

CRESTED BUTTE SOUTH PROPERTY OWNERS ASSOCIATION, INC.

POLICY ADDRESSING DISPUTES AND ALTERNATIVE DISPUTE RESOLUTION

Adopted \_\_\_\_\_

The following policy has been adopted by the Crested Butte South Property Owners Association, Inc. ("Association") pursuant to C.R.S. Section 38-33.3-209.5, at a regular meeting of the Board of Directors.

NOW, THEREFORE, IT IS RESOLVED that the Association does hereby adopt the following policies and procedures for addressing and resolving disputes:

1. Policy It is the policy of the Association to require the use of Alternative Dispute Resolution ("ADR") to resolve disputes involving the Association and an Owner. ADR is defined as a procedure for settling a dispute by means other than litigation, such as mediation, non-binding arbitration, or binding arbitration.

2. Application. In the event of any dispute between the Association and an Owner, except for those Exempted Claims defined below, the Association and the Owner agree to mandatory alternative dispute resolution, in lieu of litigation, to resolve the dispute using the procedures set forth below.

3. Covered Claims. Covered Claims means disputes between one or more Owners and a) the Association or b) any current or former director or officer relating to their conduct in that capacity, or c) one or more Owners relating to their rights, duties and obligations as Owners to the extent the Association is involved therewith.

4. Exempt Claims. The following claims are exempt from the provisions of this Policy:

- (a) Any action by the Association against an Owner to collect assessments or other sums due to the Association, including a foreclosure proceeding.
- (b) Any action by the Association to enforce any provisions of the Association's Declarations, Bylaws, or Rules and Regulations, or other governing documents.
- (c) Any claim of the Association which if not pursued by the filing of a lawsuit would be deemed barred due to the applicable statute of limitations.
- (d) Any claim for immediate protective or injunctive relief, based on the health, welfare or safety of the Association, or an Owner, or the community of Crested Butte South, except that the underlying merits of the dispute shall be subject to this policy;
- (e) Any claim under federal or state law which precludes application of this policy; and
- (f) Any claim set forth in paragraph 7 hereunder.

2. Procedure for All Covered Claims. All claims other than Exempt Claims shall be considered Covered Claims and shall be resolved using the following procedures in lieu of litigation:

- (a) The Association or any Owner having a claim ("Claimant") against an

Owner or the Association, respectively (“Respondent”), other than an Exempt Claim, shall notify each Respondent in writing of the Claim (“Notice”), stating (i) the nature of the Claim, including the date, time, location, persons involved, and Respondent’s role in the Claim, (ii) the basis of the Claim (i.e. the provisions of this Declaration, the Bylaws, the Articles, Rules or Regulations or other authority out of which the Claim arises), (iii) what Claimant wishes Respondent to do or not do to resolve the Claim; and (iv) that Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The parties shall make every reasonable effort to meet in person to resolve the Claim by good faith negotiation.

(c) Mediation.

(i) If the parties do not resolve the Claim through negotiation within 20 days of the date of the Notice (or within such other period as may be agreed upon by the parties) (“Termination of Negotiations”), Claimant shall have 30 additional days to submit the Claim to mediation by an independent mediation service agreed upon by the parties.

(ii) If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of the Claim.

(iii) If the parties do not settle the Claim within 60 days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings (“Termination of Mediation”). The Termination of Mediation notice shall set forth when and where the parties met, that the parties are at an impasse, and the date that mediation was terminated.

(iv) Within 10 days of the Termination of Mediation, the parties shall again attempt to resolve the matter informally through negotiation.

(d) Arbitration.

(ii) If the parties do not resolve the Claim through negotiations, as provided for above, within 30 days of the Termination of Mediation, the Claimant shall then have 15 additional days to submit the Claim to arbitration in accordance with the appropriate rules of the American Arbitration Association, or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of the Claim. However, nothing herein shall release or discharge Respondent from any liability to anyone not a party to the proceedings.

(iii) This Policy is an agreement of the Association and Owners to mediate and/or arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable

arbitration law of the State of Colorado. The arbitration shall be final and binding 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.

5. Selection of Mediator/Arbitrator. Any ADR pursued must be done so using a trained mediator, arbitrator, or facilitator having some familiarity with the governance of community associations, and with the law of the subject matter underlying the dispute. If the parties to the ADR cannot agree, within 30 days of the request for ADR, on the facilitator, mediator, arbitrator, or other qualified person to conduct the ADR, then, within 10 days:

- (a) Each party shall choose a qualified person as defined in this Policy, and those so selected shall then appoint a third qualified person to be determined in their sole discretion.
- (b) In the event a party fails to select a qualified person as specified in subsection (a) above, the person selected by the other party shall be deemed acceptable to both parties and shall act as the facilitator, arbitrator, or mediator.

6. Costs. If the Claims are resolved through negotiation or mediator as provided above, each party shall bear all of its own costs incurred in resolving the Claim, including its attorney fees and mediation expenses, unless the parties otherwise agree. If the Claims are not resolved through negotiation or mediation as provided above and the Claim goes to arbitration, the prevailing party shall receive as a part of its award from the opposing party all of its costs, including attorney fees, costs for other representatives in resolving such Claim, and any expenses incurred as a result of the dispute resolution procedures of this Policy.

7. Failure to Comply with Settlement. If the parties resolve any Claim through negotiation, mediation, or arbitration as set forth above, and the other party fails to abide by the terms of such agreement or award, then the other party may file suit or initiate administrative proceedings to enforce such agreement or award without need to comply with the provisions of this Policy. In such event, the party taking action to enforce the agreement or award shall be entitled to recover from the non-complying party all costs incurred in enforcing such agreement or award, including and without limitation, attorney fees and costs.

8. Definitions. Unless otherwise defined in this Policy, initially capitalized or terms defined in the Declarations shall have the same meaning herein.

9. Supplement to Law. The provisions of this Policy shall be in addition to and in supplement of the terms and provisions of the Declarations and the law of the State of Colorado governing the community of Crested Butte South.

10. Deviations. The Board may deviate from the procedures set forth in this Policy if in its sole discretion such deviation is reasonable under the circumstances.

11. Amendment. This Policy may be amended from time to time by the Board of Directors.

Crested Butte South Property Owners Association, Inc.

By:

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Kevin Van Horn, President

Attest

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Mark Trautman, Secretary/Treasurer

This Policy Addressing Disputes and Alternative Dispute Resolution was adopted by the Board of Directors at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, and is effective the \_\_\_\_\_ day of \_\_\_\_\_, 2016, and is attested to by the Secretary of the Crested Butte South Property Owners Association, Inc.