

**LAS VEGAS CAY CLUB HOMEOWNERS' ASSOCIATION
AKA FLAMINGO PALMS VILLAS
BOARD OF DIRECTORS RESOLUTION
RE: INSURANCE CLAIM AND DEDUCTIBLE POLICY AND PROCEDURE**

In order to facilitate the respective maintenance, repair, and replacement obligations of the Las Vegas Cay Club Homeowners' Association aka Flamingo Palms Villas (the "Association") and the Owners in relation to the Common Elements, Limited Common Elements and Units, the Board of Directors (the "Board") hereby adopts the following Insurance Claim and Deductible Policy and Procedure for implementation within Las Vegas Cay Club aka Flamingo Palms Villas (the "Community"). Unless otherwise specified, the capitalized terms have the same meaning as those terms are defined in the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for The Las Vegas Cay Club Condominiums (the "Declaration").

Emergency Response

1. The Board has adopted the following procedure regarding water and sewer emergencies, and water and sewer damage caused by faulty plumbing, air conditioners, water heaters, and any other items, which are or may be the maintenance responsibility of the Owner. If there is a water leak resulting in damage to one or more Units:

- a. The Association may respond to the emergency and stop the leak to fulfill its duty to contain the damage and mitigate further damage;
- b. The Association will utilize its right of entry, if necessary, to all Units affected in an emergency;
- c. The Association will remove any water or sewage from the Unit, i.e., dry out the waterlogged areas to prevent further damage.

2. No repairs will be made by the Association, other than the emergency response to stop the leak and remove the water. Owners must contact their insurance carriers and make a claim on their individual policies.

3. If the damage appears to be over the Association's deductible and it appears to be a covered claim, the Association will comply with the Covered Insurance Claims provisions below.

Definitions

4. "Common Elements" is defined to include, among other things, the Buildings (but not the Units), the apparatus, installation and equipment of the Buildings, and the parts of the Project identified as Common Elements or Limited Common Elements. See Declaration, Article I, "Common Elements".

5. "Limited Common Elements" are those portions of the Common Elements over which exclusive easements are reserved for the benefit of one or more but fewer than all the Owners, which may include, but are not limited to, the balconies, terraces, elevator lobbies, and storage lockers, if any, servicing a Unit as described in Section 3.3 of the Declaration.

6. Section 3.3 of the Declaration further defines the portions of the Common Elements which are Limited Common Elements assigned to the Units, as follows:

(a) If a chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column or other fixture lies within and partially outside the designated boundaries of a Unit, the portion serving one or more Units is a Limited Common Element, allocated solely to the Units served thereby, the use of which is limited to those Units, and any portion serving more than those Units constitutes a part of the Common Elements.

(b) To the extent any hot water heater or tank and any of its related equipment, pipes, or conduit, lies within and partially outside the designated boundaries of a Unit, to the extent it serves one or more Units, it shall be a Limited Common Element, allocated solely to the Units served thereby, the use of which is limited to those Units, and any portion serving more than those Units constitutes a part of the Common Elements.

(c) Any shutters, awnings, window boxes, doorsteps, storage areas, entry areas, stoops, porches, balconies, patios and exterior doors and windows or other fixtures designed to serve a single Unit, including any such identified on the Plat and Plans as Limited Common Areas, located outside the boundaries of the Unit, are Limited Common Elements allocated exclusively to the Unit and the use of such Limited Common Elements is limited to that Unit.

(d) Entry areas, stairs, stoops, steps, and walls above door openings at the entrances to each Building providing access to less than all Units constitute Limited Common Elements allocated exclusively to the Units served thereby and the use of such Limited Common Elements is limited to such Units.

(e) Exterior surfaces, trim, siding, doors, and windows will be Limited Common Elements allocated to the Units sheltered or served thereby.

(f) Mailboxes, name plates and exterior lighting affixed to the Building will be Limited Common Elements allocated to the Units served thereby.

(g) Any porch or balcony appurtenant to a Unit shall be a Limited Common Element of the Unit(s) to which it is adjacent and accessible. The Association shall be responsible for the maintenance of the structural and mechanical elements of any such Limited Common

Elements, except to the extent arising from or necessitated by the negligence, misuse or neglect of a specific Unit Owner, in which case such cost and expense shall be paid solely by such Unit Owner, with the owner of the Unit to which they are appurtenant responsible for the costs of same and, directly, for the general cleaning, plant care and the upkeep of the appearance of the area(s).

