assessments, late fees, and fines for nonpayment of assessments or late fees may be challenged in an alternative dispute resolution proceeding, but only on the grounds that they were not authorized by the Governing Documents or by law or that the method utilized for imposing them was not consistent with the procedure set forth in the Certificate of Incorporation, By-Laws or law.

- (c) With respect to a dispute in connection with which the Association is a party, reasonable filing fees may be charged by the Association for dispute resolution; provided, however, that such fees shall not exceed \$75 for each party, which shall be refundable to a party found to be the prevailing party. With respect to a dispute in which the Association is not a party to the dispute, all fees charged for alternative dispute resolution shall be borne by the unit owners who are parties to the dispute.
- (d) The mediation process shall be initiated upon the written request of all parties to a dispute, or by an individual unit owner, tenant or other resident if a dispute is with the Association. The form of the request for mediation shall be provided by the Association. The request for mediation shall contain a brief statement generally setting forth the nature of the dispute.
- (e) Within seven days following receipt of notice from a unit owner for dispute resolution, or prior to commencing suit, the Association shall provide the unit owner with a list of qualified mediator-arbitrators from the list maintained by the Office of the Ombudsman, which list shall be maintained by the Department of Community Affairs and made promptly available upon request. If any unit owner who is a necessary party to a dispute resolution fails to respond in writing, within 14 days following the posting in the United States mails, postage prepaid,

of the Association's notice offering dispute resolution and requesting a response within such time period, which notice was addressed to the unit owner at the address of record in the business office of the Association and at any other address that the unit owner may have provided in writing for alternative or emergency notification, the unit owner shall be deemed to have waived the right to participate in dispute resolution and the Association shall have no further obligation under §86 of the UCIOA Bill (A-3855).

- (f) If more than one unit owner is a party to a qualified dispute and all such unit owners cannot agree upon the identity of the dispute resolver, the Association shall choose from among any of the dispute resolvers selected by any of the unit owners.
- (g) Upon selection of a dispute resolver, the Association shall notify the dispute resolver so selected, who shall schedule the mediation-arbitration procedure within 30 days of the dispute resolver's selection.
- (h) Dispute resolution shall commence with mediation. If the mediation results in an agreement between the parties to the dispute, the agreement shall be set forth in writing and executed by the parties, and may then be enforced in the Superior Court in the same manner as a binding arbitration award.
- (i) Each party to the mediation may prepare and submit, at least three business days prior to the date scheduled for the mediation session, a written statement setting forth the acts or omissions from which the dispute arose; the specific provisions of the Governing Documents which allegedly have been violated; and/or the party's defense to the complaint. The position statement shall not exceed three (3) typewritten pages. No responsive or supplemental statements shall be permitted. The mediation shall be held, if possible, within twenty (20) days after the request for mediation is filed with the Association's General Manager.
- (j) Both parties shall meet with the mediator(s) for one

mediation session of not more than three (3) hours. If the dispute cannot be settled at the mediation session, or at any mutually agreed continuation, either party may give the other, and the mediator(s), a written notice declaring the mediation process at an end.

- (i) The mediator(s) shall manage the mediation proceedings as the mediator(s) deems best so as to make it expeditious and less burdensome than litigation. The mediator(s) shall be responsible for controlling the procedural aspects of the mediation proceedings. The mediator(s) shall not have the authority to impose a settlement on the parties, but may make recommendations for settlement and assist the parties in reaching a satisfactory resolution of the dispute. If, after the initial mediation session, the mediator(s) determines that adequate progress in the mediation has not occurred, the mediator(s) shall have the right to terminate the mediation, even if both parties assert their desire to continue the mediation.
- (ii) If the parties agree to settle the dispute, the settlement shall be documented by the mediator(s) at the conclusion of the mediation session and all parties will be asked to sign the agreement at that time. In the event the mediation is between a resident and the Board, the agreement will indicate that the terms negotiated by one or more members of the Board are subject to full Board approval and the representative members of the Board will undertake to secure that approval as soon as possible, but in any event not more than ten (10) days after the mediation. In the event that the full Board does not accept one or more of the provisions, every effort will be made to reschedule a mediation session to resolve outstanding issues.
- (k) Mediation proceedings shall be conducted in private. Only the parties and the mediator(s) shall attend. Other persons may attend only upon the express consent

of the parties and the mediator(s). All proceedings of, or writings generated in connection with, the mediator, including any position statement, settlement agreement, mediator's settlement recommendations, and any statement made by any party or other participant, shall in all respects be considered part of settlement negotiations and without prejudice to the respective rights, remedies and defenses of the Association and any other parties. Nothing said or disclosed during the mediation process, nor any document produced, which is not otherwise independently discoverable under the New Jersey Court Rules, shall be offered or received as evidence or used for impeachment or for any other purpose in any pending or future litigation, except that either party shall have the right to enforce any signed settlement agreement in accordance with its terms.

