

**RESOLUTION 99-4**

**TWIN RIVERS HOMEOWNERS ASSOCIATION ("Association")  
AS TRUSTEE FOR THE TWIN RIVERS COMMUNITY TRUST**

**ALTERNATE DISPUTE RESOLUTION**

WHEREAS, N.J.S.A. 45:22A-44(c) requires associations to provide a fair and efficient procedure for the resolution of housing related disputes between the Unit Owners ("Unit Owners") and the Association, and between Unit Owners, as an alternative to litigation (collectively "ADR Procedure"); and

WHEREAS, the Board of Trustees (the "Board") is given the authority in various Articles in the Indenture, Declaration of Restrictions and Reservation of Easements and in the By-laws for the Association, to operate and manage the affairs of the Association, and to exercise all powers, duties and authority necessary for the proper conduct and the administration of the affairs of the Association; and

WHEREAS, for the benefit of the Association and of the individual Unit Owners, the Board deems it necessary and desirable to establish a procedure for dispute resolution through a process of negotiation, mediation and non-binding arbitration prior to the institution of binding arbitration or litigation in circumstances where there is a dispute between Unit Owners or between the Association and Unit Owners regarding compliance with the provisions of the Indenture and Declaration of Restrictions and Reservation of Easements or their successors, the By-laws and the Rules and Regulations of the Association (collectively called the "Governing Documents"), thereby attempting to minimize the necessity of judicial intervention and litigation; and

WHEREAS, the Board has the power and authority to enforce on its own behalf and on behalf of all Unit Owners, all of the provisions and restrictions set forth in the Governing Documents including the regulations, appearance and use of the Units and Common Elements and has the authority to notify Unit Owners of activity which violates the Governing Documents and to delegate its enforcement rights as herein provided; and

WHEREAS, all days referred to herein shall be deemed to be calendar days;

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees that the following Procedure be and it hereby is adopted with respect to all disputes which may arise with regard to the provisions of the Governing Documents.

**I. INITIAL EFFORTS TO RESOLVE DISPUTES**

1. Any Unit Owner, Officer, Director or agent of the Association has the authority to request that a Unit Owner cease or correct any act or omission which appears to be in violation of the Governing Documents. Such informal request should be made before the formal ADR procedure is initiated.

2. With respect to the use of any facility where a violation of the rules for the use of such facility might endanger life, limb, property or equity of the Association, any duly authorized agent of the Association may, without further notice, suspend for a period of not greater than seventy-two (72) hours, the right of any Unit Owner to use such facility, if an oral request to cease or correct the violation has not caused such violation to cease. Thereafter, the Board shall have the right to continue any such suspension until such time as the Dispute is finally resolved.

3. The Association, on its own initiative or upon the receipt of a formal written complaint from a Unit Owner, may make initial attempts to secure compliance with the Governing Documents through correspondence to the Unit Owner 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 ("Initial Notice"). Such Initial Notice shall indicate that the Unit Owner may elect, within fourteen (14) days after receipt of the Initial Notice, to proceed to mediation prior to the initiation of enforcement proceedings by the Association Committee in the event the Unit Owner disputes the allegations contained in the Initial Notice. The Unit Owner shall make such an election by sending written notice to the Association of the Unit Owner's request to mediate ("Notice For Mediation").

4. If the Unit Owner within the fourteen (14) day period, (i) does not deny in writing the allegations set forth in the Initial Notice; or (ii) fails to make the election to proceed to mediation, all allegations contained in the Initial Notice shall be deemed admitted and the Board shall have the right to impose any or all of the sanctions listed in Paragraph 24 of this Resolution, including self help, without any further hearings or proceedings. The Initial Notice shall also advise the Unit Owner as to the consequences of failure to respond. If there is a written denial of such allegations and no election to proceed to mediation, the Dispute shall be promptly referred to non-binding arbitration as provided in Article III of this Resolution.

5. Either prior to the Unit Owner electing to proceed to mediation or after mediation has been elected but before it has commenced, the parties shall attempt in good faith to resolve any controversy, claim or dispute arising out of or relating to the Governing Documents or the breach, enforceability or validity thereof promptly by negotiation between such parties ("Dispute"). A Dispute shall not include issues relating to (i) the payment or nonpayment of regular and/or special common expense assessments levied against a Unit in accordance with the Governing Documents, (ii) election issues, nor (iii) alleged noncompliance by the Association or the Association Board with the Governing Documents or applicable law. Should the parties fail to resolve the Dispute through negotiation within thirty (30) days after the receipt of the Initial Notice and receipt of the Unit Owner's Notice for Mediation, then and in such event, the parties may then proceed to mediation as provided hereafter.