Maintenance Responsibilities

7. Pursuant to the Declaration and applicable provisions of Nevada law, the Association is: (a) responsible for the maintenance, repair, and replacement of the Common Elements and the Improvements located thereon, and (b) responsible to maintain, repair and/or replace the Limited Common Elements as required by the Board, and the Association may enter upon the Limited Common Elements and make any necessary repairs and charge the Owner(s) of the appurtenant Unit(s) for all costs involved in making such repairs as a Special Assessment. The Owner is responsible for the maintenance, repair, and replacement of the Unit. See Declaration, Article II, Sections 2.8 and 2.10, NRS 116.2102(2) and (4), and NRS 116.3107.

8. Notwithstanding the foregoing, any Common Expense caused by the negligence or willful misconduct of the Owner or the Owner's family, tenants, or guests, may be assessed, after Notice and a Hearing, exclusively against the Owner and Owner's Unit in the form of a Special Assessment. See Declaration, Article II, Section 2.8(a), Article IV, Section 4.11, and Article XVII, Section 17.1. See also NRS 116.3115(6).

9. If there is a leak in a Limited Common Element pipe, one that exclusively services one or more, but less than all Units, the Association may make the repair and assess the cost of repair to the Owners. In the alternative, the Owners may, after notifying the Association in writing, elect to repair the Limited Common Element pipe at the Owner's expense. See Declaration, Article II, Section 2.8(c) and 2.10. See also NRS 116.3115(4).

10. Nevada law provides that "in the case of a building that contains units divided by horizontal boundaries described in the declaration, or vertical boundaries that comprise common walls between units, the insurance maintained . . . to the extent reasonably available, must include the units, but need not include improvements and betterments installed by units' owners." See NRS 116.3113(2).

11. To the extent the coverage is reasonably available, the Board shall obtain and maintain the following Property Insurance Coverage:

PROPERTY INSURANCE COVERAGE

(a) *Coverage.* Property insurance coverage will cover the facilities of the Condominium Project including all Buildings and structures, for example, the Units and all fixtures, equipment and any improvements and betterments whether part of a Unit or a Common Element, and such personal property of Owners as is normally insured under building coverage, but excluding land, excavations, portions of foundations below the undersurface of the lowest basement floors, underground piling, piers, flues and drains

and other items normally excluded from property policies; and all property owned by the Association.

See Declaration, Article VIII, Section 8.2(a).

12. The Association maintains a commercial general liability insurance policy which insures the Common Elements, the structural components of the Building, and the Units, in accordance with the requirements of the Declaration and NRS 116.

13. The Association's current commercial general liability insurance policy deductible is \$25,000.00 per occurrence. The deductible is subject to changes.

Non-Covered Claims

14. Damage Only to a Single Unit Where the Damage is Less than Association's Insurance Deductible. If there is a water leak or sewer leak, or other occurrence where only a single Unit is damaged, and the damage is less than \$25,000.00, then a claim will **not** be made on the Association's insurance policy and the duty to repair and maintain is based upon the maintenance and repair responsibility set forth above. The Owner remains responsible for the maintenance, repair, and replacement of his/her individual Unit. In addition, the Owner shall promptly notify his/her personal insurance carrier of the damage and follow all procedures for the filing of claims as set forth in the Owner's personal insurance policy. The Owner shall be solely responsible for any deductible amount required by the Owner's personal insurance carrier to be paid.

If the Common Elements have also been damaged, the Owner, from whose Unit the leak originated may be assessed the cost of repair and replacement as a Special Assessment, after Notice and a Hearing.

15. Damage to Multiple Units Where the Damage Amount is Less Than Association's Insurance Deductible. If there is a water leak or sewer leak, or other occurrence where multiple Units are damaged, and the damage is less than \$25,000.00, then a claim will **not** be made on the Association's insurance policy and the duty to repair and maintain is based upon the maintenance, repair, and replacement responsibility set forth above. The Owners remain responsible for the maintenance, repair, and replacement of their respective Units. In addition, each affected Owner shall promptly notify his/her personal insurance carrier of the damage and follow all procedures for the filing of claims as set forth in the Owner's personal insurance policy. Each Owner shall be solely responsible for any deductible amount required by the Owner's personal insurance carrier to be paid. An Owner of a damaged Unit may have a claim against the Owner of the Unit where the water leak or sewer leak originated and may personally pursue such claim.

