

(vii) to the Association upon foreclosure of its lien for assessments under Section 12.7, or to another purchaser at such foreclosure sale;

(viii) under circumstances which the Board, in its discretion, deems to warrant classification as an exempt transfer (e.g., a transfer made solely for estate planning purposes may be, but is not required to be, deemed exempt from payment of the Enhancement Fee).

PART FOUR: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

ARTICLE 13 EASEMENTS

The easements created in this Article establish the rights of Owners to use the Common Area and create various rights for the benefit of Owners, the Declarant, the Association, and others over property within the Community. Some of these rights are related to development and construction within the Community and on adjacent property, while others relate to the Association's rights to come upon property of others to fulfill its responsibilities and the interrelationships between the Community and the owners of adjacent property.

13.1 Easements in Common Area.



AN EASEMENT IS ONE PERSON'S RIGHT TO GO UPON OR USE THE PROPERTY OF ANOTHER.

The Declarant grants to each Owner a nonexclusive right and easement appurtenant to such Owner's Unit for use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) Certain Owners' rights to the exclusive use of those portions of the Common Area designated as Limited Common Area; and
- (d) The Board's right to:
 - (i) adopt rules regulating Common Area use and enjoyment, including rules limiting the number of guests who may use the Common Area, and to charge use fees for such use;
 - (ii) suspend an Owner's right to use Common Area facilities pursuant to Article 8;
 - (iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;

(iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area, except as otherwise specifically provided in this Declaration or any deed conveying the Common Area to the Association;

(v) rent or grant a license to use any portion of any clubhouse or other Common Area facility on an exclusive or non-exclusive short-term basis to any Person on such terms as the Board may determine;


(vi) permit use of any recreational facilities situated on the Common Area by the general public, which use may be subject to admission charges, membership fees, or other user fees established in the Board's discretion; and

(vii) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and

(e) the rights of the Declarant and its designees under Section 18.2.

Any Owner may extend the Owner's right of use and enjoyment to the members of such Owner's family, lessees, and social invitees, as applicable, subject to reasonable Board regulation. An Owner who leases such Owner's Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

13.2. Easements of Encroachment.

 ***AN ENCROACHMENT OCCURS WHEN A PERSON'S HOME, FENCE, OR OTHER STRUCTURE EXTENDS ONTO HIS OR HER NEIGHBOR'S PROPERTY. THIS SECTION PERMITS MINOR, INADVERTENT ENCROACHMENTS TO REMAIN.***

The Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units. A permitted encroachment is a structure or fixture that extends unintentionally from one person's property onto another's a distance of less than two feet, as measured from any point on the common boundary along a line perpendicular to such boundary. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

13.3. Easements for Utilities, Etc.

(a) ***Installation and Maintenance.*** During the Development and Sale Period, the Declarant reserves for itself and grants to the Association and all utility providers, perpetual non-exclusive easements throughout the Community (but not through a structure) to the extent reasonably necessary to:

(i) install utilities and infrastructure to serve the Community, other Technology Systems, security and similar systems, and drainage systems;

(ii) install walkways, pathways and trails, street lights, and signage on property the Declarant or the Association owns or within public rights-of-way or easements reserved for such purpose on a recorded plat;

(iii) inspect, maintain, repair, and replace the utilities, infrastructure, and other improvements described above; and

(iv) access and read utility meters.

Notwithstanding the above, the Declarant reserves the right to deny access to any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms.

(b) ***Specific Easements.*** The Declarant also reserves the nonexclusive right and power to grant and record such specific easements consistent with Section 13.3(a) as it deems necessary to develop the property described in Exhibits "A" and "B." The location of the specific easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

(c) ***Minimal Interference.*** All work associated with the exercise of the easements described in subsections (a) and (b) of this section shall be performed so as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to the condition existing prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

13.4. Easements to Serve Additional Property.

The Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and Mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. The Person exercising such easement rights shall be responsible for any damage caused to the Common Area as a result of their actions in connection with development of such property. This easement shall also include, without limitation, the right to make any or all of the Common Area facilities available on a temporary or permanent basis to owners of any portion of the property described on Exhibit "B."

If the above easement grants permanent access to and from any property which is not submitted to this Declaration, or permanent use privileges to the owners of any property which is not submitted to this Declaration, the Declarant, or its successors or assigns, shall establish, by agreement with the Association or covenant on the benefited property, a reasonable arrangement by which the owners of the benefited property or any mandatory membership owners Association having jurisdiction over such property shall (a) share on a reasonable basis the costs which the Association incurs in connection with the ownership, maintenance, repair, replacement, operation, and insurance, of the Common Area facilities of which use is shared pursuant to this easement, including any management fees; or (b) provide reciprocal rights to the Association's Members to use comparable facilities within such portion of the Additional Property, or (c) a combination of (a) and (b). The shared maintenance costs may include maintenance to or along any roadway providing access to the benefited property. Notwithstanding the foregoing, the Declarant and the Association may grant easements to the general public for use of property or facilities owned or maintained by the Association without seeking compensation or reimbursement for use by the general public.

