

Westhaven Trails Community Service Association, Inc.

November 27, 2023

Dear Association Member:

The Board of Directors for the Westhaven Trails Homeowners Association is contacting you to address a request to amend the Declaration of Covenants to modify the voting and assessment provisions in the Covenants.

### **The Current Covenants.**

As you are aware, all our properties are subject to the Declaration of Covenants, which, among many things, establishes our Homeowners Association. These Covenants have not been modified since enactment by the developer of our subdivision in 1981. A copy of the Covenants is available to review on our website at [www.westhaventrails.org/covenants](http://www.westhaventrails.org/covenants).

During both the 2022 and 2023 annual meeting some Association Members have requested that we reevaluate and change our current Covenants with respect to voting rights and how assessments are made. These two items are linked in our Covenants. Under our current Covenants, each residential unit owner provides one (1) vote. For owners of single-family homes, a homeowner has one (1) vote, but an owner of a multiunit apartment building has many votes (i.e., a 50-unit apartment building has 50 votes exercised by the owner). Historically, this has resulted in owners of multiunit buildings having a greater impact on elections for Board members, relative to single family homeowners, though this is also because many owners do not participate in electing the Board.

Regarding assessments, under our Covenants the amount assessed to each owner is based on the number of residential units, using a formula which takes into consideration the number of bedrooms in that dwelling unit. Historically, this has resulted in a relatively low annual assessment to single family homeowners, but a much higher assessment to multiunit building owners, because of the number of dwelling units in those buildings. Assessments are used for the Association to pay for maintenance of common areas, including park equipment and park maintenance.

### **The Proposed Amendment.**

Under a proposed amendment to the Covenants, voting rights and assessments would be calculated to be the same for each lot. In other words, single family homeowners would continue to have one (1) vote, but a lot owner of a multiunit building would also only have one (1) vote. In addition, assessments would also be based on lots. A single-family homeowner would pay an assessment equal to his neighbor, but the lot owner of a multiunit building would also pay the same amount of assessment.

These changes would result in an increase in voting power of single-family homeowners, since

the voting power of multiunit owners would be reduced to one (1) vote per lot. By our calculations, there are currently 841 dwelling units in the subdivision, so there are that many votes. Under the proposed change, the number of votes would be reduced to 466, since the multiunit properties would be reduced to one (1) vote per lot. This change results in more weight being afforded to each vote.

The change in the assessment process would result in a net decrease in the assessments to multiunit lot owners but increase it for other lot owners. We have an example below of how the change in the assessment process would affect an assessment of a single-family home, using our 2023 budget.

Current assessment on a single-family home: \$85 Three\* Bedrooms or more.  
\$63.75 Two\* Bedrooms.

Proposed assessment on a lot, including a  
single-family home, regardless of bedrooms: \$120.11

Please note that the proposed amendment to the Covenants will not increase the Association's budget or expenses; rather the same budget will be collected but in an equal amount from each lot owner. Additionally, the proposed assessment on the lot does not include any special assessments or private court fees.

### **How the Covenants are Amended.**

The Covenants are recorded, like a deed, and are applicable to all the lots in the subdivision. In order to amend the Covenants, we must follow the procedure set forth in the Covenants. These procedures require the following:

1. Per Section 13.03 of the Covenants, the amendment must be signed by at least 65% of the lot owners. The signature must be "original" and notarized, so that the instrument can be recorded with the Dane County Register of Deeds.
2. Per Section 12 of the Covenants, the consent of 2/3rds of the first mortgagees of the lots is required.

Enclosed you will find two forms for you to complete. The first form, approving the amendment to the Declaration of Covenants, must be signed or acknowledged before a notary. In addition to signing that form, please complete and sign the second form, which concerns your mortgage bank. Once completed, please mail the forms back to P.O. Box 45348, Madison, WI. 53744-5348. We need the **original signed paper copy**, not a digital copy.

If you do not approve of the amendment, then you do not need to sign the first form. We do request though that if you do not approve that you let us know. You may email us at [board@westhaventrails.org](mailto:board@westhaventrails.org) or you can indicate non-approval on the remittance form when you return your annual assessment. Please include the address of your property in the subject line, which will assist us in keeping overall track of whether 65% of the owners want to amend the covenants. Please note, we would like to receive all responses and conclude this process by February 12<sup>th</sup>, 2024.

**Please Contact your Mortgage Bank for Approval.**

In addition to completing the two forms referenced above, for approval by 2/3rds of the mortgagees (your mortgage bank), attached is a sample letter and form for you to send to your mortgage bank. Given the large number of properties in the subdivision, we are requesting that each owner contact his or her mortgage bank to obtain approval.

When contacting your mortgage bank for approval, you should modify the letter to include your name and address. The mortgage bank can complete the form and mail or email it back to you, and we ask that you then forward the approval to us, along with your address in the subject line of the email so we may keep track of which mortgage lenders for each property have approved of the amendment.

**Next Steps.**

The Board would like to invite owners to a special membership meeting to answer questions regarding the proposed amendment, notarize those approvals for owners who wish to sign the approval in person, and help answer any questions on how to obtain approval from your mortgage lender.

This letter serves as notice for the special membership meeting to be held at 6 p.m. on Tuesday, January 16, 2024, at the Madison West District Police Station community room at 1710 McKenna Blvd. Gammon Road.

Sincerely,

*Enzo Ciarletta*

Enzo Ciarletta

President, Board of Directors

Enclosures

*\*Corrected error from original mailing.*



**OWNER CERTIFICATION REGARDING MORTGAGE BANK**

I, the undersigned, and the owner of the property located at:

\_\_\_\_\_  
(enter address).

I hereby certify the following (check the appropriate line):

\_\_\_\_\_ There is no mortgage on the aforesaid property.

\_\_\_\_\_ There is a mortgage on the aforesaid property.

If there is a mortgage on the aforesaid property, the name and address of my mortgage bank or service provider is \_\_\_\_\_

\_\_\_\_\_  
(enter the name and address of mortgage bank or provider).

I certify that I will contact my mortgage bank or provider to obtain approval of the proposed amendment to the Declaration of Covenants and provide proof of the approval to the Westhaven Trails .

Owner Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_

Owner Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_