If the Common Elements have been damaged, the Owner, from whose Unit the leak originated may be assessed the cost of repair and replacement as a Special Assessment, after notice and a hearing.

Covered Insurance Claims

16. In the event the Board believes that the nature of the claim may fall within the Association's insurance policy, the Board may, in its sole discretion, submit the claim to the Association's carrier on behalf of the Owner, in accordance with the requirements of the Association's Insurance Policy. Owners are not to make claims directly to the Association's insurance carrier or to take any steps to contact the Association's insurance carrier or agent, without the express written approval of the Board.

17. If the Association's insurer accepts coverage for the claim, the Owner is not relieved from his/her maintenance and repair obligations under the Declaration and Nevada law, and shall remain solely responsible for repairing, replacing, maintaining, or otherwise remedying the damages sustained to the Owner's Unit, which are not covered by the Association's insurance, including those items referenced in Paragraphs 6 and 11, above, at the Owner's cost and expense.

18. If the Association's insurer accepts coverage for the claim and the amount of the claim exceeds the insurance deductible under the Association's Insurance Policy: (a) the deductible will be the responsibility of the Owners of the Units benefitted by the repair, with responsibility being calculated on a percentage of the total expenses, and (b) the insurance proceeds, if any, which are in excess of the insurance deductible may be applied, also on a percentage basis, toward the Owner's repair costs as well as repairing the Common Elements damaged, if any.

19. Damage to Multiple Units: Caused by Willful Misconduct or Negligence. If the loss or damage: (i) originates in an Owner's Unit or Limited Common Element for which the Owner is responsible, pursuant to Article II, Section 2.10 of the Declaration (together, "Originating Unit"), (ii) is caused by the **willful misconduct or gross negligence** of any Owner or tenant, or the invitee of the Owner or tenant, and (iii) spreads to and damages other Units ("Damaged Units"), then the Owners of the Originating Unit shall be solely and exclusively responsible for all costs of repair, and the cost of the Association's insurance deductible. Consistent with Nevada law, if the total cost of repairs exceeds the deductible and the damage or loss is caused by the willful misconduct or gross negligence of any Owner or tenant, or the invitee of the Owner or tenant, then **the amount in excess of the deductible will also be the sole responsibility of the Owner of the Originating Unit and the entire cost of repair can be charged exclusively against the Originating Unit as a Special Assessment, even if the Association maintains insurance with respect to that damage.** See Declaration, Article II, Section 2.8(c), Article IV, Section 4.11, and Article XVII, Section 17.1, and NRS 116.3115(6).

20. Damage to Multiple Units: Not Covered by Willful Misconduct or Negligence to Unit and Common Elements. If the Association's insurer accepts coverage for the claim, and if the loss or damage: (i) originates in an Owner's Unit or Limited Common Element for which the Owner is responsible, pursuant to Article II, Section 2.10 of the Declaration ("Originating Unit"), (b) is NOT caused by the willful misconduct or gross negligence of any Owner or tenant, or the invitee of the Owner or tenant, (c) spreads to and damages other Units, and (d) exceeds the amount of the deductible, the cost of the Association's insurance deductible shall **be the sole responsibility of the Owners** of the Units benefitted by the repair, with responsibility being calculated on a percentage of the total expenses **between the Units.** See Declaration, Article II,

Section 2.8(c), Article IV, Section 4.11, and Article XVII, Section 17.1. If the total cost of repairs exceeds the deductible, then the amount in excess of the deductible will be covered by the Association's insurance if it is a covered claim.

Expenses Incurred Due to Owner's Failure or Refusal to Act

21. If the Association is required to make the repairs as a result of the Owner(s) failure or refusal to do so, or in the case of an emergency, and the Owner(s) are responsible for making the repairs and incurring the expense, then the Owner(s) benefitted by the repairs shall be assessed exclusively for the cost of the repairs to their respective Units. See Declaration, Article II, Sections 2.8(c) and 2.10 and Articles IV, Section 4.11.

