

**VAIL GATEWAY PLAZA CONDOMINIUMS, INC. - POLICY
REGARDING ALTERNATIVE DISPUTE RESOLUTION (ADR)**

- SUBJECT:** Adoption of a procedure regarding Alternative Dispute Resolution.
- PURPOSE:** Establish a procedure to be followed for alternative dispute resolution of issues between Owners and the Association.
- AUTHORITY:** The Governing Documents of the Association and Colorado law.

The Governing Documents are comprised of:

- a. Amended and Restated Declaration for Vail Gateway Plaza Condominiums;
- b. Map for Vail Gateway Plaza Condominiums;
- c. Bylaws for Vail Gateway Plaza Condominiums;
- d. Articles of Incorporation for Vail Gateway Plaza Condominiums;
- e. Rules, Regulations and Policies for Vail Gateway Plaza Condominiums;
- f. Responsible Governance Policies as required by C.R.S. 38-33.3-209.5 for Vail Gateway Plaza Condominiums.

Colorado Law is comprised of:

1. Colorado Common Interest Ownership Act (“CCIOA”) codified at C.R.S. 38-33.3-101 et seq.
2. Colorado Revised Not for Profit Corporate Act (“CRNCPA”).

EFFECTIVE DATE: 1/28/2019
_____, 2018

RESOLUTION: Vail Gateway Plaza Condominiums (“Association”) hereby adopts the following Policy:

1. Adoption. These policies and procedures are hereby adopted for the purpose of compliance with C.R.S. 38-33.3-209.5(1)(b)(iv), which is applicable to pre-existing communities, and to promote the recreation, health, safety, and welfare of the Owners. Any undefined term herein shall have the meaning provided for in the Association Governing Documents.
2. Philosophy. As legislated at C.R.S. 38-33.3-124, which is applicable to pre-existing communities, the cost, complexity, and delay inherent in court proceedings make litigation a particularly inefficient means of resolving neighborhood disputes. Therefore, the Association hereby adopts these protocols to make use of mediation or arbitration as alternatives to, or pre-conditions upon, the filing of a complaint between an Owner(s) or group of Owners and the Association that do not involve an imminent threat to the peace, health, or safety of the community. The Association encourages the amicable resolution of

disputes involving the Association and its Owners without the emotional and financial costs of litigation.

3. Bound Parties. The Association, its officers, directors and committee members, all persons subject to the Declaration including Owners, and any person not otherwise subject to the Governing Documents who agrees to submit to this Policy are referred to collectively herein as the “Bound Parties” and are the person(s) or entities bound by this Policy.
4. Definition of Dispute. The term Dispute for purposes of this Policy shall mean any type of dispute or claim of any nature or kind, including interpretation and enforcement of the Governing Documents or applicable law other than those excepted to below and each Bound Party covenants and agrees that those claims, grievances or disputes described herein. All Disputes (“Dispute”) shall be resolved using the procedures set forth below in lieu of filing suit in any court. Dispute shall not include the following:
 - 4.1 Any action for or related to collection of Assessments in which event the Association’s Assessment Collection Policy shall govern; or
 - 4.2 Enforcement of the Governing Documents in which a fine or penalty is assessed or implemented against an Owner, in which event the Association’s Enforcement Policy shall govern with the exception of election to proceed under this Policy as addressed in more detail in Section 5 below; or
 - 4.3 Any suit by the Association to obtain a temporary restraining order (ore equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association’s ability to enforce the architectural standards and use restrictions and rules; or
 - 4.4 Any suit between Owners, which does not include the Association as a party, if such suit asserts a Dispute which would constitute a cause of action independent of the Association Documents; or
 - 4.5 Any suit in which any indispensable party is not a Bound Party; and
 - 4.6 Any suit as to which any applicable statute of limitations would expire within 180 days of giving the notice required below.
5. Election to Proceed Under this Policy. In any matter excluded in Section 4 above from the definition of a Dispute, the Executive Board may propose the alternative of addressing the matter under this Policy and if the Owner(s) elects that option, the Owner shall be deemed to have elected to proceed under this Policy and to have waived the other relevant processes under the Governing Documents including the Enforcement Policy. Any Disputes regarding the application or interpretation of the Enforcement Policy shall be addressed under this Policy.

6. Integration with Governing Documents. This Policy is intended to work in harmony with the Governing Documents and in particular with the Association’s Amended Enforcement Policy (“Enforcement Policy”).

