

CRESTWOOD VILLAGE FIVE

**Alternate Dispute Resolution
Practice and Procedure**

RESOLVED, by the Board of Trustees of Crestwood Village Five on

April 2, 2003 as hereinafter set forth:

1. There be established a Practice and Procedure to resolve disputes between Crestwood Village Five and its Members, as well as disputes that might arise among the Members themselves, involving the enforcement of the obligations set forth in the Governing Documents known as Crestwood Village Five Covenants, By-Laws and Rules and Regulations.

2. The Board of Trustees shall be responsible for implementing the Practice and Procedure on behalf of Crestwood Village Five.

3. The Practice and Procedure shall consist of several sequential stages known as Investigation, Negotiation, Mediation and Arbitration.

4. A decision of Investigation, Negotiation or Mediation reached at the conclusion of the stages shall be binding upon the Parties unless one or both are dissatisfied with the result and elect to proceed to the next sequential step. A decision reached at the conclusion of Arbitration shall not be binding upon the Parties unless they both agree to that effect.

5. There shall be at least one Compliance Committee of at least one Trustee and two Members selected by the Board of Trustees to supervise the Practice and Procedure of resolving disputes between the Association and its Members and/or between the Members themselves. They shall keep written records of those proceedings. There may be more than one Compliance Committee selected by the Board of Trustees at its direction dependent upon need.

6. Disputes that relate to the determination and/or payment of special common expense assessments levied against Members in accordance with the Governing Documents are not issues subject to the Practice and Procedure. They are the sole province of the Board of Trustees and are not subject to review.

7. Nothing herein set forth shall prevent Members or the Association from pursuing legal remedies which they may have in a Court of Law so long as the Practice and Procedure has first been undertaken.

8. The mediator shall manage the mediation proceedings as the mediators deem best so as to make it expeditious, economical and less burdensome than litigation. The mediator shall be responsible for controlling the procedural aspect of the mediation process. The mediators

do not have the authority to pose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute. The mediators are authorized to conduct joint and separate meetings with the parties and to make all and written recommendations for settlement. Whenever necessary, the mediators may also obtain expert advice concerning technical aspect of the dispute, provided that the parties agree and assume the expense of obtaining such advice. Arrangements for obtaining such advice shall be made by the mediators or the parties as the mediators are authorized to end the mediation whenever, in the judgment of the mediators, further efforts at mediation would not contribute to a resolution of the dispute between the parties. There shall be no stenographic record of the mediation process.

9. In the event that a dispute involves a Tenant of premises located in the Community, both the Tenant and the Member owning the leased premises are necessary Parties to the Practice and Procedure.

10. At all times in these proceedings the Members and the Association may be represented by an attorney licensed to practice law in the State of New Jersey.

11. Any inadvertent omission or failure to conduct an adversary proceeding in exact conformity with the Practice and Procedure shall not invalidate the result of such proceedings so long as a prudent and reasonable attempt has been made to insure due process according to the general steps set forth herein.

Investigation

1. Any Officer, Trustee, Area Representative or Manager has the authority to request a Member cease or correct any act or omission which appears to be a violation of the Governing Documents. Any such complaint and the results thereof shall be reported in writing to the Compliance Committee. The Member shall be notified in writing with respect to the alleged violation

2. With respect to the use of any facility where a violation of Rules for its use might endanger life, limb, property or equity in the Association, any such Officer, Trustee, Area Representative, or Manager may, without further notice, suspend for a period of not greater than 72 hours the right of any Member to use that facility. Prior to any such suspension, however, a verbal request to cease or correct the violation must have resulted in non-compliance.

3. The Compliance Committee shall decide whether there should be any further proceedings based upon the nature of the incident and the results obtained.