Vacant Units/Unresponsive Owners

22. It is the responsibility of each Owner/resident to immediately notify the Association of any water or sewer leak in the Owner's/resident's Unit. If an Owner/resident will be absent from the Unit for any period of time, it is the Owner's/resident's obligation to plan to inspect the Unit on a regular basis to avoid the effects of water or sewer leaks. The Board hereby declares that an Owner's/resident's failure to timely notify the Association of a water or sewer leak shall be characterized as willful misconduct or gross negligence and any such claim originating therefrom shall be treated as set forth in Paragraph 19.

23. If a Unit is vacant and a water or sewer leak occurs within the Unit, then the Association, including its employees, agents, and community manager, may enter the interior of the Unit to:

- a. Abate a water or sewer leak in the Unit and remove any water or sewage from the Unit that is causing damage or, if not immediately abated, may cause damage to the Common Elements or another Unit if the Owner fails or refuses to abate the water or sewage leak.
- b. After providing the Owner with notice, but before a hearing:
 - i. Remove any furniture or fixtures including without limitation, flooring, baseboards and drywall, that were damaged as a result of water or mold damage resulting from a water or sewage leak to the extent such removal is reasonably necessary because water or mold damage threatens the health or safety of the Community residents, results in blighting or deterioration of a Unit or the surrounding areas and adversely affects the use and enjoyment of nearby Units, if the Unit's Owner fails or refuses to remediate or remove the water or mold damage.
 - ii. Remediate or remove any water or mold damage in the Unit resulting from the water or sewage leak to the extent such remediation or removal is reasonably necessary because the water or mold damage threatens the health or safety of the Community residents, result in blighting or deterioration of the Unit or the surrounding area and adversely affects the use and enjoyment of nearby Units if the Unit's Owner fails or refuses to

remediate or remove the water or mold damage. For the purpose of this provision, remediation does not include restoration.

See NRS 116.310312.

24. After notice and a hearing, as required by Nevada law, and subject to the maintenance and repair obligations set forth above, the Association may order that the costs of any maintenance or abatement or the reasonable costs of remediation or removal conducted pursuant to Paragraph 23, above, including, without limitation, reasonable inspection fees, notification and collection costs and interest, be charged against the Unit. See NRS 116.310312(5).

25. The costs of any maintenance or abatement or the reasonable costs of remediation or removal conducted pursuant to Paragraph 23, above, shall be treated as part of the super priority portion of the Association assessment lien. See NRS 116.310312(16).

Owner's Insurance Requirements

26. Except as specifically provided in the Declaration or Nevada law, the Association shall not be responsible to Unit Owners to obtain insurance coverage upon the property lying within the boundaries of their Unit and any appurtenant Limited Common Element including, but not limited to, their personal property, and for their personal liability, moving and relocation expenses, lost rent expenses and living expenses and for all other risks not otherwise insured in accordance herewith. To the extent that a Unit Owner or other occupant of a Unit desires coverage for such excluded items, it shall be the sole responsibility of the Unit Owner and/or occupant to obtain such coverage. Accordingly, each Owner is encouraged to obtain and maintain continuously in effect during the time of his/her ownership, an H06 policy of insurance insuring his/her Unit, and all contents and personal property located therein, including, without limitation, all improvements and betterments installed by the Owner. The H06 policy should include a clause or provision that in the event an Owner is required to repair damages sustained to his/her Unit, even if such claims are covered under the Association's master insurance policy, the payment of the Owner's repair costs which are less than or equal to the deductible amount under the Association's master insurance policy shall be made by the insurance carrier issuing the H06 policy to the Owner. See Declaration, Article VII, Section 8.6.

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27. Each Owner is further encouraged to consult his/her personal insurance agent to determine if modification of his/her current homeowner's policy is advisable based on the foregoing Insurance Claim and Deductible Policy and Procedure adopted herewith by the Board.

DATED this ____ day of _____, 2021.

**LAS VEGAS CAY CLUB HOMEOWNERS'
ASSOCIATION AKA FLAMINGO PALMS
VILLAS**

By:  _____

Its: President

By: Rodney Wang _____

Its: Vice-President

By:  _____

Its: Secretary