13.5. Easements for Maintenance, Emergency, and Enforcement.

By this Declaration, the Declarant grants to the Association easements over the Community as necessary to enable the Association to fulfill its maintenance responsibilities under Sections 6.2 and 9.2 and its enforcement rights under Section 8.2. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance, to inspect for compliance with the Governing Documents, and to enforce the Governing Documents. Any member of the Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

13.6. Easement for Fence and Landscape Maintenance.

The Declarant reserves for itself, the Association, and their successors, assigns, and designees, a perpetual, nonexclusive right and easement for the purpose of constructing, installing, maintaining, repairing, and replacing perimeter fencing or walls and landscaping:

- (a) within 20 feet of the perimeter boundary of the Community;
- (b) within 20 feet of the back-of-curb of public or private streets and alleys within the Community; and
- (a) between any fence or wall easement shown on a recorded plat of any portion of the Community and the back-of-curb of the nearest street running generally parallel to such fence or wall easement.

Nothing in this section shall obligate the Declarant, the Association, or any Builder to install fencing, walls, or landscaping, the installation of such items being in the sole discretion of the Declarant, the Association, and the Builders, as applicable, subject to such approvals as may be required under Article 5 of this Declaration.

13.7. Easements Over Streets and Alleys.

(a) *Rights of Association and Owners.* From the date of completion of construction and final inspection of any street or alley within the Community which has not been dedicated or conveyed to and accepted by the City or another local governmental authority ("**Private Street**") until the Declarant conveys such street to the Association or dedicates it to the City or another local governmental authority for public use, the Private Street shall be subject to a temporary, nonexclusive easement for access, ingress, and egress for the benefit of the Association, each Unit and the Owner thereof, and each other portion of the Community.

Use of any Private Street shall be subject to and in accordance with this Declaration, the recorded plat, any law, ordinance, or regulation governing the use of such street, and the Association Rules.

(b) *Service Easements.* The Declarant hereby creates a perpetual, nonexclusive easement for access, ingress, and egress over any Private Street for law enforcement, fire fighting, paramedic, rescue, and other emergency vehicles, equipment, and personnel; for school buses; for U.S. Postal Service delivery vehicles and personnel; and for vehicles, equipment, and personnel providing garbage and/or recycling collection service to the Community, provided that such easement shall not authorize any such Persons to enter the Private Streets except while acting in their official capacities.

The existence of these easements shall not preclude the Association from maintaining gates or other devices or systems designed to limit general vehicular access over any Private Street to portions of the Community, provided that the Association at all times maintains systems and/or procedures to permit the uncontested entry of Persons authorized to exercise the easements granted in this subsection (b) without unreasonable interference or delay.

ARTICLE 15

DISCLOSURES AND WAIVERS

This Article discloses some important information about the Community for the benefit of prospective purchasers of property in the Community. Each home buyer or new Owner, by accepting title to property in the Community, and each occupant or guest of a Unit, by occupying the Unit or entering the Community, also accepts and agrees to the matters set forth in this Article.

15.1. Public Access.

The general public may have access to the Community and Common Areas via public streets and sidewalks, parks, trails and paths. The Association may, but shall have no obligation to, control public access to or monitor Common Areas or other portions of the Community to identify and eject unauthorized persons. Neither the Declarant nor the Association shall have any obligation to construct or install walls or fences or to implement any other measures to secure the perimeter boundaries of the Community or any part of the Community in order to prevent or restrict entry by the general public.

15.2. Neighboring Uses.

Every community is impacted by conditions which different people may find objectionable. Each Owner and occupant of a Unit, by taking title to or occupying a Unit, acknowledges and agrees that there may be conditions within and outside of the Community which he or she may find objectionable and that it shall be the Owner's or occupant's sole responsibility to become acquainted with conditions within and surrounding Heritage Trails which could affect the use and enjoyment of the Unit. No representations are made regarding the use or zoning of adjacent property or that the category to which adjacent property is zoned may not change in the future.

Each Owner agrees that the Declarant, the Association, and any Declarant Affiliate or agents shall not be liable to any Owner or any other Person claiming any loss or damage, including, without limitation, indirect, special, or consequential loss or damage arising from personal injury, death, destruction of property, trespass, loss of enjoyment, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to the proximity of the Owner's Unit to objectionable uses or conditions on property in the vicinity of Heritage Trails, including without limitation, any claim arising in whole or in part from the negligence of the Declarant, any Declarant Affiliates, or their agents, or the Association. The Owner agrees to indemnify and hold harmless the Declarant, Declarant Affiliates and agents, and the Association against any and all such claims by their tenants and any other person residing in such Owner's Unit.

