



- B. The DRB shall consider the following when reviewing a BSR/E Application:
 - 1. The resulting impacts of the BSE/R on increased visibility, noise, and similar influences. The DRB may require the Applicant to make modifications to the mass/scale/height or placement of the proposed Improvements, add berms/landscaping, and other factors to reduce impacts.
 - 2. Prior modifications to BSBs and heights on the subject Lot and Adjacent Lots.
- C. The following conditions by themselves, shall not be considered unanticipated and extraordinary conditions such that a BSE/R is necessary;
 - 1. Increased costs to develop the Lot; or
 - 2. Site conditions that were known by the Owner requesting the BSE/R at the time the Owner acquired the Lot and/or would have been known by a person exercising ordinary care, when acquiring the Lot.

7.7.8 Building Site Arbitration Rules and Procedures for BSE/BSR/BHI

The HOC and each of the Owners acknowledge that disputes concerning requests for BSE/BSR/BHIs can be costly, time consuming, and disruptive to the Community. The Building Site Arbitration Process is designed to provide a fast, simple, efficient, and inexpensive process for Owners to resolve disputes over requests for BSE/BSR/BHIs.

These rules and procedures are subject to the Colorado Common Interest Ownership Act and shall govern the Building Site Arbitration Process as administered by Construction Dispute Resolution Services, LLC (CDRS). They shall take precedence over any other set of arbitration rules and procedures.

- A. **Initiation of Building Site Arbitration.** An Owner initiates the “Building Site Arbitration Process” by submitting a written Request for Building Site Arbitration to the HOC together with the filing fee and simultaneously providing notice, via certified mail return receipt requested, to all Adjacent Property Owners. The filing fee shall include the initial arbitration fee set by CDRS together with a sum of money that the DRB may, from time-to-time, determine is proper. An Owner initiating the Building Site Arbitration Process shall be called the “Claimant” for purposes of the Building Site Arbitration. The Adjacent Property Owner(s) who file a written Response within the period specified below opposing the BSE/BSR/BHI shall be called the “Respondent(s)” for purposes of these arbitration rules. The Claimant and the Respondent(s) shall be called the Parties.
- B. **DRB’s Written Assessment/Participation.** No later than fourteen (14) days after the DRB has received the Request for Building Site Arbitration from the Claimant, the DRB shall prepare a written assessment of the requested BSE/BSR/BHI. No later than seven (7) days after receiving the responses of the parties, the DRB shall transmit to CDRS the Request for Building Site Arbitration, the Responses, the DRB’s Written Assessment and the initial arbitration fee. At the request of



- either Party or the arbitrator, the DRB may participate in the Building Site Arbitration, including any site visit and the hearing, as an interested third-party and provide testimony and/or other evidence. The written assessment and evidence provided by the DRB shall not be binding on the arbitrator and shall be given whatever weight the arbitrator, in his/her sole discretion, deems appropriate.
- C. **Fees and Costs of the Building Site Arbitration.** The Claimant shall be solely responsible for all fees and costs charged by CDRS for the Building Site Arbitration. Should the arbitrator expend additional time in excess of the initial arbitration fees collected, the Claimant shall be responsible to pay those additional fees to CDRS prior to the issuance of the arbitration award. The Parties shall be responsible for their own attorney fees, expert fees as well as discovery, travel and other related costs incurred in connection with the Building Site Arbitration. Notwithstanding the forgoing, if the arbitrator determines that the Claimant or Respondent(s) have acted in bad faith in requesting or opposing a BSE/BSR/BHI, the arbitrator may, in his/her sole discretion, award reasonable fees and costs to the other Party(s).
- D. **Scope of the Building Site Arbitration.** The scope of the Building Site Arbitration process shall be limited to determining whether the requested BSE/BSR/BHI is required due to unanticipated extraordinary circumstances and determining bad faith and awarding fees and costs as set forth above. For the avoidance of doubt, except for fees and costs, the arbitrator shall not have the authority to award any Party to the Building Site Arbitration any damages of any kind whatsoever.
- E. **Selection of the Arbitrator.** A single arbitrator shall conduct the Building Site Arbitration and issue the Arbitration Award. As soon as practicable, the CDRS Senior Case Administrator shall assign the arbitrator to the matter. The CDRS Senior Case Administrator will consider the construction-related or legal expertise of the arbitrator required to handle the Building Site Arbitration, the location of the arbitrator and the fees of the arbitrator in selecting the arbitrator to handle the dispute. Neither the Claimants, the Respondents, nor the DRB or any of their representatives or attorneys shall participate in the selection of the arbitrator although CDRS will try to accommodate a specific request for an arbitrator if that arbitrator is mutually agreed to by the parties prior to the DRB filing the request for arbitration with CDRS.
- F. **Date and Location of Arbitration Hearing.** The Building Site Arbitration hearing shall be scheduled no later than thirty (30) days after CDRS has assigned the arbitrator to the matter, unless the arbitrator determines that additional time is required for good cause. The Building Site Arbitration hearing shall take place by conference call or video teleconference unless the Claimant, the Respondent[s] and the arbitrator mutually agree to hold the Building Site Arbitration hearing in person in Telluride.
- G. **Discovery.** Discovery for the Building Site Arbitration shall be limited to the