7. Mandatory Procedures.

7.1 Notice. Any Bound Party having a Dispute (“Claimant”) against any other Bound Party (“Respondent”) (collectively, the “Parties”) shall notify each Respondent in writing (the “Notice”), stating plainly and concisely:

- 7.1.1 The nature of the Claim, including the Persons involved and Respondent’s role in the Claim;
- 7.1.2 The legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- 7.1.3 Claimant’s proposed remedy; and
- 7.1.4 That Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

7.2 Negotiation and Mediation.

- 7.2.1 The Parties 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 Executive Board may appoint a representative to assist the Parties in resolving the dispute by negotiation.
- 7.2.2 If the Parties do not resolve the Claim within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon in writing by the Parties) (“Termination of Negotiations”), Claimant shall have thirty (30) additional days to submit the Claim to mediation under the auspices of a reputable and knowledgeable mediation group providing such services in Eagle County, or, if the Parties otherwise agree, to an independent agency providing dispute resolution services in the Eagle County, Colorado, area.
- 7.2.3 If Claimant does not submit a claim to mediation within thirty (30) days after Termination of Negotiations, or does not appear for the mediation, 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 the Claimant.

7.2.4 Any settlement of the Claim through mediation shall be documented in writing by the mediator. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined 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 that the Parties are at an impasse and the date that the mediation was to be mediated.

7.2.5 Within five (5) days of the Termination of Mediation, the Claimant shall make a final written settlement demand (“Settlement Demand”) to the Respondent and the Respondent shall make a final written settlement offer (“Settlement Offer”) to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant’s original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a “zero” or “take nothing” Settlement Offer.

7.3 Attorneys’ Fees. Each Party shall bear their own Attorneys’ Fees and costs incurred addressing a Dispute through completion of mediation except in the event a Party fails to appear at Mediation the Party who does appear shall be entitled to their attorneys’ fees and costs to prepare for and attend the Mediation.

8. Final and Binding Arbitration.

8.1 If the Parties do not agree in writing to a settlement of the Claim within thirty (30) days of the Termination of Mediation, the Claimant shall have fifteen (15) additional days to submit the Claim to arbitration to the Judicial Arbitrator Group in Denver, CO. in accordance with the rules of arbitration for the Judicial Arbitrator Group. The

arbitrator shall be a single arbitrator to be appointed by the Parties. If the Parties are unable to agree upon an arbitrator within thirty (30) days of the Claim being submitted to arbitration, the Arbitrator shall be appointed by the Judicial Arbiter Group. The Arbitrator shall have experience with common interest community governance. No person shall serve as the arbitrator where that person has any financial or personal interest in the result of the arbitration. Any person designated as an arbitrator shall immediately disclose in writing to all Parties any circumstance likely to affect the appearance of impartiality, including any bias or financial or personal interest in the outcome of the arbitration (“Arbitrator Disclosure”). If any Party objects to the service of any arbitrator within fourteen (14) days of after receipt of that Arbitrator’s Disclosure, such arbitrator shall be replaced in the same manner in which that Arbitrator was selected. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to persons other than Claimant.

9. This subsection is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Colorado. The arbitration award (the “Award”) 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.
10. Award of Attorneys’ Fees. The Arbitrator may award attorney’s fees and costs as prescribed by C.R.S. 38-33.3-123 (1) (b) (c) and (d) and the Governing Documents subject to neither Party being entitled to an award of their attorneys’ fees and costs incurred through Mediation.
11. Enforcement of Resolution. After resolution of any Claim, if any Party fails to abide by the terms of any agreement or 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 Section. In such event, the Party taking action to enforce the agreement or Award shall 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.

12. Claim for Damages. Damages alleged or awarded in connection with a Claim shall only be actual damages. No punitive, incidental, consequential or other damages shall be claimed or awarded.

13. Supplement to Law. The provisions of this Resolution shall be in addition to and in supplement of the terms and provisions of the Governing Documents.

PRESIDENT’S CERTIFICATION: The undersigned President of the Vail Gateway Plaza Condominiums, a Colorado nonprofit corporation, certifies that this Policy was adopted in compliance with the Governing Document.

Vail Gateway Plaza Condominiums, Inc., a Colorado non-profit corporation,

By:  _____

President of the Executive Board