15.3. Safety and Security.

Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Community. The Association may, but

shall not be obligated to, maintain or support certain activities within the Community designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. **However, neither the Association nor the Declarant shall in any way be considered insurers or guarantors of safety or security within the Community, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.**

No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to the Community cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. **Each Owner acknowledges, understands, and shall be responsible for informing any tenants and other occupants of such Owner's Unit, that the Association, its Board and committees, and the Declarant are not insurers or guarantors of security or safety and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.**

15.4. View Impairment.

Neither the Declarant nor the Association guarantee or represent that any view over and across the Units or any open space or parks within or adjacent to Heritage Trails, will be preserved without impairment. Neither the Declarant nor the Association shall have any obligation to relocate, prune, or thin trees or other landscaping to provide or maintain views. The Association shall have the right to add trees and other landscaping to Common Areas from time to time. There shall be no express or implied easements for view purposes or for the passage of light and air.

15.5 Construction and Development Activity.

Each Owner acknowledges that construction and development activities will be taking place in Heritage Trails until Heritage Trails is completely built out and thereafter as properties are improved, repaired, and modified from time to time. There may be some inconvenience and disturbance during the course of such activities, including such things as construction noise, traffic diversions, and dust and noise emanating from the property upon which such activities are occurring. Neither the Declarant nor the Association shall have any duty to take action to abate such inconveniences or disturbances, nor shall either have any liability for personal injury or property damage resulting from such activities or entry into such areas.

15.6. Protected Buffers.

Each Owner acknowledges that wetlands, open space, flood plains, ponds, streams, and drainage and detention facilities within or adjacent to the Community are part of the stormwater drainage system for the Community and not designed as aesthetic features. Water levels may fluctuate dramatically and at times may flood or be muddy or dry. Neither the Declarant nor the Association has any control over such water levels. Each Owner agrees to release and discharge the Declarant, Declarant Affiliates, and the Association from and against any and all losses, claims, demands, damages, costs, and expenses of whatever nature or kind, including reasonable attorneys' fees and costs at all tribunal levels, related to or arising out of any claim relating to such fluctuations in water levels. No person shall alter, modify, expand, or fill any wetlands, ponds, streams, drainage or detention facilities, swales, or culverts located within or in the vicinity of the Community without the prior written approval of the Declarant and any local, state, or federal regulatory or permitting authorities as may have relevant jurisdiction over such matters.

Owners and occupants of Units have no right to erect fences, attach docks, build retaining walls, anchor or store boats or other watercraft, or landscape, clear, or otherwise disturb natural vegetation within any portion of a Unit designated as a stream buffer or nondisturbance buffer on a recorded plat, nor within any property situated between the Unit boundary and the bank or water's edge of any body of water, except as may specifically be authorized in writing by the Association, the City, or any governmental or quasi-governmental agency having jurisdiction over such area.

15.7. High Voltage Power Lines; Radio and Telecommunication Towers.

Every Owner and occupant of a Unit is hereby advised that high voltage power transmission lines and radio and telecommunication towers and related equipment may be located within or in the vicinity of Heritage Trails. While various studies have failed to establish any causal relationship between living in proximity to high voltage power transmission lines or radio towers and cancer or other diseases, there remains some speculation that such a relationship may exist. Every Owner and occupant of a Unit must evaluate such risk for themselves prior to making a decision to purchase and occupy a Unit. The Declarant, any Declarant Affiliate, Builders, the Association, and their respective members, partners, affiliates, officers, directors, agents, and employees, shall not be liable for any damage or injury to any person or property arising out of or related to the construction, installation, maintenance, or operation of, or proximity to, high voltage power transmission lines and/or radio or telecommunication towers, or any such towers that may now or hereafter be located in or in the vicinity of Heritage Trails.

15.8. Natural Conditions.

Open space within or adjacent to the Community may serve as habitats for a variety of native plants and wildlife, including insects, venomous and non-venomous snakes and other reptiles, and other animals, some of which may pose hazards to persons or pets coming in contact with them. Each Owner and occupant of a Unit, and every person entering the Community: (i) acknowledges that such plants and wildlife are indigenous to the area and are not restrained or restricted in their movement within or throughout the Community; and (ii) assumes all risk of personal injury arising from the presence of such plants and wildlife in the Community. Neither the Association, the Declarant, any Builder, nor the members, partners, affiliates, officers, directors, agents, or employees of any of them, shall have any duty to take action to control, remove, or eradicate any plant or wildlife in the Community, nor shall they have any liability for any injury resulting from the presence, movement, or propagation of any plant or wildlife within or through the Community.