## II. MEDIATION OPTION

6. The formal mediation process may be initiated upon the written request of all parties to the Dispute or unilaterally by an individual Unit Owner, if the Association is a party to the Dispute, (the "Request for Mediation"), the form of which shall be provided by the Association. The Request for Mediation shall contain a brief statement generally setting forth the source and nature of the Dispute. The

Request for Mediation shall be accompanied by an escrow deposit in the amount of \$150.00. Said deposit shall be held in escrow by the Administrator ("Escrow Agent") and applied against all costs of the mediation, including, but not limited to, the fees of the mediator, if any. Said costs shall be allocated in accordance with paragraph 14 hereof. The Escrow Agent shall be entitled to release the funds as directed by the mediator, unless the parties agree otherwise in writing. Failure of the requesting party to tender the deposit with the Request for Mediation shall result in a rejection of the Request for Mediation and the matter shall proceed directly to non-binding arbitration under Article III hereof.

7. The mediation shall be conducted in accordance with the Mediation Rules of the American Arbitration Association (the "AAA") then in effect, and as modified by this Resolution, by a mediator mutually selected by the parties. The mediator shall be a mediator made available through the American Arbitration Association (Somerset Office). The mediator shall be an impartial independent neutral who shall have no relationship with any party, except as may be expressly consented to in writing by every party with no relationship to the mediator. No mediator may be a resident of the Twin Rivers Community.

8. Promptly upon receipt of a Request for Mediation, together with the appropriate fee, the Association shall provide to the parties from a list maintained by the Association the names and resumes of three impartial persons who would qualify as a mediator. The parties shall attempt to select a mediator from the names provided, or may agree on another person to act as mediator. If they are unable to agree on a mediator within seven (7) days of the date of the Request for Mediation, the mediator shall be selected by the AAA. In the event of a Dispute between the Association and a Unit Owner, only the Unit Owner shall have the right to choose the mediator, but if no selection is made within the foregoing seven (7) day period, the mediator shall be selected by the AAA. In all cases, the appropriate fee shall be paid to the Association prior to the appointment of the mediator.

9. Each party to the mediation may prepare and submit to each other and the mediator no later than one week prior to the time scheduled for the mediation session contemplated by Paragraph 10, a written statement setting forth in ordinary and concise language the acts or omissions from which the Dispute arose (the "Position Statement"). The Position Statement should specify the specific provisions of the Governing Documents which have been violated and/or the party's defense to the alleged violations. The Position Statement shall not (i) exceed three (3) typewritten pages; (ii) be construed as a pleading; (iii) shall not satisfy any discovery obligation; nor (iv) shall limit the evidence the parties may later use in an arbitration proceeding or at a civil trial, if mediation does not result in settlement. No responsive or supplemental statements shall be permitted.

10. Within fourteen (14) days after the mediator has been selected, both parties and their respective attorneys, if any, shall meet with the mediator, at a time and place scheduled by the mediator, for one mediation session of not more than four (4) hours. If the Dispute cannot be settled at such mediation session, or at any mutually agreed continuation thereof, the mediator may terminate the mediation at its sole discretion or any party may give written notice to the others and the mediator declaring the mediation process at an end, in which case the Dispute shall be referred to non-binding arbitration pursuant to Article III hereof.

11. The mediator shall manage the mediation proceedings as the mediator deems best so as to make it expeditious, economical and less burdensome than litigation. The mediator shall be responsible for controlling the procedural aspects of the mediation proceedings. The mediator shall not have the

authority to impose a settlement on the parties, but may make recommendations for settlement and assist the parties in reaching a satisfactory resolution of the Dispute. All mediation sessions shall take place within the Twin Rivers Community at a location to be made available for the mediation by the Association. Once a mediation session has been scheduled, if it is canceled more than once by the party requesting the said mediation, the mediator shall cancel the right to have a mediation of the issues presented, unless both parties agree to continue.

12. If the parties agree to settle the Dispute as the result of the mediation proceedings, such settlement shall be memorialized in a written agreement, signed at the conclusion of the mediation by each of the parties to the mediation (the "Settlement Agreement").

