

Elk Springs Homeowners Association, Inc.  
Policy and Procedure for Dispute Resolution

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Pursuant to the authority granted by Article 4.14 (A) of the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Elk Springs, Garfield County, (the “Declaration”) and as further authorized and required by the Colorado Common Interest Ownership Act, C. R. S. 38-33.3-209.5 (1) (b) (viii ) and 38-33.3-124 et seq. (the “Act”), the Board of Directors of Elk Springs Homeowners Association, Inc. (the “Association”) adopts the following policy and procedures for dispute resolution. Unless otherwise defined in this Policy and Procedure, initially capitalized or terms defined in the Declaration shall have the same meaning herein. This Policy and Procedure may be amended at any time by the Board of Directors of the Association.

The provisions of this Policy and Procedure shall be in addition to and in supplement of the terms and provisions of the Declaration and the law of the State of Colorado. The Board of Directors of the Association may deviate from the procedures set forth in this Policy and Procedure if in its sole discretion such deviation is reasonable under the circumstances. Furthermore, it is not the intent of this policy to supersede any of the provisions of the Association’s Amended and Restated Covenant Enforcement Rules and Regulations, Hearing Procedures and Schedule of Fines, as amended from time to time.

Policy:

It is the general policy of the Association to encourage the use of Alternative Dispute Resolution (“ADR”) to resolve disputes involving the Association and a Unit 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. Any ADR pursued must be done using a trained mediator, arbitrator, or facilitator having familiarity with the governance of community associations. In the event of any dispute between the Association and a Unit Owner, except for those Exempted Claims defined below, the Association and Unit Owner shall agree to resolve the dispute using the procedures set forth below prior to filing suit in any court or initiating proceedings before any administrative tribunal.

The following claims shall be exempt (“Exempted Claims”) from the provisions of this Policy:

- a) An action by the Association relating to the collection or enforcement of the obligation to pay assessments or other charges set forth in the Association’s Declaration, Articles, Bylaws, Policies, Rules and Regulations and Design Guidelines;
- b) An action by the Association to obtain a temporary restraining order or preliminary or permanent injunction (or equivalent emergency equitable relief)

and such other ancillary relief as the court may deem necessary in order to enjoin any immediate threat to persons or property;

c) Any action between or among Owners, which does not include the Association as a party, if such action asserts a claim which would constitute a claim for relief independent of the Association's Declaration, Articles, Bylaws, Policies, Rules and Regulations and Design Guidelines;

d) Any action in which an indispensable party is not the Association, its officers, directors, or committee members, or a person subject to the Association's governing documents, or their officers, directors, partners, members, employees and agents;

e) Any action to enforce a settlement agreement made under the provisions of this Policy and Procedures; and

f) Any claim initiated after the date when institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitation or statute of repose.

#### Procedure:

Notice of Claim: The Association or any Unit Owner having a claim ("Claimant") against a Unit Owner or the Association, respectively ("Respondent"), shall notify each Respondent in writing of the Claim ("Notice") stating the following:

a) The nature of the Claim, including the date, time, location, persons involved and Respondent's role in the Claim;

b) The legal or contractual basis of the Claim (i.e., the provisions of the Declaration, Bylaws, Articles, Policies, Rules and Regulations, Design Guidelines or other authority out of which the Claim arises);

c) What Claimant wants Respondent to do or not do to resolve the Claim; and

d) 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.

Negotiation/Duty to Confer: After the Respondent receives the Notice, the parties shall make every reasonable effort to meet and confer for the purpose of resolving the Claim by good faith negotiation. Such efforts may include inspections of the Claimant's or Respondent's Unit for purposes of evaluating any alleged violation. Any party may be represented by attorneys and independent consultants to assist in the negotiations and to attend meetings.

#### Mediation:

a) If the parties do not resolve the Claim through negotiation within sixty (60) 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 an additional sixty (60) days to submit the Claim to mediation by an independent mediation service agreed upon by the parties. In the event the parties are unable to agree on a mediator, a mediator shall be appointed upon application of either party to the Colorado Judicial Branch Office of Dispute Resolution. In such event, the Claim shall be deemed to be submitted upon filing the request for appointment of the mediator.

b) If the Claimant fails to submit the Claim to mediation with sixty (60) days after Termination of Negotiations, or fails to appear at the mediation, the 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 such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any person other than Claimant.

c) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the parties. If the parties do not settle the Claim within twenty (20) days after participating in the mediation with a mediator, 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.

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

#### Arbitration:

a) If the parties do not resolve the Claim through negotiation or mediation, as provided for above, within sixty (60) days of the Termination of Mediation, the Claimant shall then submit the Claim to arbitration with a trained, neutral arbitrator who will decide the outcome of the dispute based on evidence and testimony provided by the parties 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.

b) This Policy is an agreement of the Association and Unit Owners to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration law of the State of Colorado. If specifically agreed to by both parties to the arbitration, the arbitration shall be final and binding and judgment may be entered and enforced upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

c) Once the Claim has been submitted to arbitration as set forth above, the parties to the arbitration have thirty (30) days to agree on the arbitrator. If the parties fail to select an arbitrator, the parties shall submit a request for the appointment of an

arbitrator through the Judicial Arbitrator Group, Inc. or similar mutually agreed upon Colorado arbitration group conducting arbitrations in accordance with the American Arbitration Association rules and Colorado law. .

Costs: If the Claims are 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, and each party shall share equally all charges of the mediator. 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.

Failure to Comply with Settlement: If the parties agree to a resolution of any claim through negotiation, mediation or arbitration in accordance with this Policy and Procedure, and any party thereafter fails to abide by the terms of such agreement, then the other party may file its action in Garfield County, Colorado county or district court to enforce such agreement without the need to again comply with the Procedures set forth in this Policy. In such event the party taking action to enforce the agreement shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties as the court may determine) all costs incurred in enforcing such agreement, including without limitation, reasonable attorneys' fees and court costs.

#### **PRESIDENTS CERTIFICATION:**

The undersigned, being the President of the Elk Springs Homeowners Association, Inc. Board of Directors certifies that the foregoing Policy and Procedures for dispute resolution was adopted by the Board of Directors at a duly called and noticed meeting of the Board of Directors held on June 12, 2017 and in witness thereof, the undersigned has subscribed her name.

**/s/ Evelyn L. Cole**

President, Elk Springs Homeowners  
Association, Inc. Board of Directors

**June 12, 2017**

Date Adopted