The natural areas described in this section may also contain creeks, ponds, streams, and other bodies of water or intermittent pools of water, muddy areas, and underbrush, among other things, all of which are important to the ecological balance and maintenance of the area as a wildlife habitat. No Owner or occupant of a Unit shall enter upon or disturb, or permit their guests or any other person acting in their behalf to enter upon or disturb, such areas in any way without the Association's or the Declarant's prior written approval.

15.9. Utility Easements.

Portions of the Community may be subject to easements for power transmission lines, natural gas pipelines, and other utility transmission devices. The Association shall have no responsibility for providing maintenance to such areas or improving them to the Community-Wide Standard.

15.10. Schools.

No representations are made regarding the future or continued operation of public or private schools, daycare centers, or early childhood programs that currently or may in the future serve the Community, and the Declarant makes no commitment to construct or organize any such school or program.

15.11. Animal Control.

The Association shall no responsibility for animal control within the Community. The City provides animal control services within the City limits.

15.12. Proximity to Railroad.

As of the date of recording of this Charter, there is a railroad right-of-way adjacent or in close proximity to the Community with tracks in active use and trains running regularly along such tracks, which trains may be visible from and generate noise audible to persons in the Community, impact air quality within the Community, and pose a hazard to persons entering upon or in the vicinity of the railroad right-of-way. The Declarant, the Association, and Builders have no ability to control access to, use of, facilities within, or sound levels or odors and emissions from, such railroad right-of-way and have no duty to install barriers, screens, landscaping or other devices to minimize such impacts or limit access to or from the Community.

There are a variety of risks associated with proximity to railroad lines, including hazards to persons walking within or crossing the railroad right-of-way, the possibility of train derailment, motor vehicle accidents, and chemical spills, among other things. Each Owner and occupant, by accepting a deed or lease of any Unit, assumes all risk of personal injury resulting from entry upon such railroad right-of-way by themselves, their children and pets, and other members of their household and agrees that neither the Founder, the Association, nor any Builder, shall have any liability whatsoever for any property damage, personal injury, or death arising out of or related to such entry or proximity of any Unit to such railroad right-of-way.

ARTICLE 16 RIGHTS OF LENDERS

This Article sets forth various provisions for the benefit of lenders who make mortgage loans and for the benefit of those agencies which guarantee and insure mortgage loans made by institutional lenders.

16.1. Provision of Mortgagee Information.

Upon the Association's request, each Owner shall provide the Association with the name and street address of the holder or guarantor of any Mortgage encumbering such Owner's Unit. If the Association has not been notified of the name and street address of the holder or guarantor of a Mortgage on a Unit, the Association may send any notice to Mortgagees to the Owner at the Unit address with a request that the Owner provide such notice to its Mortgagee, and such act shall be deemed sufficient notice to the Mortgagee of such Unit for all purposes under this Declaration and the By-Laws.

16.2. FHA Provisions.

Notwithstanding anything to the contrary herein, any Unit which is subject to a Mortgage insured by the Federal Housing Administration (FHA) shall be exempt from any provision of this Declaration or the By-Laws to the extent that such provision would cause a lease or conveyance of such Unit to:

- (a) be void or voidable by a third party;
- (b) Be the basis of contractual liability of the Owner for breach of any right of first refusal, pre-emptive right or option, or other agreement not to convey;
- (c) terminate or make subject to termination all or a part of the Owner's interest in the Unit if a conveyance is attempted;
- (d) be subject to the consent of a third party;
- (e) be subject to limits on the amount of sales proceeds retainable by the Owner upon resale.

16.3. No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards.

16.4. Failure of Mortgagee to Respond.

Any Mortgagee who receives a written request from the Association to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 60 days after the Mortgagee actually receives proper notice of the proposal by certified or registered mail, return receipt requested.

16.5. Amendment by Board.

The purpose of this Article 16 is to facilitate financing of Unit purchases by compliance with secondary mortgage market requirements or standards. Should any institutional or governmental lender, purchaser, insurer, or guarantor of residential mortgage loans, including, for example, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development, or the Department of Veterans Affairs, hereafter eliminate, create, or otherwise revise any of their respective requirements to make, purchase, insure, or guarantee mortgage loans on Units, the Board, without approval of the Owners or Mortgagees, may cause an amendment to this Article to be recorded to comply with such revised requirements. Each Owner, by accepting title to a Unit, and each Mortgagee, by accepting a Mortgage on a Unit, acknowledges and agrees to such amendments and grants to the Board the authority to make changes to this Article 16 as contemplated by this Section.