

**RESOLUTION OF  
REGENCY AT MONTAINE COMMUNITY ASSOCIATION, INC.  
REGARDING ALTERNATIVE DISPUTE RESOLUTION**

Effective \_\_\_\_\_, 20\_\_\_\_, Regency at Montaine Community Association, Inc. (the “**Association**”) hereby adopts the following policy and procedures to be followed in the resolution of disputes between the Association and Owners:

- 1) Agreement to Encourage Resolution of Disputes Without Litigation. The Association and its officers, directors, and committee members, all Homeowners, tenants or other Persons who agree to submit to this Article (collectively, “Bound Parties”), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 16.2 in a good faith effort to resolve such Claim.
  
- 2) Claim. As used in this Article, the term “Claim” shall refer to any claim, grievance, or dispute arising out of or relating to:
  - a) the interpretation, application, or enforcement of the Governing Documents;
  - b) the rights, obligations, and duties of any Bound Party under the Governing Documents;
  - c) the design or construction of non-residential improvements within the Community, other than matters of aesthetic judgment under Article IV, which shall not be subject to review; or
  - d) a challenge to any decision by the Board or any decision by a Board Committee;
  - e) except that the following shall not be considered “Claims” unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 16.2:
  - f) any suit by the Association to collect assessments or other amounts due from any Owner;
  - g) any suit by the Association to enforce Article IV or the Design Guidelines with respect to residential improvements;
  - h) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association’s ability to enforce the provisions of Part Two of this Declaration (relating to creation and maintenance of community standards);
  - i) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;
  - j) any suit in which any indispensable party is not a Bound Party; and
  - k) any suit as to which any applicable statute of limitations would expire within one hundred eighty (180) days of giving the Notice required by Section 16.2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article;
  - l) a Construction Dispute

- 3) Notice. The Bound Party asserting a Claim (“Claimant”) against another Bound Party (“Respondent”) shall give written notice (“Notice”) to each Respondent and to the Board 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 Claimant’s proposed resolution or remedy; and
  - iv) the Claimant’s desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.
  
- 4) Negotiation. The Claimant and Respondent shall 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 negotiating a resolution of the Claim.
  
- 5) Mediation. If the Bound Parties have not resolved the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other agreed upon period), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Denver metropolitan area. Each Bound Party shall submit to the mediator a written summary of the Claim.
  - i) If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.
  - ii) If the Bound Parties do not settle the Claim within thirty (30) days after submitting the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.
  - iii) Each Bound Party shall bear its own costs of the mediation, including attorneys’ fees, and each Party shall share equally all fees charged by the mediator.
  
- 6) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the Bound Parties. If any Bound Party thereafter fails to abide by the terms of such agreement, then any other Bound Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the Bound Party taking action to enforce the agreement shall, upon prevailing, be entitled to recover from the non-complying Bound Party (or each one in equal proportions) all costs incurred in enforcing such agreement, including, without limitation, attorneys’ fees and court costs.
  
- 7) Initiation of Litigation by Association.
  - b) In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding against the Declarant or anyone else unless first approved by a vote of Members entitled to cast fifty percent

(50%) of the total Member votes in the Association. It is a condition precedent to the Association commencing any such judicial or administrative proceeding relating to any "construction defect action" (as defined in Section 303.5 of the Act) that the Association has fully complied with the requirements of Section 303.5 of the Act. The foregoing requirements for Member approval shall not apply to and no such approval is required for actions or proceedings:

- i) initiated during the Declarant Control Period;
- ii) initiated to enforce the provisions of this Declaration, including collection of assessments, and foreclosure of liens and seeking injunctive relief for non-monetary violations;
- iii) initiated to challenge *ad valorem* taxation or condemnation proceedings;
- iv) initiated against any contractor (exclusive of the Declarant and Builders), vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- v) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.
- vi) In the matters listed above, the Directors of the Association shall be indemnified for their decisions pursuant to Section 7.7 of the Declarations.

