

# COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2015-40

By Margarette S. Key Sponsored By Mayor Cyril M. Kleem  
AN ORDINANCE

## APPROVING AN AGREEMENT BETWEEN THE CITY OF BEREA AND THE RIVERSIDE GARDENS HOMEOWNER'S ASSOCIATION FOR MAINTENANCE OF A RETAINING WALL.

**WHEREAS**, Pursuant to Ordinance No. 2013-52, the City of Berea is accepting a donation of certain properties which had been retained by the developer of the Riverside Gardens Townhouses in downtown Berea, for the primary purpose of obtaining lands needed for the rebuilding of the West Center Street Bridge over the Rocky River; and

**WHEREAS**, the property line between common property owned by the Riverside Garden Homeowner's Association and the property being transferred to the City of Berea runs, in part, down the centerline of the retaining wall built as a part of the development of the townhouses which make up the Riverside Gardens Homeowner's Association; and

**WHEREAS**, the retaining wall serves both the Riverside Gardens Homeowner's Association common property and the City of Berea in that it supports both the Association properties and the City of Berea public walkway located to the rear of the townhouses.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Berea, State of Ohio:

**SECTION 1.** That the provisions of Ordinance No. 2013-52 be and the same are hereby ratified and reapproved.

**SECTION 2.** That the Mayor shall be and he is hereby authorized to execute and, on behalf of the City of Berea, enter into an agreement for maintenance of the Retaining Wall which serves both the Riverside Gardens Homeowner's Association common property and the property of the City of Berea, which Agreement is attached hereto as Exhibit "A" and incorporated herein by reference.

**SECTION 3.** That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

**SECTION 4.** That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

PASSED: May 4, 2015

ATTEST: [Signature]  
Clerk of Council

APPROVED: May 5, 2015  
[Signature]  
Mayor

[Signature]  
President of Council

Approved as to Form:

[Signature]  
Director of Law

Agreement between The City of Berea and Riverside Gardens Homeowners' Association, Inc. for  
Maintenance of a Retaining Wall

This Agreement is made and entered in to by the City of Berea, an Ohio Municipal Corporation, and the Riverside Gardens Homeowners' Association, Inc., an Ohio Non-Profit Corporation ("Association") this \_\_ day of May, 2015.

This Agreement is made for the purpose of making clear the relative responsibilities of the parties relating to a retaining wall located on properties comprised of Association common property and property owned by the City of Berea, which was transferred by the project developer, Riverside Gardens, LLC ("Retaining Wall"). A Drawing/Survey of affected lands including the Retaining Wall is attached to this Agreement.

Whereas, in the course of the development of the Riverside Gardens Planned Unit Development and common properties, certain lands were retained by the developer, and

Whereas, The City of Berea accepted a donation of those properties retained by the developer, primarily to obtain lands needed for the rebuilding of the West Center Street Bridge over the Rocky River, and

Whereas, the property line between common property owned by the Association, and the property given to the City of Berea by the developer ("City Property") runs in part, down the centerline of the Retaining Wall built as a part of the development of the townhouses which make up the Association, and

Whereas, the Retaining Wall serves both the Association and the City of Berea in that it supports both the Association property and the City of Berea public walkway located to the rear of the townhouses, and

**PLEASE CROSS MARGINAL REFERENCE WITH THE DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS OF RIVERSIDE GARDENS, A CLUSTER DEVELOPMENT, BEREA, CUYAHOGA COUNTY, OHIO RECORDED AT INSTRUMENT NO. 199909241123 OF THE CUYAHOGA COUNTY RECORDS AND THE \_\_\_\_\_ RECORDED AS INSTRUMENT NO. \_\_\_\_\_ OF THE CUYAHOGA COUNTY RECORDS.**

Whereas, the Declaration of Covenants, Conditions, Easements and Restrictions of Riverside Gardens, A Cluster Development, Berea, Cuyahoga County, Ohio recorded at Instrument No. 199909241123 ("Declaration") of the Cuyahoga County records grants an easement to the City for access to a foot-bridge that was anticipated to provide access to the west side of Rocky River.

Now, therefore, in consideration of the foregoing premises and the promises and agreements hereinafter set forth and to clarify the interests of the parties with respect to the City's easement referenced in the Declaration, the parties agree as follows:

1. The terms, recitals, representations, and exhibits referenced above are incorporated in and made a part of this Agreement.
2. The Association grants and conveys to the City of Berea a perpetual non-exclusive easement over the portion of the Association's property shown on the attached drawing and the City of Berea grants and conveys to the Association a perpetual non-exclusive easement over the portion of the City Property shown on the attached drawing to maintain, repair, and replace the Retaining Wall that is strictly subject to terms and conditions contained in this Agreement.
3. Whenever general maintenance, repair, or replacement of the Retaining Wall is necessary, the cost of such general maintenance, repair, or replacement will be equally divided between the City of Berea and the Association, except as follows:
4. In the event that specific maintenance, repair, or replacement of the Retaining Wall is necessary due to the deterioration, alteration or for replacement of the attachments supporting the public footbridge to the rear of the townhouse structures, actions or failure to act on the part of the City of Berea or any other deterioration, damage or vandalism to the portion of the Retaining Wall located on City of Berea property, the City of Berea will perform all maintenance, repair, or replacement at the City of Berea's sole cost and expense.
5. In the event that specific maintenance, repair, or replacement of the Retaining Wall is necessary due solely to actions of or failure to act on the part of the Association, the Association will perform the necessary maintenance, repair, or replacement at its cost and expense.
6. The covenants, agreements, and restrictions set forth in this Agreement run with the land and are binding upon the parties and each of their respective successors and assigns.

This Agreement shall be effective from and after both the Council of the City of Berea approves it and authorizes its execution by appropriate legislation and the Riverside Gardens Homeowners' Association, Inc. Board of Trustees approves it and authorizes its execution by an appropriate officer of the Association.

Made and executed this \_\_ day of May, 2015.

**Riverside Gardens Homeowners' Association, Inc.**

\_\_\_\_\_  
By: Peggy Connell, Its President

STATE OF OHIO                    )  
  )  
COUNTY OF CUYAHOGA         )     **SS**

**BEFORE ME**, a Notary Public, in and for said County, personally appeared the above named Riverside Gardens Homeowners' Association, Inc., by its President, Peggy Connell, who acknowledged that she did sign the foregoing instrument, and that the same is the free act and deed of said corporation and the free act and deed of her personally and as such officer.

**IN WITNESS WHEREOF**, I have hereunto set my hand and official seal in \_\_\_\_\_, Ohio, this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Please place stamp here

\_\_\_\_\_  
**NOTARY PUBLIC**

The City of Berea

By: \_\_\_\_\_

STATE OF OHIO                    )  
  )  
COUNTY OF CUYAHOGA        )        SS

BEFORE ME, a Notary Public, in and for said County, personally appeared the above named The City of Berea by its \_\_\_\_\_, \_\_\_\_\_, who acknowledged that he/she did sign the foregoing instrument, and that the same is the free act and deed of said corporation and the free act and deed of him/her personally and as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal in \_\_\_\_\_, Ohio, this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Please place stamp here

\_\_\_\_\_  
NOTARY PUBLIC

Legislatively approved and execution authorized by Ordinance 2015-\_\_ adopted by Berea City Council on May \_\_, 2015 and approved by the Mayor on May \_\_, 2015. (copy attached)

Agreement approved and execution authorized by the Board of Trustees of Riverside Gardens Homeowners' Association, Inc. at its meeting of May \_\_, 2015. (Resolution attached)

Drawing/Survey of affected lands including the retaining wall attached