



THE ELIZABETH LOFTS  
HOMEOWNERS' ASSOCIATION

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**ELIZABETH LOFTS CONDOMINIUMS OWNERS' ASSOCIATION  
BOARD OF DIRECTORS RESOLUTION  
REGARDING INSURANCE AND THE ALLOCATION OF DEDUCTIBLE**

- A. Article 9 of the Bylaws of the Elizabeth Lofts Condominiums Owners' Association prescribes the type of insurance and sets forth the respective responsibilities of the Association and the owners to place and maintain in force at all times appropriate insurance to protect the Association and its members.
- B. The Declaration and Bylaws of the Association do not specifically address responsibility for the payment of the Association insurance policy deductible.
- C. It is the intent of the Board of Directors to:
1. Ensure that the Association has adequate coverage for property and liability insurance;
  2. Ensure the continuing insurability of the Association at a reasonable price;
  3. Prescribe a procedure for reporting and processing insurance claims; and
  4. Establish a rule allocating responsibility to pay the deductible amount in a manner that is fair, reasonable, and predictable.

**NOW THEREFORE, BE IT RESOLVED THAT** the conditions, requirements, and procedure set forth below be adopted.

**I. INSURANCE DEDUCTIBLE; OWNER AND TENANT INSURANCE**

**1.1. Determination of Deductible; Notice.**

(a) **Determination of Deductible.** Subject to § 9.1.1 of the Bylaws, no insurance policy shall contain a deductible exceeding the lesser of Ten Thousand Dollars (\$10,000.00), adjusted by any increase in the Consumer Price Index – All Items – for all urban consumers as published in the U.S. Bureau of Labor Statistics (or any comparable substitute index, if such index shall be discontinued), the base year being 2005, or one percent of the face amount of the policy. In determining the deductible under the policies, the Board shall take into consideration, among other factors, the availability, cost and loss experience of the Association. In making the determination, the Board members shall exercise their reasonable business judgment.

(b) **Notice.** The Board shall give written notice to the owners of any change in the deductible proposed in renewal or replacement insurance policies within at least ten (10) days of the effective date of the change. The notice shall be delivered to each Unit, mailed to the mailing address of each Unit, or mailed to the mailing address designated in writing by the owners. The notice shall include the following notice:

**NOTICE  
CHANGE IN ASSOCIATION  
INSURANCE COVERAGE**

**THERE ARE CHANGES IN INSURANCE POLICIES CARRIED BY THE ASSOCIATION. YOU SHOULD IMMEDIATELY NOTIFY YOUR INSURANCE AGENT OF THE CHANGES SET FORTH IN THE ENCLOSED INFORMATION AND ASK YOUR AGENT TO DETERMINE IF CHANGES TO YOUR INSURANCE POLICIES ARE NECESSARY.**

1.2. **Responsibility for Insurance.** The Responsibility for insurance shall be as provided in this section.

(a) **Owners' Property Insurance.** Owners shall be responsible for obtaining and maintaining insurance policies insuring their Units for any losses less than the deductible amount under the Association's policies and for insuring their own personal property for any loss or damage.

(b) **Tenants.** Tenants shall be responsible for insuring their own personal property for any loss or damage if they desire such coverage. Owners shall be responsible to notify their tenants that the tenants' personal property is not covered by the Association's policy.

(c) **Owner and Tenant Liability Insurance.** Owners and tenants of all Units shall obtain and maintain comprehensive liability policies having combined limits of not less than One Million and No/100 Dollars (\$1,000,000.00) for each occurrence. The insurance shall provide coverage for, without limitation, the negligent acts of owners and tenants and their guests or other occupants of the Units for damage to the general and limited common elements and other Units and the personal property of the others located therein.

(d) **Association.** The Association shall have no responsibility to obtain or assist in obtaining property loss insurance for any owner or tenant for:

(1) Damage to a Unit not covered by the Associations policy (because of the deductible amount or because the claim for loss or damage is one not normally covered by fire and property loss insurance policies with extended coverage endorsements); or

(2) For any damage or loss to the owner's or tenant's personal property.

(e) **No Monitoring.** The Association has no obligation to monitor whether owners and tenants comply with their respective obligations to maintain required insurance.

**1.3. Deductible or Other Uninsured Loss.** The Association's Declaration and Bylaws do not specifically establish who is responsible to pay the deductible amount under the Association's casualty policy in the event of a loss. As deductible amounts increase in the current insurance industry climate, it becomes more important for the Association to establish a rule determining who is responsible to pay the deductible. The Board has decided to allocate the deductible to the party who is responsible for maintaining the damaged property under the Association's Declaration and Bylaws. This method is fair, predictable, avoids involving the Association in determination of negligence, and discourages owners from filing numerous small claims, which can adversely affect the Association's insurability. For purposes of this Section 1.3, the term "deductible" includes both the deductible portion of an insured loss and a casualty loss that is not insured when it is not required to be insured under the terms of the Declaration or Bylaws. The Board hereby adopts the following specific rules for allocating the deductible:

**(a) Responsibility for Deductible Follows Responsibility for Maintenance.**

The deductible amount under the Association's casualty insurance policy shall be paid by the party (ies) with responsibility for maintenance, repair, and replacement of the damaged item without regard to whether the loss may have been caused by the negligence of any party. Since the Association is charged with maintenance, repair, and replacement of the common elements, and individual owners are charged with maintenance, repair, and replacement of their individual Units, the Association will pay the deductible with regard to damage to the common elements, and individual owners will pay the deductible for damage to their Units.