8) Construction Disputes.

Any claim, controversy or dispute, whether sounding in law, equity, contract or tort (excluding, however, tort claims arising from physical bodily injury) between the Declarant, the Association and/or any one or more Owners over or related to the design, construction or physical condition of the Common Area, Lots or Improvements related thereto constituting a "construction defect action" as defined in Section 303.5 of the Act and made against the Declarant, the Association, or any Construction Professionals (as defined in Section 303.5 of the Act) which shall be deemed a "Construction Dispute", shall be resolved by binding arbitration in accordance with the Uniform Arbitration Act of 1975, C.R.S. §13-22-201, et seq., as amended (or if such Act is repealed, then such other uniform state arbitration law enacted in its place). Any such arbitration proceeding may be required by an aggrieved person upon written notice ("Arbitration Notice") delivered to the Association, the Declarant or other person(s), as the case may be, before the date when commencement of legal or equitable proceedings based on such claim or dispute would be barred by the applicable statute of limitations. No such demand for arbitration shall be made after the date when such proceedings would be barred by the applicable statute of limitations. The Judicial Arbitrator Group in Denver, Colorado ("JAG") (or other arbitrator mutually acceptable to the parties) shall administer all aspects of arbitrations conducted hereunder, including the selection of arbitrators, pursuant to arbitration rules agreed upon by the parties or if agreement is not reached within thirty days after issuance of the Arbitration Notice, then pursuant to arbitration rules selected by the arbitrator. Arbitration hereunder shall be before a single arbitrator. The arbitrator shall possess the requisite experience and expertise in respect to matters to which the controversy relates to enable him or her to perform his or her arbitral duties competently. The cost of the arbitrator(s) and of any hearing transcript shall be divided equally between the parties. Any and all discovery in conjunction with such arbitration shall be limited to information directly relevant to the controversy or claim in arbitration and shall be concluded within forty-five (45) days after the appointment of the arbitrator or arbitration panel. Judgment upon the arbitrator's determination shall be entered and enforced by the district court for the County in which the Community is located. This Section 16.4(a) may not be amended, nullified or modified without the written consent of the Declarant.

9) **JURY WAIVER.** IN THE EVENT THAT ANY JUDICIAL PROCEEDING IS ALLOWED OR HAD HEREIN, IN ORDER TO EXPEDITE FINAL RESOLUTION OF ANY CONSTRUCTION DISPUTE, EACH PARTY TO THE DISPUTE WAIVES ANY RIGHT TO A JURY TRIAL FOR CLAIMS AND COUNTERCLAIMS RELATING TO THE CONSTRUCTION DISPUTE.

i) Limitations. Section 16.4 of this Article XVI shall not be amended unless such amendment is first approved by a vote of Members entitled to cast at least fifty percent (50%) of the total Member votes in the Association and shall not be amended, modified or repealed with respect to any Claims that constitute a “construction defect action” as defined in Section 303.5 of the Act without the prior written consent of the Declarant. The Association cannot sue anyone with respect to any issues on individual homes including, without limitation, construction and warranty claims, and can only sue for issues regarding the Common Areas and this limitation may not be amended, modified or repealed at any time without the prior written consent of the Declarant.

10) Definitions. Unless otherwise defined in this Resolution, initially capitalized or terms defined in the Declaration shall have the same meaning herein.

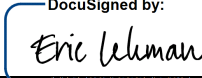
11) Supplement to Law. The provisions of this Resolution shall be in addition to and in supplement of the terms and provisions of the Declaration and the law of the State of Colorado governing the community.

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

13) Amendment. This Resolution may be amended from time to time by the Board of Directors.

The undersigned, being the President of the Association, certifies that this Resolution was adopted by the Board of Directors of the Association on 3/5/2021, 20  .

**REGENCY AT MONTAINE COMMUNITY  
ASSOCIATION, INC.,**  
a Colorado nonprofit corporation,

By:   
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President

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