Section 4 - Arbitration Procedures

- (a) If the dispute is not resolved in mediation by a written agreement executed by all parties to the dispute, the alternative dispute resolution procedure shall proceed to binding arbitration if all parties agree in writing. If all parties do not agree in writing that the arbitration shall be binding, then the dispute shall proceed to non-binding arbitration. When all parties have agreed to binding arbitration, it shall be deemed to be an election of remedies and no party to the dispute may commence litigation with regard to the subject matter of the dispute, except as permitted by N.J.S.2A:24-1 et seq. (Title 2A "Administration of Civil and Criminal Justice", Subtitle 6 "Specific Civil Actions", Chapter 24 "Arbitration of Collective Bargaining Agreements", 2A:24-1 "Arbitration provisions; validity and effect"!).
- (b) Each party to arbitration shall have the right to introduce evidence and testimony concerning their position, cross-examine witnesses for the opposing party and present written legal arguments in support of their position.
- (c) The dispute resolver shall advise the parties, prior to the commencement of the dispute resolution procedure, whether

the parties will immediately proceed to arbitration if mediation is unsuccessful, or whether a separate proceeding will be established for arbitration if the mediation fails to produce a written agreement. If the dispute resolver advises the parties that mediation and arbitration are to be separate proceedings, and the parties do not reach a written agreement during the mediation phase, the dispute resolver shall schedule the arbitration hearing to occur within 30 days of the conclusion of mediation.

- (d) Each party to the arbitration shall have the right to request one adjournment of the hearing date, provided the adjournment request is made within 10 days of the date of the dispute resolver's notice establishing the date of the hearing. In case of an emergency, and upon good cause shown, the dispute resolver may honor a request for an adjournment that is made more than 10 days after the dispute resolver's notice. Upon a request for an adjournment, the dispute resolver shall reschedule the hearing within 14 days of the original hearing date unless (a) such date would cause a material hardship to one or more parties, whereupon the dispute resolver shall reschedule arbitration for a date certain in the arbitrator's sole discretion, but such date shall only be more than 30 days after the original date set for the arbitration hearing in the event of material hardship due to sickness, injury or death in the immediate family of a party to the dispute; or (b) the parties mutually consent to an alternate date. If any party fails to comply with the dispute resolver's scheduling of the arbitration, the arbitrator shall enter an award in favor of the non-defaulting party or parties.
- (e) The dispute resolver shall render a written arbitration award within 14 days following the conclusion of the arbitration hearing. If the arbitrator fails to issue a written award within 14 days, the Association shall give notice of such failure to the Department of Community Affairs and to the arbitrator. If the arbitrator fails to issue a written award within a further 16-day period, either party shall have the right to file suit with respect to the subject matter of the arbitration. Nothing shall prevent the Association from filing a lien with respect to the subject matter of the dispute following the expiration

of the 30-day period; provided, however, that the enforcement of any such lien may be stayed by a court having jurisdiction and that, in the event of a ruling by the arbitrator adverse to the Association after the end of the 30-day period, the lien shall be discharged by the Association at its sole cost and expense.

- (f) In the event that a dispute is not resolved through mediation, the dispute resolver shall, in the arbitration proceeding, assess costs against the non-prevailing party; provided, however, that the costs assessed shall not exceed \$300, which award of costs shall, in binding and non-binding dispute resolution procedures, be binding.
- (g) If emergency relief is required, a motion to stay the alternative dispute proceedings may be filed in the Superior Court. The motion shall be accompanied by a verified petition alleging facts that, if proven, would support entry of a temporary injunction, and if an appropriate motion and supporting papers are filed, the alternative dispute resolution proceedings shall be stayed pending a court hearing and disposition of a motion for temporary injunction.
- (h) A unit owner may file a claim with a court of competent jurisdiction with regard to any matter that would constitute a dispute under this Resolution; provided, however, that (1) any such court filing shall be deemed an election of remedies and shall bar the unit owner from any further alternative dispute resolution proceedings; (2) when a unit owner has initiated a claim with a court of competent jurisdiction after having been advised by the Association of the right to participate in alternative dispute resolution proceedings, the Association can immediately file a notice of fine or revoke or suspend the unit owner's privileges, if otherwise permitted by law and by the Governing Documents and subject to the authority of the court to stay any such action; and (3) where a unit owner has, in accordance with paragraph (a) of Section 4 of this Resolution, elected to participate in binding arbitration, the unit owner shall not be permitted to file a claim with a court of competent jurisdiction except as provided in paragraph (a) of Section 4. No claim may be filed by a unit owner while alternative dispute resolution

proceedings are ongoing, unless such proceedings have been abated pursuant to paragraph (g) of Section 4 of this Resolution. No application for alternative dispute resolution shall be filed with regard to any matter pending before a court of competent jurisdiction, except upon the order of the court.

Section 5 - Fines

- (a) A fine shall not be imposed on a unit owner unless the unit owner is given written notice of the action taken and of the alleged basis for the action, and is advised of the right to participate in an alternative dispute resolution procedure. A unit owner who does not believe that the mediation phase of the alternative dispute resolution procedure has satisfactorily resolved the matter and who does not agree to continue the procedure as binding arbitration shall not be prevented from seeking a judicial remedy in a court of competent jurisdiction.
- (b) No lien shall be recorded concerning a fine imposed by the Association unless:
 - (i) the right to the lien has been established pursuant to a determination by a court of competent jurisdiction, or
 - (ii) the fine imposition has been authorized through alternative dispute resolution proceedings, or
 - (iii) the unit owner has been notified by the Association, by personal service or by registered or certified mail, return receipt requested, of the unit owner's right to have the dispute resolved through alternative dispute resolution proceedings and has not requested such proceedings within 30 days of receipt of such notice or has, after requesting such proceedings, failed or refused to participate in them or discontinued such participation. If service is made by registered or certified mail, the date of receipt shall be deemed to be the date the mail is accepted or three days following the date of mailing, whichever comes first.

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