13. Mediation proceedings shall be conducted in private. Only the parties, their representatives and the mediator shall attend the proceedings. Other persons may attend only upon the express consent of the parties and the mediator. All proceedings of, or writings generated in connection with, the mediation conference, including the Position Statement, Settlement Agreement, mediator's settlement recommendations, and any statement made by any party, attorney or other participant, shall in all respects be considered as part of the settlement efforts and therefore privileged and non-admissible in a court of law of arbitration, and nothing said or disclosed, nor any document produced, which is not otherwise independently discoverable, shall be offered or received as evidence or used for impeachment or for an other purpose in any current or future arbitration proceedings or litigation, except that either party shall have the right to enforce the Settlement Agreement in accordance with its terms.

14. All costs of the mediation, including without limitation the fees of the mediator, shall be shared equally between the parties to the Dispute. Should the escrow deposit be insufficient for this purpose, the parties shall deposit an additional sum with the Escrow Agent in an amount sufficient to cover the additional costs of the mediation.

### III. NON-BINDING ARBITRATION

15. Other than in the case of a default by a respondent, a hearing on any unresolved Complaint shall be held under the auspices of AAA within thirty (30) days after receipt of written notice of (i) any decision, not to proceed to mediation (including nonpayment of the required fee) or (ii) the unsuccessful conclusion of mediation proceedings, whichever first occurs. In such event, the AAA filing fee shall be shared equally by the parties. In addition, all parties shall be given at least fourteen (14) days prior written notice of the right to be heard, with or without counsel, and the right to cross-examine witnesses with respect to the violations alleged in the Complaint. At the conclusion of the hearing, which shall be held in Mercer County, New Jersey at a location designated by the arbitrator, the arbitrator shall have the right to either dismiss the charges or to impose any sanctions or remedies contemplated by Paragraphs 24 and 27 of this Resolution.

If the Dispute is ultimately heard and a decision is rendered by the arbitrator ("Decision") pursuant to the applicable Governing Documents, the Decision shall be binding upon all parties unless an aggrieved party, if applicable, initiates litigation or by mutual agreement, binding arbitration procedures within forty-five (45) days after receipt of written notice of the Decision. Moreover, the Decision may not be appealed to the Board. If no such proceedings or litigation are formally commenced within such forty-five

(45) day period, then a party may only seek judicial review of the Decision within the time permitted by law upon the grounds that it was obtained through fraud, corruption or misconduct or in contradiction of the applicable Governing Documents or New Jersey law.

#### IV. BINDING ARBITRATION

16. A formal binding arbitration proceeding shall be commenced upon the filing with the AAA of a Notice of Intent to Arbitrate (the "Arbitration Notice"). The form of Arbitration Notice shall be provided by the Association. The Arbitration Notice shall contain a brief statement generally setting forth the source and nature of the Dispute, and shall be accompanied by the filing fee required by the AAA. By such submission of the Arbitration Notice, the aggrieved party acknowledges and confirms his intent to abandon his right to have the Dispute decided in court by a judge or jury.

17. If the Dispute is referred on a timely basis to binding arbitration after a non-binding arbitration Decision is rendered by the initial arbitrator, it shall be heard by a different sole arbitrator acceptable to the parties who is certified by the AAA and selected from a panel of 3 names supplied by the AAA. If they are unable to agree upon one of the persons or someone else to act as arbitrator within the time limit imposed by the AAA, then the arbitrator shall be selected by the AAA. Referral of a Dispute to arbitration shall be by a party aggrieved by the non-binding arbitration Decision. Any issue as to whether or the extent to which the Dispute is subject to arbitration shall be decided by the arbitrator.

18. The arbitration shall be conducted in accordance with the applicable Rules of the "AAA" then in effect, and as may be modified by this Resolution or by the arbitrator. The arbitration shall be governed by the substantive law of the State of New Jersey, and the judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

19. Within twenty (20) days and no sooner than ten (10) days after the appointment of an arbitrator, a preliminary hearing among the arbitrator, the parties and counsel for the parties, if represented, 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, and 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 or order may be waived if the arbitrator deems it appropriate under the circumstances.

20. Requests for discovery shall be submitted to the arbitrator not less than ten (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 fifteen (15) days after the preliminary hearing unless extended by the arbitrator.

21. There shall be no dispositive motion practice. The arbitrator shall not be bound by the rules of evidence or of civil procedure, but may consider such writings and oral presentations as deemed reasonable by the arbitrator.

