

OVERLOOK VILLAGE CONDOMINIUM ASSOCIATION, INC.

POLICY RESOLUTION 00_____ -01

**REGARDING ALTERNATIVE DISPUTE RESOLUTION
AND SYSTEM OF FINES**

WHEREAS, the Declaration of Covenants and Restrictions and By-Laws (the "Governing Documents") empower the Board to take all those actions necessary for the proper conduct and administration of the affairs of the Association; and

WHEREAS, the Declaration and the By-Laws specifically empower the Board to levy fines in order to enforce compliance with the Governing Documents and Rules and Regulations of the Association; and

WHEREAS, it is the intent of the Board, in accordance with the Planned Real Estate Development Full Disclosure Act, and the regulations thereunder, N.J.A.C. 5:26-8.2(c) to establish a procedure for the resolution of housing related disputes among individual unit owners and between unit owners and the Association, and a procedure for the imposition of fines related to such disputes, which comports with the need for efficient and fair management of the Association and the principles of due process; and

WHEREAS, the term "housing related disputes" shall mean those disputes relating to (1) infractions of rules, restrictions or duties established in the Governing Documents, and (2) architectural control matters (hereinafter, "Disputes"); and

WHEREAS, an ADR Committee ("Committee") has been formed by the Association, and consists of unit owners who are not Trustees or officers of the Association; and

WHEREAS, the Committee shall require any Committee member involved in a dispute to excuse himself from any proceedings in connection therewith;

NOW THEREFORE, be it resolved that the following Resolution establishing the Association's policy for alternative dispute resolution and the imposition of fines shall be and hereby is adopted;

ARTICLE I

THE DISPUTE RESOLUTION PROCEDURE

1. **Request for Hearing.** Each property owner shall be advised in writing by the Association of his right to a hearing pursuant to this policy in all cases where the right to a hearing may apply, including but not limited to, the enforcement of rules, regulations and restrictions of the community. A hearing may be requested, in writing, within ten (10) days of receipt by the owner of the notice of the right to hearing. In the event a hearing is not timely requested, a hearing may thereafter be denied.

2. **Enforcement of Rules and Regulations.** The managing agent, an officer or trustee of the Association, or a property owner may file a written statement with the Association, alleging a violation of a rule, regulation or restriction. The statement of violation should set forth in clear and concise language the

acts or omissions with which the respondent is charged and should be as specific as possible as to times, dates, places and persons involved. A statement of violation must be supported by reasonable evidence, or it may be rejected.

2. Informal Actions. When the Association receives a statement of violation, and informal action may, but need not, be taken by the claimant or any officer or agent of the Association, whereby a request is made that the respondent cease or correct the violative conduct. If appropriate, the Association may seek to resolve the dispute or stop the violation through negotiation or mediation.

3. Service of Notice of Violation and Intent to Levy Fine. If informal action is not taken or proves unsuccessful, the Association's managing agent, in the name of the Association, shall serve upon the property owner and tenant, if applicable, in violation (the "Respondent") a Notice of Violation and Intent to Levy Fine. The Notice of Violation and Intent to Levy Fine may be combined in a single letter-form document and shall be collectively referred to hereafter as the "Notice."

The Notice should include:

(a) The acts or omissions, with which the Respondent is charged, including, if possible, times, dates, places and persons involved;

(b) The specific provisions of the Governing Documents or Rules and Regulations that the Respondent allegedly violated;

(c) The fine to be assessed against the Respondent for the violation, if applicable, and, at the option of the Association, any additional fine that will be assessed if Respondent continues the violation;

(d) Any suspension of voting rights or right to use common facilities or amenities;

(e) Notice that the Respondent may contest the Notice by filing a written answer to the Notice;

(f) Notice that Respondent must contest the Notice within ten (10) days of receipt of the Notice or waive his right to contest; and

(g) Notice that if Respondent contests the Notice, Respondent has the right to a hearing in accordance with this Policy Resolution. The fine imposed or suspension of rights shall be held in abeyance pending the outcome of the Alternative Dispute Resolution Proceeding.

The Notice shall be served upon the Respondent either (1) by personal service, which service may be effectuated by the Managing Agent of the Association or other agent of the Association, or (2) by Regular First Class Mail, or by Registered or Certified Mail, Return Receipt Requested, addressed to Respondent at the address appearing on the books of the Association. Service by mail will be deemed effective three (3) days after posting in a regular depository of the United States mail.

4. Guidelines for the Imposition of Fines. The Association may assess fines in relation to the Notice beginning on the date of the first offense and the fines may continue to accrue each day until the violation is abated.

The Respondent shall be fined in an amount not greater than \$25 for a single violation unless the violation involves violence to person or property, in which case the fine may be up to \$100, or unless fines are established in specific amounts for particular violations in the Association's Rules and Regulations, as same may be amended from time to time. Each day on which a violation persists after the service of the Notice may be treated as a separate violation for which a separate fine of not more than \$25 may be assessed.

In addition to any fine assessed, the Association may impose upon the Respondent the reasonable cost of repair or replacement of any item on the Common Property which is damaged intentionally or through the negligence of the Respondent or his tenant or guest. The Association may also suspend voting rights and the right to use common facilities or amenities in lieu of, or in addition to, the imposition of fines, so long as such suspension complies with the Governing documents. For a non-continuous violation, the suspension of voting rights and the right to use common facilities or amenities shall not exceed thirty (30) days. If the violation is of a continuing nature, the suspension of voting rights and rights to use common

facilities or amenities may continue indefinitely until the violation is abated.

In accordance with the Governing Documents, the owner shall be responsible for any fine arising from conduct of the owner's tenant or tenant's guests or invitees, without prejudice to owner's right to collect such sums back from tenant, under owner's lease.