mutual exchange of documents among the Parties as follows: No later than fifteen (15) days before the hearing, the Claimant and the Respondents shall transmit electronically to each Party all documents that: 1) the Claimant or Respondent intends to use at the hearing; and/or 2) comprise reports or analysis of the building site conditions or the proposed BSE/BSR/BHI. No later than seven (7) days before the hearing, the Claimant and Respondents shall transmit electronically to CDRS any documents they may use at the hearing. No hard copies shall be submitted to CDRS. Unless the Claimant, the Respondents and the arbitrator agree, no interrogatories, requests for admissions, depositions, or third-party subpoenas shall be permitted for the Building Site Arbitration.

- H. **Responsibilities of the Arbitrator.** The arbitrator shall be responsible to conduct a Building Site Arbitration according to these Rules and Procedures and in accordance with the Colorado Common Interest Ownership Act C.R.S. § 38-33.3-101, et seq. (“CCIOA”) while utilizing the CDRS General Arbitration Rules and Procedures, only when necessary and not superseded by these Rules and Procedures. The arbitrator shall also have the responsibility to render an unreasoned arbitration award within fourteen (14) days after the closing of the Building Site Arbitration hearing. CDRS shall issue a “Certified Copy” of the Building Site Arbitration award according to the terms and conditions as specified in the CDRS General Arbitration Rules and Procedures. Notwithstanding the forgoing, the case administrator may withhold and/or delay the issuance of the Building Site Arbitration award if fees and costs due to CDRS are not or have not been paid when due.
- I. **Responsibilities of the Parties.** The Parties shall follow these Building Site Arbitration Rules and Procedures and all timetables as specified in these Rules and Procedures. Additionally, the Parties shall notify CDRS within seven (7) days of the initiation of the Building Site Arbitration process or receipt of notification of the Building Site Arbitration process if they have selected any individuals or firms to represent them or participate in the Building Site Arbitration process along with their contact information including their email address to allow the arbitrator to do a conflict check.
- J. **Building Site Visit.** The arbitrator may request a Building Site Visit, if he/she determines a visit is necessary to evaluate the BSE/BSR/BHI. The Claimant and the Respondents, upon mutual agreement, may also request a Building Site visit. Any Building Site visit shall be conducted prior to the hearing at a time agreeable to the arbitrator and both Parties. Both Parties and/or their representatives may be present at the time of the Building Site visit. The cost of the Building Site visit shall be paid by the Claimant.
- K. **Arbitration Communications.** All communications shall be via email. All information sent to the arbitrator prior to the Building Site Arbitration Hearing shall be sent to CDRS via email with a copy to all other parties to the arbitration. Only information shared with all parties may be presented to the arbitrator for his/her review and consideration. There can be no direct contact with the



arbitrator by any Party. All submissions, questions, or concerns shall be sent to the CDRS case administrator who shall forward the submissions or discuss those questions of concerns with the arbitrator.