**(b) Allocation Among Several Parties.** If loss occurs to more than one Unit,

or to common elements and one or more Units, the deductible amount under the Association's casualty insurance policy shall be allocated between or among the parties in proportion to their total respective losses. For example, if a casualty damages the common elements to the extent of \$100,000, and damages a single Unit to the extent of \$50,000, the Association's deductible amount of \$10,000 shall be allocated \$6,667 to the Association, and \$3,333 to the Unit owner, since the total loss suffered by the Unit owner is one-half the amount of the total loss suffered by the Association.

**(c) No Bar to Individual Claims.** Nothing in this Resolution shall bar a

claim by any party, including, without limitation, any owner or the Association, to recover any loss or damage caused by the negligence of any other party. The purpose of this Resolution is to create an efficient, doubt-free mechanism to fund the deductible to permit the prompt repair of the damaged portions of the Condominium. For example, if Owner A's Unit is damaged and he believes the casualty is due to the negligence of Owner B, this Resolution requires Owner A to pay the deductible portion of the loss. Following such payment, however, nothing in this Resolution prevents Owner A from pursuing a claim against Owner B to recover the deductible amount paid by Owner A.

**(d) Exception for Earthquake Insurance.** In addition to the Association's

regular policy of casualty insurance, the Association currently purchases a separate policy of earthquake insurance. As is customary with earthquake insurance policies, the deductible amount is substantially higher than under a casualty policy. The deductible amount under the Association's current earthquake insurance policy is 5% of the building's rated value. Because of the high deductible amount and because of the likelihood that any earthquake damage to any

Condominium units would be accompanied by substantial damage to parking units, storage units, owners' personal property, and general common element utility installations, the Board of Directors concludes that it is reasonable to allocate the deductible amount under the Association's earthquake insurance policy differently than the deductible under the casualty policy. Accordingly, the deductible amount under the Association's earthquake insurance policy in the case of earthquake damage to property that is otherwise covered by the Association's earthquake policy shall be paid for by the Association. In the event that a special assessment is needed to fund the Association's payment of the deductible amount, the special assessment shall be allocated among the owners in proportion to their respective percentages of ownership in the common elements, in like manner with all other Association assessments.

(1) The building's ratable value is currently set \$63,850,000. The 5% deductible would thereby be \$3,192,500, which equates to an average of over \$16,000 per unit. As the ratable value of the building increases, the average unit deductible will increase as well. Owners wishing to know their exact percentage of ownership should contact the Community Manager. This information is also found on the Association's website.

(2) If the Association's earthquake limit falls below the actual damage caused by an earthquake, any damage over and above the total insurance policy limit shall be allocated among the owners in proportion to their respective percentages of ownership in the common elements.

## **II. DUPLICATE INSURANCE COVERAGE**

In the event of duplicate insurance coverage, the insurance policy obtained by the Unit owners shall be considered the primary coverage.

## **III. PROCEDURE FOR HANDLING CLAIMS**

**3.1** All claims against the Association's insurance shall be processed through and coordinated by the Board of Directors, or, if authorized, the Association's community manager.

**3.2** Charges of managing agents for handling claims, as well as fees and costs for consultants, counsel, and other persons assisting the Association, shall be treated as part of the overall loss, apportioned, if at all, in the same manner as the deductible is apportioned.

## **IV. PROCEDURE FOR INVESTIGATION AND REPAIR**

**4.1** **Investigation.** Upon the occurrence of a casualty affecting any Unit(s) or the common elements, the Board of Directors shall conduct such investigation as it considers reasonable under the circumstances to determine the nature and extent of the damage, the likely cause of the damage, and the likelihood of insurance coverage for the same. The Board may retain such contractors, consultants, or counsel, as it considers appropriate under the circumstances.

**4.2** **Repairs to Common Elements.** The Association will always control the conduct of maintenance and repairs to common elements.

**4.3 Repairs to Unit(s).** In the event of damage to one or more Units with respect to which there is any coverage under the Association's insurance policy, the Association retains the right, but not the duty, to control the solicitation of bids and the conduct of repairs for such damage. In its discretion, the Board of Directors may choose to permit an individual Unit owner to control the conduct of repairs to the Unit, depending upon a) the relative financial contributions of the Association's insurance and the individual owner or its insurance carrier; b) the Board's confidence that Unit repair work will not adversely affect the common elements or other Units; and c) other relevant factors.

**IN WITNESS WHEREOF**, the undersigned hereby certifies that the foregoing Resolution was adopted at a meeting of the Board of Directors on this 23rd day of February, 2016.

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Secretary of the Board

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Chairman of the Board