Negotiation

1. The Compliance Committee may make initial attempts to secure compliance by a Member with the Governing Document or disputes which arise among the Members of the Community through correspondence which states the time, date, place and nature of the violation and which sets forth the time period in which the violation must be corrected. Notice to a Member shall be by certified mail, return receipt requested. If a Member does not comply with the request of the Compliance Committee or otherwise respond within a 10 day period, the notice shall indicate that all allegations contained therein shall be deemed admitted and the Board of Trustees shall have the right to impose the sanctions authorized in the Governing Document. Copies of such correspondence shall be maintained by the Compliance Committee.

2. Should the dispute not be resolved by correspondence, the Compliance Committee shall conduct hearings at which time the Member is requested to attend in a further effort to resolve the dispute whether it

involves the enforcement of the Governing Documents or disputes among the Members of the Community. The timing of the hearing is at the discretion of the Compliance Committee and shall be completed within a 30 day period from the initial correspondence.

3. The Compliance Committee shall attempt in good faith to resolve any controversy, claim or dispute. It shall keep written records of its procedures. Should the Parties fail to resolve the dispute through negotiation; the Compliance Committee shall notify the Parties of the availability of the sequential Practice and Procedure of Mediation and Arbitration.

Mediation

1. If the dispute has not been resolved by Negotiation as set forth above, the next procedure to be followed is Mediation.

2. A formal Mediation process may be initiated upon the written request of any Party to the dispute within a period of 10 days after the conclusion of the Negotiation process. The form of the request shall be provided by the Compliance Committee. The request for Mediation shall contain a brief statement generally setting forth the source and nature of the dispute.

3. Mediation shall be conducted in accordance with the Mediation Rules of the American Arbitration Association then in effect and as may be modified by this Resolution by Mediators mutually selected by the Parties.

4. The Association shall maintain a list of impartial persons to act as Mediators. All of them shall be volunteers among the Membership of the Association. None of them shall be current Officers, Trustees, Area Representatives or Chairpersons of Administrative Committees of the Association. Chairperson of social or recreational committees of the Association are not excluded from serving as mediators. Every effort should be made to maintain a current list of at least seven Mediators.

5. Upon receipt of a Request for Mediation, the Association shall promptly provide the Parties with the names and resumes of the Mediators. Each of the Parties shall have the right to designate one of the Mediators to hear the dispute. Those two Mediators shall designate a third Mediator who shall act as Chairperson. If either or both of the Parties are unable to agree upon a Mediator within 5 days of the date of the Request for Mediation, the Compliance Committee shall select the Mediator(s).

6. Each Party to the Mediation shall prepare and submit no later than 3 days prior to the time scheduled for the Mediation Session, a written

statement setting forth in ordinary and concise language the acts or omissions from which the dispute arose. Should the dispute involve the Association, the statement should specify the provisions of the Governing Documents which have been violated and/or the Party's defense thereto. Should the dispute be between Members of the Association, the statement should specify the events involving the dispute and/or the defense thereto. The statement shall not exceed three typewritten pages. The statement shall not be construed as a pleading, shall not satisfy any discovery obligation, and shall not limit the evidence the Parties may later use in Arbitration in a Court of Law, if Mediation does not result in settlement. No responsive or supplemental statements shall be permitted. Such statements shall be referred to as Position Statement, both the complaint and defense thereto.

7. Within 5 business days after the Mediators have been selected, both Parties shall meet with the Mediators for one session of not more than 4 hours. If the dispute cannot be settled at such Mediation session, or at any mutually agreed continuation thereof, either Party may give the other, and the Mediators, written notice declaring the Mediation process at an

end. Thereafter, the dispute may proceed to Arbitration. If not, then the prior decision reached at Investigation shall remain in effect.

8. The Mediators shall manage the Mediation proceedings as the Mediators deem best so as to make it expeditious, economical and less burdensome than litigation. The Mediators shall be responsible for controlling the procedural aspects of the Mediation proceedings. The Mediators shall make recommendation for settlement and assist the Parties in reaching a satisfactory resolution of the dispute. In the absence of an agreement between the Parties, the Mediators shall not have the authority to impose a settlement on the Parties.

