

COUNCIL CHAMBER

City of Berea, Ohio

Ordinance No. 2019-74

By Nick Faschka Sponsored By Mayor Cyril M. Kleem
AN ORDINANCE

APPROVING AN AMENDMENT TO SECTION 7.20, SALE, LEASING OR OTHER ALIENATION OF LIVING UNITS, OF THE DECLARATION AND BY-LAWS OF THE RIVERSIDE GARDENS HOMEOWNERS' ASSOCIATION, AND DECLARING AN EMERGENCY.

WHEREAS, Section 7.20, Sale, Leasing or Other Alienation of Living Units, of the Declaration and By-Laws of the Riverside Gardens Homeowners' Association, as set forth in Exhibit A, which is attached hereto and incorporated herein by reference, establishes various restrictions relating to an owner's right to sell and lease a Living Unit; and

WHEREAS, the Riverside Gardens Homeowners' Association wishes to revise the leasing restrictions contained in Section 7.20 of the Declaration and By-Laws, as set forth in Exhibit B, which is attached hereto and incorporated herein by reference; and

WHEREAS, Article XVI, Section 16.12(e) of the Declaration and By-Laws of the Riverside Gardens Homeowners' Association states that Section 7.20 may not be amended without such Amendment being approved by an Ordinance, duly adopted by the City.

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

SECTION 1. That the Council of the City of Berea approves an amendment to Section 7.20, Sale, Leasing or other Alienation of Living Units, of the Declaration and By-Laws of the Riverside Gardens Homeowners' Association, in substantial conformance with Exhibit B, which is attached hereto and incorporated by reference.

SECTION 2. 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.

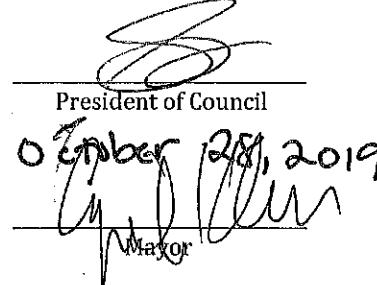
SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare, or providing for the usual daily operation of a municipal department, and for the further reason that the amendment is immediately necessary in order to facilitate the sale and/or lease of Living Units at Riverside Gardens. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: October 21, 2019


President of Council

ATTEST: Allyson G.
Clerk of Council

APPROVED: October 21, 2019


Mayor

Approved as to Form:

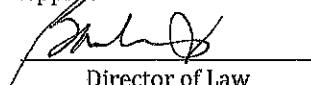

Director of Law

Exhibit "A"

Section 7.20 Sale, Leasing or Other Alienation of Living Units

(a) Owner's Right to Transfer. The Association shall have no right of first refusal with respect to the purchase or lease of a Living Unit, and an Owner shall be able to transfer his Living Unit freely by sale, gift, devise, or otherwise without restriction, except as provided in subsection (b) below. Except as otherwise provided herein, the Living Units shall be owner-occupied. This provision may not be amended without such amendment approved by an ordinance duly adopted by the City.

(b) Owner's Right to Lease Living Unit. An Owner shall not have the right to lease his Living Unit. Notwithstanding the foregoing, if the Developer fails to sell a Living Unit within six (6) months after completion of the same, the Developer may lease the Living Unit, but shall continue to use reasonable efforts to sell the same; and provided further, that any such leases shall not be assignable or assigned by the Developer, except to the Developer's mortgagee. Furthermore, a mortgagee of a Living Unit who acquires title to the Living Unit by foreclosure or deed-in-lieu of foreclosure shall have the right to lease such Living Unit. Any lease of a Living Unit shall be in writing and shall provide: (1) that the lease shall be subject to the terms of this Declaration, the Code and Rules and that any failure of a lessee to comply with the terms of this Declaration, the Code and Rules shall be in default under the lease or sublease; (2) that the Association shall have the right to require the Owner to deposit with the Association such amount as the Association shall consider appropriate as security to provide funds for repairs and to assure compliance with this Declaration, the Code and Rules. As above stated, the limitations with respect to the leasing of Living Units shall not apply to the Developer or a first mortgagee of a Living Unit. This provision may not be amended without such amendment approved by an ordinance duly adopted by the City.

(c) Names of Owners and Occupants of Living Units. To enable the Association to maintain accurate records of the names, addresses and phone numbers of Owners and other Occupants of Living Units, the Association shall promptly be notified in writing, that a Living Unit has been transferred or leased to another person. In addition, the purchaser or lessee of such a Living Unit shall be provided with a copy of this Declaration, the Code, the Rules and other relevant documents.