- L. **Pre-Hearing Conference.** Upon request of one or more of the Parties, the CDRS case administrator will schedule a Pre-Hearing conference call or video teleconference to be held within seven (7) days of the appointment of the arbitrator to review and establish certain additional rules and procedures for the Building Site Arbitration process including but not limited to:
 - Scheduling the date for the Building Site Arbitration hearing;
 - Establishing whether the DRB shall participate in the Building Site Arbitration;
 - Establishing the rules and limitations on the presentation of evidence at the Building Site Arbitration hearing;
 - Establishing the number of witnesses and individuals who will testify during the Building Site Arbitration hearing;
 - Establishing the specifics of the opening and closing statements for the Building Site Arbitration hearing; and/or
 - Establishing other special rules and procedures necessary to conduct the Building Site Arbitration.

- M. **Correction or Modification of the Award.** After receiving a copy of the Building Site Arbitration award from CDRS, any Party to the Building Site Arbitration may request to the CDRS case administrator that a correction or modification to the award be made concerning typographical, computational, grammatical or any other similar correction that may be necessary to the award. A copy of that request shall also be sent to the other Party by certified mail. That request must be submitted to CDRS within seven (7) days after receiving a copy of the Building Site Arbitration Award from CDRS. The other Party will also have seven (7) days to respond to the request for the modification indicating their acceptance or objection to the correction or modification. No response from the other Party shall be considered an acceptance of the proposed correction or modification to the Building Site Arbitration Award. After the seven (7) day response period has expired, the arbitrator will be notified of the request and will respond to the CDRS case administrator within seven (7) days of receiving a copy of the request as to whether to allow the correction or modification. If there is a modification or correction to the original Building Site Arbitration Award, there will be a new Building Site Arbitration Award issued by CDRS.

- N. **Severability.** If any of these Building Site Arbitration Rules and Procedures are deemed to be contrary to applicable law or are declared to be void by any court or through any legal process, all other Building Site Arbitration Rules and Procedures shall remain in force and only that Building Site Arbitration Rule or Procedure that is contrary to applicable law or voided shall be severed from these Rules and Procedures.



- O. **Modifications and Changes.** The arbitrator may modify or change these Rules and Procedures only to the extent necessary to comply with mandatory provisions of Colorado law, including, in particular, CCIOA.
- P. **Confidentiality.** Arbitration is a private process. All information concerning the Building Site Arbitration shall be kept confidential by the Parties, their attorneys, the DRB or anyone else involved in the arbitration process including experts and witnesses.

7.8 Appeals to the BOD

A timely and properly filed appeal of an Appealable Decision shall be heard and decided by the BOD.

7.8.1 **Appealable Decisions and Parties Authorized to Commence an Appeal.** The right to appeal a DRB Final Action is strictly limited. Only the following parties are authorized to appeal and only of the following types of Final Actions may be appealed:

Appeals by a Notice Owner. A Noticed Owner may appeal the following type of Final Action in the following limited circumstance:

A Final Action approving a Limited Design Exception.

Appeals by the Applicant. The Applicant of any Application that was denied or approved by the DRB with conditions contested by the Applicant may be appealed to the BOD.

7.8.2 Commencement of an Appeal

Unless and until the DRB takes a Final Action, the actions of the DRB are not final, and the time for an appeal does not begin.

An Appellant authorized to bring an appeal of a Final Action shall file a written Notice of Intent to Appeal form with the HOC.

The Notice of Intent to Appeal must be received by the HOC within seven (7) calendar days of the Record Date of the Final Action. If the time for bringing an appeal falls on a weekend day, the filing deadline is extended to close of business the succeeding weekday that is not a federal holiday. The Notice of Intent to Appeal must be received by the HOC prior to the close of business (5 PM) on the last day by which an appeal may be taken.

Failure to timely submit a Notice of Intent to Appeal to the HOC shall eliminate a right of appeal by the party.

During such time that an appeal has been accepted by the HOC and through its final disposition, the HOC shall suspend further review and consideration of other Applications concerning the Lot that is the subject of the appeal.

All materials submitted in connection with an appeal shall only be sent to the HOC. The HOC shall circulate materials to the BOD and shall post the materials on the Website. Neither the Appellants nor other parties wishing to submit materials or information shall correspond directly with the BOD.