

Hampton Commons - Amendment

ARTICLE VIII INSURANCE OBLIGATIONS OF ASSOCIATION AND INDIVIDUAL OWNERS

Section One. Insurance to be Maintained by Association. The Association shall maintain, to the extent reasonably available:

- (a) Property insurance on the common elements and the "Exterior Shell" of the townhome buildings insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. For purposes of clarity, the "Exterior Shell" of the townhome buildings shall include: (1) all exterior surfaces, including siding or brick veneer, windows, doors, or any other opening in the exterior of the building and including all portions of the building between the exterior surface up to and including the studs of all exterior perimeter walls and all load bearing walls that provide structural support, (2) the roof (including shingles) and all structural support for the roof, (3) the foundation of the building, up to and including any concrete subfloor, (4) all portions of any firewall separating townhomes, (5) all shutters, downspouts, and other similar exterior features common on the townhome buildings in the community, and (6) all plumbing, electrical, gas, and other utility wiring within exterior perimeter walls and roof. The total amount of insurance after application of any deductibles shall be not less than one hundred percent (100%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and
- (b) Liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, Ownership, or maintenance of the common elements.

Section Two. Insurance Not Reasonably Available. If the insurance described in Section One of this Article is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Lot Owners.

Section Three. Content of Association Policy. Insurance policies carried pursuant to Section One (a) of this Article shall provide that:

- (a) Each Lot Owner is an insured person under the policy to the extent of the Lot Owner's insurable interest;
- (b) The insurer waives its right to subrogation under the policy against any Lot Owner or member of the Lot Owner's household;
- (c) No act or omission by any Lot Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under the policy; and

- (d) If, at the time of a loss under the policy, there is other insurance in the name of a Lot Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

Section Four. Losses Adjusted with Association. Any loss covered by the property policy under Section One of this Article shall be adjusted with the Association, and the insurance proceeds for that loss are payable to the Association and not to any mortgagee or beneficiary under a deed of trust. The Association shall hold any insurance proceeds in trust for Lot Owners and lienholders as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged property, and Lot Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the planned community is terminated.

Section Five. Insurance to be Maintained by Lot Owners. Each Lot Owner shall purchase an insurance policy for that Owner's Lot insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than one hundred percent (100%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies. Each Owner's policy shall cover all structural elements of their Lot except for the Exterior Shell of the townhome building, as defined above. For clarity and as examples, each Owner's policy shall include coverage for all portions of the Lot from the studs of the townhome walls inward (including insulation and drywall), from the trusses in the ceiling downward, and from the subflooring (meaning everything above the concrete foundation) upward. In addition, any policy shall contain a Replacement Costs Endorsement. Proof of insurance coverage shall be submitted to the Association upon request. Owners may, at their option, obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expenses and such other additional coverage as they may desire.

Note – Owners are strongly encouraged to obtain insurance sufficient to cover any deductible, assessment or chargeback that may exist for the Association's policy and to confirm with the Association the amount of any possible deductible, assessment, or chargeback amount each year to make sure the owner has sufficient individual coverage to assist with these items.

Section Six. Certificates; Cancellation. An insurer that has issued an insurance policy under this section shall, upon written request, issue certificates or memoranda of insurance to the Association and any Lot Owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Lot Owner, and each mortgagee or beneficiary under a deed of trust to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

Section Seven. If Repair or Replacement is Not Required. Any portion of the planned community for which insurance is required under Section One (a) of this Article which is damaged or destroyed

shall be repaired or replaced promptly by the Association unless (i) the planned community is terminated, (ii) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (iii) the Lot Owners decide not to rebuild by an eighty percent (80%) vote, including one hundred percent (100%) approval of Owners assigned to the limited common elements not to be rebuilt. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If any portion of the planned community is not repaired or replaced, (i) the insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the planned community, (ii) the insurance proceeds attributable to limited common elements which are not rebuilt shall be distributed to the Owners of the Lots to which those limited common elements were allocated, or to lienholders, as their interests may appear, and (iii) the remainder of the proceeds shall be distributed to all the Lot Owners or lienholders, as their interests may appear, in proportion to the common expense liabilities of all the Lots. Notwithstanding the provisions of this Article, N.C. Gen. Stat. § 47F-2-118 governs the distribution of insurance proceeds if the planned community is terminated.

Section Eight. Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association or those held in trust, shall be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to twelve (12) months' assessments, plus reserves accumulated.

Section Nine. Obligation to Rebuild Lots. Should any portion of a Lot which is not covered under the Association's policy described under Section One (a) of this Article be damaged or destroyed, the Owner of such Lot shall repair or replace it promptly in accordance with the original construction plans and specifications unless (i) this Declaration is terminated; or (ii) repair or replacement would be illegal under any state or local health, environmental, or safety statute or ordinance. For purposes of clarity, repairing or replacing promptly shall mean commencing repair or replacement within ninety (90) days of notification by the Association that work must begin, and each Owner shall continue with repair or replacement in good faith until completed. The costs of repair or replacement of those portions of any dwelling or any other improvement upon a Lot that are not covered under the Association's policy described under Section One (a) of this Article or are in excess of proceeds of insurance is the sole responsibility of the Owner of such damaged Lot and other improvements.

The Association shall provide to Owner the name and contact information for all contractors used by the Association for the Exterior Shell. The Association shall also provide copies of all permits obtained for work on the Exterior Shell.

Section Ten. Deadline to Obtain Coverage. From the date that this Article becomes effective when it is recorded in the Register of Deeds office for Forsyth County, Owners shall have thirty (30) days to obtain coverage as outlined in this Article.

Section Eleven. Deductible/Retainage Responsibility and Assessment Therefore. Whenever the maintenance, repair, and replacement of any item for which the Association is obligated to maintain, repair or replace is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair, or replacement except that the Owner(s) of such Lot(s) requiring maintenance, repair, or replacement shall be, in said instance, required to pay such deductible, retention, chargeback which is the portion of the costs of such maintenance, repair, and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair, or replacement. Any such costs shall be assessments and chargebacks collectable in the same manner as regular assessments as provided herein, the Association may place those amounts directly on the Owner's ledger, and such amounts shall be secured by liens as provided in N.C. Gen. Stat. § 47F-3-116.

Section Twelve. Further Clarification. It is the express intent of this Article VIII to limit the Association's obligation to maintain insurance and to the obligation to rebuild after casualty to the Exterior Shell as described above. Further, any shortage in insurance proceeds are to be the responsibility of the owner as an assessment and chargeback when applicable.