Exhibit "B"

Section 7.20 Sale, Lease or Other Alienation of Living Units

(a) **Owner's Right to Transfer.** The Association shall have no right of first refusal with respect to the purchase or lease of a Living Unit, and an Owner shall be able to transfer his Living Unit freely by sale, gift, devise, or otherwise without restriction, except as provided in subsection (b) below. Except as otherwise provided herein, the Living Units shall be owner-occupied. This provision may not be amended without such amendment approved by an ordinance duly adopted by the City.

(b) **Owner's Right to Lease Living Unit.** To protect and preserve the Declaration's fundamental purposes, including, without limitation, the preservation of property values and the well-being of Owners and Occupants; no Living Unit can be leased, let, or rented, whether for monetary compensation or not, by an Owner to others, for business, speculative, investment, or any other purpose, subject to the following:

(1) The above prohibition does not apply to:

- (i) Living Units that are occupied by the parent(s) or child(ren) of the Owner;
- (ii) "Hardship Units." To meet a special situation and to avoid a practical difficulty or other undue hardship, each Owner has the right to lease their Living Unit to a specified renter/tenant for a one-time period of no more than 24 consecutive calendar months, subject to the restrictions and requirements as identified in subparagraphs (2) and (c) below. To exercise this right, the Owner must provide the Board with prior, written notice of the lease at least 10 business days prior to its commencement and not be more than 60 days delinquent in payment of any Assessment or other amount due to the Association. If the Owner is more than 60 days past due in payment, the Owner will request from the Board of Directors a one-time hardship exception and will not lease the Living Unit until the Board approves the request; or
- (iii) "Holdover Units." Living Units that are occupied by an Owner who sold their Living Unit to a third party but chooses to remain residing in the Living Unit for a maximum period of 90 days from the date title transfers.

(2) Living Units occupied by parents or children of an Owner, Hardship Units, or Holdover Units are subject to the following conditions and restrictions:

- (i) Leases must be provided to the Board of Directors prior to the commencement of the lease term;
- (ii) No Living Unit may be leased, let, or rented to any business or corporate entity for the purpose of corporate housing or similar use;
- (iii) No Living Unit may be sub-leased, sublet or rented by a tenant;
- (iv) No individual room, part, or sub-part of any Living Unit may be leased, let, or rented;

(v) The Association has at all times a limited power-of-attorney from and on behalf of any Owner who is more than 60 days past due in the payment of any Assessment or other amounts due to the Association. The limited power-of-attorney permits the Association to collect the lease or rent payments directly from the lessee, tenant or renter until the amount owed to the Association is paid in full;

(vi) The lessee, tenant, or renter must abide by the terms of the Declaration, Bylaws, and Rules;

(vii) When an Owner leases their Unit, the Owner relinquishes all amenity privileges, but continue(s) to be responsible for all obligations of ownership of their Living Unit and is jointly and severally liable with the lessee, tenant, or renter to the Association for the conduct of the lessee, tenant, or renter and any damage to Association property; and

(viii) The Association may initiate eviction, proceedings to evict any lessee, tenant, or renter for violation of the Declaration, Bylaws, Rules, or applicable laws, by any occupant of the Living Unit, or the Owner of the Living Unit. The action will be brought by the Association, as the Owner's agent, in the name of the Owner. The Association will give the Owner(s) at least 10 days written notice of the intended eviction action. The costs of any eviction action, including reasonable attorneys' fees, will be assessed to the Owner(s) and the Living Unit's account and is a lien against that Living Unit.

(3) Any land contract for the sale of a Living Unit must be recorded with the Cuyahoga County Fiscal Office. A recorded copy of the land contract must be delivered to the Board of Directors within 30 days of its recording. Any unrecorded land contract is a prohibited lease.

Section 7.20(b) may not be amended without such amendment approved by an ordinance duly adopted by the City.

(c) The Board may adopt and enforce Rules and Definitions in furtherance, but not in contradiction, of the above provisions, including, without limitation, Rules to address and eliminate attempts to circumvent the meaning or intent of Section 7.20(a) or (b) and in furtherance of the preservation of Riverside Gardens as an owner-occupied community and against the leasing of Living Units for investment or other purposes.

(d) The Board has full power and authority to deny the occupancy of any Living Unit by any person or family if the Board, in its sole discretion, determines that the Owner of such Living Unit is intending or seeking to circumvent the meaning, purpose, or intent of Section 7.01(b).

Section 7.17 - Resubdivision of Sublots

No Sublot shall be subdivided or its boundary lines changed except with the proper written approval of the Board or except as expressly authorized herein. Developer, however, hereby expressly reserves the right to replat any Sublot owned by Developer. Any such division, boundary line change, or replatting shall not be in violation of applicable City and County regulations.