5. Respondent's Options Upon Receipt of the Notice. Upon receipt of the Notice, the Respondent may:

(a) Cease and/or correct the action(s) complained of in the Notice and pay the fine assessed.

(b) File a written answer to the Notice and request for a hearing within ten (10) days of receipt. Said written answer will be evaluated, with all other germane evidence presented, by the ADR Committee.

(c) If a respondent does not reply to a Notice within ten (10) days, he shall be in default, and the Association may impose against him any sanction set forth in the Notice.

6. The Alternative Dispute Resolution Proceeding.

(a) If a written request for hearing is filed, the ADR Committee shall schedule the hearing as soon as possible, but not later than thirty (30) days, unless special circumstances exist. The ADR Committee may adjourn any hearing upon request, for good cause. A quorum shall be established by the attendance of one (1) or more Committee members.

(b) At the hearing, the ADR Committee shall select a Committee member to act as presiding officer for the hearing. It is the duty of the presiding officer to explain the rules and procedures of the hearing. Counsel for the Association may be present at the hearing and may advise the Committee at the Committee's request.

(c) At the request of the person who filed the written Notice or Respondent, or on its own motion, the ADR Committee may conduct the Proceeding in private session.

(d) Each party has the right to be represented by counsel, the right to present relevant evidence and the right to cross-examine witnesses. Respondent may obtain copies of the relevant books, documents or other items, if available, by applying to the Board of Trustees or the Managing Agent of the Association.

(e) Technical rules of evidence or procedure may be relaxed by the presiding officer who, nevertheless, may reserve the right to exclude all irrelevant, immaterial, or repetitious evidence. Written evidence may be accepted if deemed trustworthy by the Committee. The presiding officer also has the discretion to impose reasonable limits on the time allowed to testify and the number of witnesses.

(f) The Committee may establish reasonable time limits on the presentation of evidence at a hearing. Once the evidence is presented, the Committee shall adjourn in order to render a decision. The Committee may request at any time written

statements from any party or from counsel in order to clarify any issue. All Decision shall be rendered in writing, but need not be in any particular form.

(g) If the person or body who filed the statement of violation or a critical witness to the violation does not appear at the Proceeding, the Notice may be dismissed.

(h) The Respondent may rely upon his or her written answer to the Notice in lieu of appearing at an Alternate Dispute Resolution Proceeding. However, if a hearing is requested and Respondent fails to attend, the payment accompanying the request shall be forfeited.

7. Decisions. To be effective, a Decision of the ADR Committee must be made in writing pursuant to a majority vote. Copies of the Decision of the ADR Committee must be delivered to the parties by personal service or regular mail promptly after the Decision is issued.

8. Matters or Issues in Litigation. The Board may, at its discretion, deny a unit owner the right to an Alternate Dispute Resolution Proceeding where the matter or issue for which the proceeding is requested has been or is currently being litigated by the Association or a unit owner. The Association may, upon notice to the Complainant, postpone forwarding the Notice to the ADR Committee for up to ninety (90) days after its receipt of the Notice if litigation of the matter or issue raised in the Complaint is pending or imminent. If the anticipated litigation does not commence during the ninety (90) day period, the Board

must forward the Notice to the Covenants Committee for Alternate Dispute Resolution Proceedings.

ARTICLE II

APPEALS

1. Any Decision of the ADR Committee may be appealed by an affected unit owner to the Board of Trustees. The Board may not appeal a decision in which it is a party.

2. All appeal petitions must be submitted to the Board within ten (10) days after receipt of a copy of the written Decision or Ruling from the ADR Committee. In the event that an appeal petition is not filed within the ten (10) day period, the Decision of the ADR Committee is not appealable to the Board

3. Any unit owner making an appeal pursuant to this Article II shall have the opportunity to be heard by the Board upon ten (10) days written notice, and shall have the right to be represented by counsel. The conduct of the hearing before the Board shall be at the Board's discretion and shall not be controlled by the provisions set forth in this Resolution for the conduct of the Alternative Dispute Resolution Proceedings.

ARTICLE III

MISCELLANEOUS PROVISIONS

1. **Exhaustion of Remedies Provided Herein.** Unit owners and tenants must exhaust all remedies provided by this Resolution before resorting to a court of law for relief.

2. **Construction.** Any inadvertent omission or failure to follow the procedures in this Resolution will not invalidate the results of any Decision or Ruling, as long as a prudent and reasonable attempt was made to assure basic due process rights.

3. **Rules of Decision.** The role of the ADR Committee shall be strictly limited to making findings of fact and a proposed resolution of housing related disputes in a manner not inconsistent with the rules, regulations or policies of the Board, or the covenants or restrictions in the Condominium Governing Documents, as same may be interpreted by the Board. It shall not be the function of the ADR Committee to modify, alter or amend in any way any rule, regulation or policy of the Board, or any restriction or covenant in the Governing Documents. Rather, it shall be the function of the ADR Committee to determine whether a violation of any rule, regulation, policy, restriction or covenant has occurred, and if so, what the appropriate remedy therefore shall be.

4. **Counsel.** The ADR Committee may utilize the services of counsel when necessary in order to advise the Committee on procedural issues or to answer questions about the interpretation of the Governing Documents. The ADR Committee may utilize the Board's counsel or outside counsel for this purpose. The Board shall approve any expense for counsel fees in advance of incurring counsel fees.

5. **Nonapplicability.** This alternative dispute resolution procedure is not applicable to disputes involving the nonpayment of regular or special common expense assessments.

I certify that the foregoing Resolution was duly adopted by the Board of Directors of the Overlook Village Condominium Association, Inc. at a meeting duly held in accordance with the By-Laws of the Association on May 23, 2001.

ATTEST:

Patricia McHenry, Secretary