9. Mediation proceedings shall be conducted in private. Only the Parties, and the Mediator shall attend the proceedings. Other persons may attend only upon the express consent of the Parties and the Mediators. All proceedings of or writings generated in connection with the Mediation Conference, including the Position Statement, Settlement Agreement or Mediators' Decision, and statements made by any Party shall in all respects be considered privileged information. Nothing said or disclosed, nor any document produced, which is not otherwise independently discoverable, shall be offered or received as evidence or any other purpose in any

current or future Arbitration proceedings or litigation, except that either Party shall have the right to enforce the Settlement Agreement or Negotiator's Decision in accordance with its terms.

10. If the Parties agree to settle the dispute, such settlement shall be memorialized in a written agreement and signed at the conclusion of the Mediation by each of the Parties to the Mediation. This would be a Settlement Agreement. If the Parties cannot agree to settle the dispute, the Mediators shall make a finding of facts and prepare a Decision.

Arbitration

1. If the dispute has not been resolved by Mediation, it may be referred to Arbitration by a sole Arbitrator who is designated as such by the American Arbitration Association. Selection of the sole Arbitrator shall be from a list of four names by the American Arbitration Association. From the list, each Party shall rank its preference in order from one to four. These names will then be returned to the American Arbitration Association which will in turn select the Arbitrator based upon each Party's ranking. Referral to Arbitration may be made by any one of the Parties. Any issue as to whether or the extent to which the dispute is subject to Arbitration shall be decided by the Arbitrator.

2. A formal Arbitration proceeding shall be commenced upon the filing with the Compliance Committee of a Notice of Intent to Arbitrate by all Parties to the dispute or by a Member in the event the dispute is with the Association. The form of Notice shall be provided by the Compliance Committee. The Notice shall contain a brief statement generally setting forth the source and nature of the dispute and shall be accompanied by a filing fee in the amount established by the Arbitrator. This cost shall be borne by the party seeking arbitration.

3. The Arbitration shall be conducted in accordance with the Mediation Rules of the American Arbitration Association then in effect and as modified by this Resolution. The Arbitrator shall be selected as set forth in Subparagraph 1 above. In absence of acceptance to that procedure by the Parties, the Compliance Committee shall select an Arbitrator. That Arbitrator shall be an impartial independent neutral who shall have no relationship with either Party. The Arbitration shall be governed by the substantive law of the State of New Jersey.

4. Within 30 days after the appointment of an Arbitrator, a Preliminary Hearing among the Arbitrator and the Parties shall be held for the purpose of developing a plan for the management of the Arbitration

which shall be memorialized in an appropriate order. The matters which may be addressed at the Preliminary Hearing include without limitation: (a) definitions of issues; (b) scope, timing and types of discovery, if any; (c) schedule and place of hearings; (d) setting of other timetables; (e) submission of briefs; (f) whether, and to what extent, expert testimony will be required, whether the Arbitrator should engage one or more neutral experts, and whether engagement of experts by the Parties can be obviated or minimized; (g) whether, or to what extent, the direct testimony of witnesses will be received by affidavit; and (h) any other matters which would promote the efficient, expeditious and cost effective conduct of the proceeding. This Preliminary Hearing may be waived or limited if the Arbitrator deems it appropriate under the circumstances.

5. Requests for discovery shall be submitted to the Arbitrator not less than 10 days prior to the Preliminary Hearing. Each Party shall provide the other with copies of documents relevant to the issues raised by any claim or counterclaim. The Arbitrator shall permit such relevant discovery as he/she shall determine is appropriate under the circumstances, taking into account the needs of the Parties and the desirability of making discovery expeditious and cost effective. Such discovery may include production of

requested documents and depositions, particularly of witnesses who will not appear personally before the Arbitrator to testify, if there is a substantial, demonstrated need therefor. All discovery shall be completed within 15 days after the Preliminary Hearing.