Section 7.18 - Compliance with City Codes

Each Owner shall comply with City and other governmental requirements. It is agreed that a violation of any such requirements or any restriction, condition, covenant or restriction imposed now or hereafter by the provisions of this Declaration is a nuisance per se that can be abated by the Association or such governmental authority.

Section 7.19 - Use of the Name "Riverside Gardens"

No Person shall use the word "Riverside Gardens" or any derivative thereof in any printed or promotional material without the prior written consent of Developer. However, Owners may use the name "Riverside Gardens" in printed and promotional material where such word is used solely to specify that particular property is located within Riverside Gardens.

Section 7.20 - Sale, Leasing or Other Alienation of Living Units

(a) Owner's Right of Transfer. The Association shall have no right of first refusal with respect to the purchase or lease of a Living Unit, and an Owner shall be able to transfer his Living Unit freely by sale, gift, devise, or otherwise without restriction except as provided in subsection (b) below. Except as otherwise provided herein, the Living Units shall be owner-occupied. This provision may not be amended without such amendment approved by an ordinance duly adopted by the City.

(b) Owner's Right to Lease Living Unit. An Owner shall not have the right to lease his Living Unit. Notwithstanding the foregoing, if the Developer fails to sell a Living Unit within six (6) months after completion of the same, the Developer may lease the Living Unit, but shall continue to use reasonable efforts to sell the same; and provided further, that any such leases shall not be assignable or assigned by the Developer, except to the Developer's mortgagee. Furthermore, a mortgagee of a Living Unit who acquires title to the Living Unit by foreclosure or deed-in-lieu of foreclosure shall have the right to lease such Living Unit. Any lease of a Living Unit shall be in writing and shall provide: (1) that the lease shall be subject to the terms of this Declaration, the Code and Rules and that any failure of a lessee to comply with the terms of this Declaration, the Code and Rules shall be in default under the lease or sublease; (2) that the Association shall have the right to require the Owner to deposit with the Association such amount as the Association shall consider appropriate as security to provide funds for repairs and to assure compliance with this Declaration, the Code and Rules. As above stated, the limitations with respect to the leasing of

*Developer can lease w/o
HOA approval?*

Living Units shall not apply to the Developer or a first mortgagee of a Living Unit. This provision may not be amended without such amendment approved by an ordinance duly adopted by the City.

(c) Names of Owners and Occupants of Living Units. To enable the Association to maintain accurate records of the names, addresses and phone numbers of Owners and other Occupants of Living Units, the Association shall promptly be notified in writing, that a Living Unit has been transferred or leased to another person. In addition, the purchaser or lessee of such a Living Unit shall be provided with a copy of this Declaration, the Code, the Rules and other relevant documents.

Section 7.21 - Party Walls

(a) Each wall which is built as part of the original construction of a Living Unit upon the Property and placed on the dividing line between two Living Unit Lots shall constitute a Party Wall, and, to the extent not inconsistent with the provisions of this Section, the Owners sharing a Party Wall shall be responsible for the maintenance, repair and replacement of such Party Wall, and shall be responsible to maintain insurance on the Party Wall.

(b) Each Owner sharing a Party Wall shall have the full right to use the Party Wall for the support of beams and structural materials or in any other lawful manner not prohibited hereby; provided, however, that such use shall not injure, impair the strength of, or endanger the wall, foundation or other portion of the Living Unit of the other Owner, and shall not impair or endanger the Party Wall benefits and supports to which the adjoining Living Unit is entitled.

(c) Neither Owner of a Living Unit sharing a Party Wall may extend or increase the height of the Party Wall except upon the written approval of the other Owner, the Design Review Committee and the Eligible Mortgage Holders on both Living Units. No such extension or increase in height may be made which impairs the strength or injures the existing wall or the foundation of the buildings. In the event of such extension or increase in the height of the Party Wall, the other Owner shall have the right to use the extended or heightened part of the wall by paying to the constructing party one-half of the costs of such part of the Party Wall, as he shall use. Any extension or increased height of the Party Wall shall be a Party Wall, become part of the existing Party Wall and be subject to the terms hereof.

(d) In the event of any dispute arising concerning a Party Wall, or under the provisions of this Section, such dispute shall be submitted to arbitration pursuant to Section 16.9 of this Declaration.

Section 7.22 - Waiver of Subrogation

Each Person as a condition of accepting title and/or possession of a Living Unit and the Association agree for themselves, and their respective successors, heirs, executors, administrators, personal representatives, assigns, and lessees, provided said agreement does not invalidate or prejudice any policy of insurance, that in the event that any building, structure or improvement

Thank you in advance for your cooperation and prompt response to this request. The Board respectfully requests that you provide the City approval by August 30, 2019. Should you wish to further discuss this matter, please do not hesitate to telephone me.

