

POLICY RESOLUTION 2011-003: INSURANCE

WHEREAS, Article VIII of the Bylaws of the Garden Homes At Charbonneau Green Townhome Association states that the Association shall obtain and maintain in force policies of insurance and prescribe the type of insurance; and

WHEREAS, the Bylaws of the Association do not specifically address responsibility for the payment of the Association insurance policy deductible, and

WHEREAS, ORS 94.676 authorizes the Association's Board of Directors to adopt this Resolution, and

WHEREAS, 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.

1. INSURANCE DEDUCTIBLE; OWNER AND TENANT INSURANCE

1.1. Determination of Deductible

(a) Subject to the limitation in the Bylaws Article 8 Section 7 the Board of Directors shall determine the amount of the deductible for property loss insurance policies and any other insurance policies required to be obtained by the Association as provided in the Bylaws of the Association or applicable law. 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 the amount of the deductible under the Association policies and any change in the deductible proposed in renewal or replacement insurance policies at least thirty (30) days after the effective date of the change. The notice shall be delivered to each owner or mailed to the mailing address of each owner or mailed to the mailing address designated in writing by the owners. The notice shall include the following notice in at least 12-point type that is either all capitals or boldface:

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 and lots 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 Hundred Thousand dollars (\$100,000.00) 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 common areas and other units, lots and the personal property of the others located therein.

(d) **Association.** The Board shall obtain property, liability, and other policies as it deems necessary as prescribed under Article 8 of the Bylaws. 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 Association's policy (because of the deductible amount or because the claim for loss or damage is one not covered by fire and property loss insurance policies held by the Association); 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 property and 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. There are several options open to the Association in developing such a rule. For example, the Association could allocate the deductible based upon fault, or the Association could establish a rule that the Association always pays the entire deductible, regardless of whether the loss occurs to common areas or to one or more units and/or lots. After considering its options, however, the Board has determined that the best rule is 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 also includes the cost of 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.

(b) **Allocation Among Several Parties.** If loss occurs to more than one unit, or to common areas 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 areas to the extent of \$100,000, and damages the interior of a single unit to the extent of \$50,000, the deductible shall be allocated $2/3$ to the Association, and $1/3$ to the owner of the unit.

(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 so as to permit the prompt repair of the damaged portions of the unit and building. 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.

2. PROCEDURE FOR HANDLING CLAIMS

2.1 All claims against the Association's insurance shall be processed through and coordinated by the Board of Directors, or, if authorized, the Association's managing agent.

2.2 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.

3. PROCEDURE FOR INVESTIGATION AND REPAIR

3.1 **Investigation.** Upon the occurrence of a casualty affecting any unit(s) or the common areas, 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.

3.2 **Repairs to Common Areas.** The Association will always control the conduct of maintenance and repairs to common areas and other areas for which the Association has maintenance responsibility.

3.3 **Repairs to Unites).**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 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 areas or other units; and (c) other relevant factors.

**ADOPTED BY THE BOARD OF DIRECTORS OF THE GARDEN HOMES AT
CHARBONNEAU GREENS TOWNHOME ASSOCIATION**

Recorded in the Minutes of the Board Meeting of April 20, 2011 (date)

Attested by: Madge Sempert President Madge Sempert
(signature) (printed name)