22. Any provisional remedy available from a court of law shall be available from the arbitrator to the parties pending final resolution of the Dispute. In the event a party deems it necessary to prevent irreparable harm from an alleged violation, such party may make an application to the arbitrator seeking preliminary injunctive 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.

23. A hearing on the Dispute shall be held within twenty (20) days of the preliminary hearing and shall be concluded within five (5) hearing days, which need not be consecutive. 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 Mercer County, New Jersey designated by the arbitrator. Each party shall attend the hearing.

24. The arbitrator shall, within thirty (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 award may be converted to a judgment and enforced in any court having jurisdiction to do so. The arbitration 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 them from undertaking any 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, including the confirmation of the Association's right to self help as contemplated by Paragraph 22 of the Twin Rivers Indenture.
- (c) **Suspension of Privileges.** Disciplinary action imposed by the arbitrator may include suspending or conditioning the party's privileges to use the Association common property and facilities. For any non-continuing infraction, such suspension shall be for a period of not more than thirty (30) days. For a continuing infraction, suspension may be imposed for such longer period as the violation continues.
- (d) **Award of Damages.** The arbitrator may assess damages, if any, 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 permitted under the Governing Documents and by law.

25. Within thirty (30) 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, provided all such corrections are made in writing.

26. The arbitrator shall base the award on the provisions of the applicable Governing Documents, and shall endeavor to follow the law and judicial precedent which a New Jersey Superior Court Judge sitting in Mercer County would apply in the event the Dispute were litigated in such Court. The arbitrator shall have no power or authority to render any judgment or award that is in direct contravention of the Governing Documents or is clearly erroneous in its application of substantive law, and any such judgment or award shall not be eligible for confirmation.

27. The arbitrator may award all or a part of a party's reasonable attorney's fees and costs associated with the arbitration, including the filing fee, taking into account the final result of the arbitration proceeding, the conduct of the parties and their counsel in the course of the arbitration and other relevant factors. The arbitrator shall, in the final award, assess the amount of the costs of the proceedings. However, in the absence of a specific award, all arbitration costs, including the arbitrator's fees, if any, shall be shared equally by the parties to the Dispute. Should the escrow deposit be insufficient for this purpose, the parties shall deposit in advance an additional sum with the Escrow Agent in an amount sufficient to cover the additional costs of the arbitration.

28. Within forty-five (45) days after receipt of the award any aggrieved party may seek judicial review of the binding arbitration award solely and exclusively upon the grounds that it was obtained through fraud, corruption or misconduct, or in the event that the arbitrator's award is in direct contravention of the Governing Documents or clearly erroneous in its application of New Jersey substantive law. Any suit, action or proceeding, whether at law or in equity and including any declaratory judgment or similar suit or action constituting or pertaining to such judicial review, shall be instituted in the Superior Court of the State of new Jersey. If an award is reviewed, the prevailing party shall be entitled to recover from the non-prevailing party all costs and reasonable attorneys' fees incurred in the review proceedings.

29. If judicial review is not commenced within forty-five (45) days after transmittal of the award, the arbitration award shall be deemed binding upon all of the parties. Thereafter, such award may be converted to a judgment and enforced in any court having jurisdiction to do so.

V. GENERAL

30. A tenant shall have the right to utilize the ADR Procedure upon submission to the Association of written authorization by the Unit Owner of the unit in which the tenant resides.

31. Any inadvertent omission or failure to conduct any adversary proceeding in exact conformity with this Resolution shall not invalidate the results of such proceeding, so long as a prudent and reasonable attempt has been made to ensure due process according to the general steps set forth herein.

32. The provisions of this ADR Resolution shall supersede any Grievance Committee or other ADR Procedure of The Association which are currently in effect. This Resolution may be modified in whole or in part at any time by the Board of Trustees of the Twin Rivers Homeowners Association as Trustee for the Twin Rivers Community Trust.

BE IT FURTHER RESOLVED that the printing of this Resolution in its entirety in the community newsletter publication, *Twin Rivers Today*, or its successors or assigns, shall be deemed to be proper notice to all residents of the Twin Rivers development and the said Resolution shall remain on record on the books of the Twin Rivers Community Trust.

BE IT FURTHER RESOLVED that this Resolution shall supersede Resolution 93-9, Resolution 97-12, and replace the same.

Duly approved by the Board of Trustees  
at their meeting of March 25, 1999

ATTEST:

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Robert J. Hudak, Secretary/Treasurer