6. There shall be no disposition motion practice (motions for dismissal, and the like). The Arbitrator shall not be bound by the rules of evidence or civil procedure, but may consider such writings and oral presentations as deemed reasonable.

7. Any provisional remedy available from a Court of Law shall be available from the Arbitrator to the Parties pending Arbitration of the dispute. In the event a Party deems it necessary to prevent irrevocable harm from an alleged violation, such Party may make an application to the Arbitrator seeking preliminary injunction relief to maintain the status quo or safeguard the property that is the subject of the dispute until the Arbitration award is rendered or the dispute is otherwise resolved. If the Arbitrator issues an injunction, the same may be enforced in the manner as any final award of the Arbitrator.

8. A hearing on the dispute shall be held within 30 days of the Preliminary Hearing and shall be concluded within 5 days. The time limits

are included to expedite the proceeding, but are not jurisdictional. The Arbitrator, for good cause, may allow reasonable extensions or delays, which shall not affect the validity of the award. The Hearing may be held at any place within the State of New Jersey designated by the Arbitrator. Each party shall attend the hearing.

9. The Arbitrator shall within 30 days of the conclusion of the Hearing determine the claims of the Parties and render a final Award in writing. The Arbitrator may, but is not required to, provide a concise statement of the general basis for his/her conclusions. The Arbitrator's Award may include, but is not limited to, the following remedies:

- (a) Cease and Desist Order. The Arbitrator may issue a Cease and Desist Order against a Party prohibiting the undertaking of action relating to the dispute.
- (b) Injunctive Relief or Specific Performance. The Arbitrator may issue an injunction or order specific performance of any obligation created under the Governing Documents.
- (c) Suspension of Privileges. Disciplinary action imposed by the Arbitrator may include suspending or conditioning the Party's privileges of using the common elements and

facilities. For any non-continuing infraction, such suspension shall be for a period of not more than 30 days. For a continuing infraction, suspension may be imposed for so long as the violation continues.

- (d) Award of Damages. The Arbitrator may assess damages against a Party. The amount of damages to be assessed shall be determined according to the proofs in each case. For any violation, the damages to be assessed shall at least be such an amount as is required to compensate the opposing Party or the Association for actual damages incurred. In no event shall the amount of damages assessed exceed the actual damages incurred by the opposing Party or the Association. The Arbitrator shall have no authority to award punitive damages or other damages not measured by the prevailing Party's actual damages.
- (e) Fines and Other Remedies. The Arbitrator shall also have the right to impose fines to the extent that he/she is permitted to do so pursuant to the Governing Document.

10. Within 3 days after delivery of an Award to the Parties, the Arbitrator may make corrections on his/her own initiative, and corrections requested by a Party if warranted, provided all such corrections are made in writing.

11. The Arbitrator shall base the Award on the provisions of the Governing Document and shall endeavor to follow the law and judicial precedent which a New Jersey Superior Court Judgment sitting in Ocean County would apply in the event the dispute were litigated in such Court. By submitting a Notice of Intent to Arbitrate the Parties expressly agree that the Arbitrator shall have no power or authority to render any Judgment or Award that is in contravention of the Governing Documents or is erroneous in its application of substantive law, and expressly agree that any such Judgment or Award shall not be eligible for confirmation.

12. The Arbitrator's Award shall not be binding upon the Parties unless they have specifically authorized same prior or during the proceeding themselves. Should the Award be authorized to be binding by the Parties, then it may be converted into a Judgment and enforced in any Court of the State of New Jersey having jurisdiction to do so.

Certified to be a True Copy of the Resolution adopted by the Board of Trustees of Crestwood Village Five on APRIL 2, 2003, 2003.



LOUISE JACKSON, SECRETARY
CRESTWOOD VILLAGE FIVE