

RESOLUTION 10-01

VILLAS AT ELK RUN HOMEOWNER'S ASSOCIATION, INC.

(ADOPTING A NEW POLICY AND CLARIFYING EXISTING POLICY FOR THE TREATMENT OF INSURANCE DEDUCTIBLES IN CONNECTION WITH CASUALTIES COVERED BY ASSOCIATION INSURANCE POLICIES)

Adopted: ~~August~~ ^{December} 8, 2010

The following policy has been adopted by the Board of Directors (the "Board") of Villas at Elk Run Homeowner's Association, Inc. (the "Association") at a regular meeting of the Board.

RECITALS:

- A. Capitalized terms below are defined in the Condominium Declaration for the Villas at Elk Run recorded December 12, 1994 as Reception No. 377097, as amended (the "Declaration"), unless otherwise stated.
- B. Section 11 of the Declaration requires the Association to purchase and maintain certain policies of insurance covering both the Common Elements and the Units, as defined in the Declaration.
- C. Section 9.1 of the Declaration states that "each owner shall be responsible for maintenance and repair of his Unit".
- D. Section 9.3 of the Declaration states: "If damage to the Common Elements or to any Unit is caused by the negligence or intentional act of an owner, that owner must pay or reimburse the Association, or other affected Owners, for such damage."
- E. The Act (Section 38-33.3-313(6) C.R.S.) provides: "To the extent the Association settles a claim for damages to real property, it shall have authority to assess negligent owners causing such loss or benefiting from such repair or restoration all deductibles paid by the association. In the event more than one unit is damaged by a loss, the association in its reasonable discretion may assess each unit owner a pro rata share of any deductible paid by the association."
- F. The causes of damage to a Unit and/or the Common Elements can be an occurrence within another Unit (e.g. water damage from an overflowing toilet may affect a neighboring Unit), a failure of the Common Elements (e.g. a roof leak), natural disaster, or myriad other causes or combination of causes that make a rigid policy undesirable. Nonetheless, a process must be adopted in order to facilitate a fair and impartial method for apportioning, where appropriate, individual Unit Owner responsibility for insurance deductibles.

THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS:

1. In connection with damage to the Common Elements or Unit(s) covered by any of the Association's insurance policies, where the Association is responsible to pay for some or all of any

applicable deductible, the Board, or a Committee duly appointed by the Board for such purpose, shall hold a fact-finding meeting as follows:

a. Work cooperatively to schedule a mutually convenient time and place for a meeting with the Owner or Owners that may, as a result of the meeting, be found individually liable for a greater share of an insurance deductible than such Owner's ownership share of the Common Element (if after 10 business days a reasonable time and place cannot be agreed upon, the Board or Committee may set a reasonable time and place);

b. Provide not less than 5 business days' notice to all Owners of the time, place, and purpose of the meeting;

c. Hold the meeting at which each Unit Owner(s) described in subsection (a) shall be provided an opportunity to present their argument(s) with respect to individual liability for the insurance deductible in question, after which the Board or Committee may choose to ask questions. If time permits, all other Owners present shall be given an opportunity to be heard of not less than three minutes each;

d. Nothing in this Section 1 shall limit the ability of the Board to consider any reasonable evidence or circumstances, whether or not addressed herein, that may be relevant to the cause of damage or the repairs paid for by insurance proceeds or the Association. The Board shall be limited only by the good faith obligation to use reasonable efforts to make fair and impartial determinations hereunder.

2. Within thirty days of the meeting, the Board or Committee shall review the information provided, together with any other evidence they have available, and make one of the following findings:

a. That the damage causing the Association's liability for the insurance deductible was caused by the negligent or intentional act of one or more Owners, who shall be assessed for the deductible charged to the Association (as well as any other related costs, in accordance with the Declaration). For purposes of assessing deductibles hereunder, "negligence" shall include instances where the source of damage can be traced to items owned by or in the control of a specific Owner (e.g. where personal property such as refrigerator leaks water that damages Unit or Common Elements). Where more than one Owner is responsible, the Board or Committee may determine a percentage of fault or, where such a determination is not practicable, shall assess each Owner pro rata based on the number of Owners found responsible; or

b. That the damage was not caused by any individual Owner's negligence or intentional act, or the cause of damage cannot be reasonably and clearly determined or attributed to any particular Owner, then the insurance deductible charged to the Association shall be assessed to each

Owner that benefits from Unit repairs (but not Common Element repairs). In the event more than one Owner benefits from Unit repairs, proportionate liability shall be based on the proportionate share of total insurance proceeds paid that are attributable to the repair of such Unit, or if no such determination can be readily made, pro rata according to the number of Owners charged hereunder.

In no event shall any Owner charged under this Section 2b be assessed more than the actual value of such Owner's Unit repairs. If the Board or Committee determines that the cause of damage fits under Section 2b, but the total charge for repairs to Units does not equal or exceed the deductible (e.g. where repairs are to the Common Elements), the Association shall be responsible for the remainder of the deductible.

3. An Owner shall be liable hereunder for the acts of the Owners tenants, invitees, agents, and guests.

4. In the event the Board determines that damage has occurred that may be covered by the Association's insurance, but finds that it is in the best interest of the Owners as a whole not to file a claim, those expenses paid directly by the Association for such damage may be charged to Owners in accordance with this policy, as if a deductible were paid. In no event shall the amounts charged to Owners hereunder exceed the deductible that would have been paid unless such Owners caused the damage by grossly negligent or intentional acts.

5. In the event one or more Board members is an Owner that may be charged hereunder, the Board members not affected shall appoint a Committee of three impartial Owners (who may be Board members) to conduct the meeting and make findings under Sections 1 and 2.

6. Any deductible or other charges to be charged to an Owner pursuant to this policy shall be collectable in the same manner as Assessments for Common Expenses, pursuant to Section 10 of the Declaration.

7. Each Owner must maintain their own insurance in accordance with Section 11.4 of the Declaration. In addition, Owners are strongly encouraged to purchase a "deductible rider" or other additional coverage, to cover a case where a deductible of other Association cost is assessed to such Owner's Unit pursuant to this policy.

8. Except as expressly stated herein, this Resolution shall not limit the responsibility of an Owner, at law or under the Declaration, to pay for damage to Common Elements or Units.

Joseph Clark Addy
President Treasurer

SECRETARY'S

CERTIFICATION: The undersigned, being the Secretary of Villas at Elk Run Homeowner's Association, Inc., a Colorado non-profit corporation, certifies that the foregoing policy was adopted by the Board of Directors of the Association, at a duly called and held meeting of the Board December 8, 2010, and in witness thereof, the undersigned has subscribed his/her name.

VILLAS AT ELK RUN HOMEOWNER'S
ASSOCIATION, INC., a Colorado non-profit corporation

By: Kelly Dsh
Secretary