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# LUEDER LARKIN & HUNTER, LLC

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ATTORNEYS AT LAW

February 2, 2022

Re: Village Grove Owners Association, Inc.  
**Coventry at Village Grove Roofing Project**

The purpose of this document is to provide answers to questions and concerns regarding the roofing project in Coventry at Village Grove which arose during the meeting on January 20, 2021. Many of these questions center on the interplay between the Association's maintenance responsibility and the procedure for handling damage occasioned by a casualty event.

Every Owner in the Village Grove community is subject to the Master Declaration of Protective Covenants, Conditions, Restrictions and Easements for Village Grove (the "Declaration") and is a member of Village Grove Owners Association, Inc. (the "Association"). The Association's Board of Directors (the "Board") is vested with the authority to manage the affairs of the Association. This authority extends to managing the Association's maintenance responsibilities.

**Why must owners file an insurance claim for casualty damage to areas which fall under the Association's maintenance responsibility?**

The Association is responsible for the maintenance and repair of the townhome roofs within Coventry at Village Grove. This is addressed in Article 8, Section 8.2 of the Declaration. Though the Association is responsible for the maintenance and repair of the townhome roofs, it has no obligation to provide any insurance for any portion of the townhome units. Under Article 10, Section 10.2 of the Declaration, each Owner must carry all-risk casualty insurance on their townhome. These insurance policies cover areas which fall under the Owner's maintenance responsibility, as well as areas which fall under the Association's maintenance responsibility. The Association is not responsible for the cost of repairing casualty damage to an area falling under its maintenance responsibility. Where an Owner refuses to submit a claim for casualty damage to an area which falls under the Association's maintenance responsibility, the Association may submit a claim against that Owner's policy or require that the Owner do so.

The following hypothetical scenario demonstrates the interplay between the Association's maintenance responsibilities and casualty damage covered under an owner's insurance:

*A townhome building containing four individual units burns down. This is considered a casualty event. The building was in need of some routine maintenance at the time. Three owners in that building file insurance claims to*

5900 WINDWARD PARKWAY, SUITE 390, ALPHARETTA, GEORGIA 30005  
TELEPHONE 770-685-7000 FACSIMILE 770-685-7002  
[www.luederlaw.com](http://www.luederlaw.com)

*repair the damage caused by the fire. One owner refuses to file an insurance claim, arguing that the Association is responsible for maintenance of the exterior portions of townhome units, so it should cover the whole cost of replacing the exterior portions of townhome units. This is not the case and would make little practical sense. This owner's insurance policy covers areas falling under the Association's maintenance responsibility and areas falling under the owner's maintenance responsibility. There is no point in the Association requiring, and the owner carrying, such a policy if the owner refuses to file a claim when damage is done to an area falling under the Association's maintenance responsibility. If the Association obtains insurance coverage for these areas as well, this would be double coverage paid for by Association dues. As such, the Association may submit a claim against this owner's policy to recover the cost of repairing any damage occasioned by the casualty event.*

### **What about owners who are not aware of any casualty damage to their roofs?**

In preparation for the roofing project, the Board hired a contractor to evaluate the townhome roofs in Coventry at Village Grove throughout the end of 2020 and the beginning of 2021. During these evaluations, it came to the Association's attention that a significant number of townhome roofs have suffered storm damage which may be covered by homeowners' insurance. There are several owners who assert that no damage has occurred to their roofs as a result of a casualty event, and, therefore, they will not file an insurance claim. Whether damage has occurred as the result of a casualty event, and is thus covered by insurance, is a determination to be made by each Owner's insurance provider after a claim has been filed. In filing a claim, each Owner should provide their insurance provider with true and accurate information. Upon receipt of this information, the insurance provider will determine what portion of the damage occurred as the result of a casualty event.

Consider the following hypothetical scenario, where it is difficult to determine what damage, if any, was caused by a casualty event:

*An owner discovers water damage to the drywall walls of the unit. In assessing the damage, it is discovered that improper maintenance of a pipe has allowed water to slowly leak inside the unit walls over an extended period of time and that mold has formed. A large storm came through the area recently, and, without professional knowledge of this type of damage, the owner cannot differentiate the damage caused by the storm from the damage caused by the leaking pipe. The owner files a claim with her insurance provider, and her provider makes a determination based on a professional assessment of the damage.*

The Association has informed all owners that any costs not covered by insurance will be paid for by the Association as a maintenance expense. The Association has further informed all owners that it will contribute up to \$1,500 towards every owner's insurance deductible. Article 10, Section 10.2 of the Declaration also requires that each Owner provide a copy of their homeowners insurance policy to the Association upon request. In a letter sent by this firm dated December 18, 2020, the Association requested that each Owner provide a copy of their homeowners insurance policy. Any Owner who has failed to do so is in violation of the Declaration.

**What if an Owner fails or refuses to file a claim with their insurance provider?**

In the event that an Owner fails or refuses to file a claim with their insurance provider, the roofing project will still move forward for ALL townhomes in Coventry at Village Grove. The Association has two options for how to proceed under these circumstances:

**Option 1.** The Association may file a claim against the Owner's insurance policy, as the Association is responsible for maintaining the area at issue and the damage may be covered by insurance. The project will then proceed as it would for any other Owner.

**Option 2.** The Association will complete the roofing project and assess any Owner who failed to provide the required insurance documentation the full cost of that Owner's roof replacement. This cost is approximately \$6,000.00. Article 4, Section 4.6 of the Declaration grants the Board the power to levy specific assessments as it deems appropriate and provides, in relevant part, the following:

The Board of Directors may also specifically assess Owners for Association expenses as follows: (a) expenses of the Association which benefit less than all of the Units may be specifically assessed equitably among all of the Units which are benefited according to the benefit received; and (b) expenses of the Association which benefit all Units, but which do not provide an equal benefit to all Units, may be assessed equitably among all Units according to the benefit received.

If it is determined that the townhome roof had storm damage that could have been covered by insurance the Owner was required to have, but the Owner failed to have such coverage or refused to allow a claim to be filed, the Association should not be required to incur unnecessary maintenance expenses.

**Do owners have the authority to select their own contractor?**

No. Under the Declaration, owners are not authorized to select the contractor.

While owners are responsible for carrying insurance, any decisions regarding the maintenance or repair of the townhome roofs are to be made by the Board. The Board may select the contractor to perform such maintenance or repair work, regardless of whether the work is necessitated by ordinary wear and tear or by a casualty event. The Board considered numerous contractors for the roofing project, and it selected Skyshield. This decision was based on several considerations, including the cost of the project, the quality of the work, and the warranty protecting that work. Owners are not responsible for, nor do they have any authority over, choosing a contractor to perform work on areas which fall under the Association's maintenance responsibility.

Further, the Association is responsible for ensuring the quality of the work and will address potential warranty and quality issues. The Association, and not the Owner, is responsible for maintaining the roofs once completed. As such, the Board has taken care to select a contractor who performs quality work.

**Can an Owner refuse to allow Skyshield to work on that Owner's roof?**

No. The Association may grant Skyshield access to all townhome roofs to complete the roofing project.

Pursuant to the easement granted under Article 12, Section 12.5 of the Declaration, the Association will grant Skyshield access to all townhomes in Coventry at Village Grove in order to complete the roofing project. An easement is a right which a person or entity has on the property of another. Under Article 12, Section 12.5 of the Declaration, the Association has a perpetual easement across the exterior portions of all townhome units and may access these exterior portions as may be reasonably necessary for the maintenance required under the Declaration. This easement allows the Association to hire a contractor of its choosing to work on the townhome roofs, and it allows said contractor to access the townhome roofs to complete the necessary work.

**Why are Owners being asked to sign over the payment from their insurance provider to the Association?**

The contract for the roofing project is between the Association and Skyshield. The Association is responsible for ensuring that Skyshield receives proper payment for the work performed. The cost of the roofing project will be covered by a combination of insurance payments and Association funds. The Association will be covering the deductible amount, as well as any shortfall between the amount of insurance funds received and the actual cost of the roof repairs. It makes the most practical sense for the Association to gather the funds and make payment to Skyshield directly for the full replacement cost. As such, the Board has determined to take the current approach of asking owners to sign over their insurance payments to the Association to be put towards the roofing project.

Some owners have stated that, because Skyshield is not the contractor they would have selected for the project, they will not sign over the payment or pay for the work done by Skyshield. As discussed above, owners have no authority over selecting the contractor for the roofing project. This decision is for the Board, and an owner cannot refuse to pay simply because they would have chosen a different contractor than the Board.

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### **TOWNHOME ROOFING PROJECT WEBPAGE**

Below, please find the link to access the Townhome Roofing Project webpage:

<https://villagegrove.net/townhome-roofing-project>

**Questions:** You may submit questions or concerns regarding the roofing project to the project manager, Andrew Hancock, and the Association's property manager, Jim Stobe, through the Townhome Roofing Project portal on the Association's website.

**Governing Documents:** The following documents are available on the Townhome Roofing Project webpage for your review:

- Master Declaration of Protective Covenants, Conditions, Restrictions and Easements for Village Grove
- Third Amendment to Master Declaration of Protective Covenants, Conditions, Restrictions and Easements for Village Grove
  - o Amends Article 8, Section 8.2 of the Declaration, which sets forth the maintenance responsibilities of the Association

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### **ATTORNEY INFORMATION**

Firm: Lueder, Larkin & Hunter, LLC

Firm Address: 5900 Windward Parkway, Suite 390  
Alpharetta, Georgia 30005

Attorney: Elizabeth K. Modzeleski