I await your reply.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Julie A. Perkins".

JULIE A. PERKINS

JAP:kea
Enclosures
cc: All Board Members (via electronic mail only)



KAMAN & CUSIMANO^{PC}

ATTORNEYS AT LAW

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July 23, 2019

VIA ELECTRONIC MAIL and U.S. Mail: bjones@cityofberea.org

City of Berea
c/o Barbara Jones, Law Director
11 Berea Commons
Berea, Ohio 44017

Re: Riverside Gardens Homeowners' Association, Inc.

Dear Ms. Jones:

I represent the Riverside Gardens Homeowners' Association, Inc. On April 9, 2019, I first wrote to you asking that the City of Berea approve proposed changes to the leasing restriction found in the Riverside Gardens Declaration. At this time, I am requesting the status of the City's review of this matter as I have not received a response to date.

The Association is in the process of rewriting their Declaration and Bylaws, which were recorded on September 24, 1999, at Cuyahoga County Fiscal Office Instrument No. 199909241123. The rewrite process includes revising the leasing restriction found on pages 25-26 of the Declaration at Article VII, Section 7.20, enclosed.

Declaration Article XVI, Section 16.12(d) permits amendments to the Declaration and Bylaws with a majority vote of the owners. Section 16.12(e) further provides "the provisions of Sections 7.20[sic](a) and (b) may not be amended without such Amendment approval by an ordinance duly adopted by the City."

I am requesting you review the enclosed, proposed changes to the leasing restriction provision and approve the changes by an ordinance adopted by the City.

Proposed Amended Leasing Restriction

Owner's Right to Lease Living Unit. To protect and preserve the Declaration's fundamental purposes, including, without limitation, the preservation of property values and the well-being of Owners and Occupants; no Living Unit can be leased, let, or rented, whether for monetary compensation or not, by an Owner to others for business, speculative, investment, or any other purpose, subject to the following:

- (a) The above prohibition does not apply to:
 - (i) Living Units that are occupied by the parent(s) or child(ren) of the Owner;
 - (ii) "Hardship Units." To meet a special situation and to avoid a practical difficulty or other undue hardship, each Owner has the right to lease their Living Unit to a specified renter/tenant for a one-time period of no more than 24 consecutive calendar months, subject to the restrictions and requirements as identified in subparagraphs (b) and (c) below. To exercise this right, the Owner must provide the Board with prior, written notice of the lease at least 10 business days prior to its commencement and not be more than 60 days delinquent in payment of any Assessment or other amount due to the Association. If the Owner is more than 60 days past due in payment, the Owner will request from the Board of Directors a one-time hardship exception and will not lease the Living Unit until the Board approves the request; or,
 - (iii) "Holdover Units." Living Units that are occupied by an Owner who sold their Living Unit to a third party but chooses to remain residing in the Living Unit for a maximum period of 90 days from the date title transfers.
- (b) Living Units occupied by parents or children of an Owner, Hardship Units, or Holdover Units are subject to the following conditions and restrictions:
 - (i) Leases must be provided to the Board of Directors prior to the commencement of the lease term;

- (ii) No Living Unit may be leased, let, or rented to any business or corporate entity for the purpose of corporate housing or similar use;
- (iii) No Living Unit may be sub-leased, sublet, or rented by a tenant;
- (iv) No individual room, part, or sub-part of any Living Unit may be leased, let, or rented;
- (v) The Association has at all times a limited power-of-attorney from and on behalf of any Owner who is more than 60 days past due in the payment of any Assessment or other amounts due to the Association. The limited power-of-attorney permits the Association to collect the lease or rent payments directly from the lessee, tenant, or renter until the amount owed to the Association is paid in full;
- (vi) The lessee, tenant, or renter must abide by the terms of the Declaration, Bylaws, and Rules;
- (vii) When an Owner leases their Unit, the Owner relinquishes all amenity privileges, but continue(s) to be responsible for all obligations of ownership of their Living Unit and is jointly and severally liable with the lessee, tenant, or renter to the Association for the conduct of the lessee, tenant, or renter and any damage to Association property; and,
- (viii) The Association may initiate eviction proceedings to evict any lessee, tenant, or renter for violation of the Declaration, Bylaws, Rules, or applicable laws, by any occupant of the Living Unit, or the Owner of the Living Unit. The action will be brought by the Association, as the Owner's agent, in the name of the Owner. The Association will give the Owner(s) at least 10 days written notice of the intended eviction action. The costs of any eviction action, including reasonable attorneys' fees, will be assessed to the Owner(s) and the Living Unit's account and is a lien against that Living Unit.

(c) Any land contract for the sale of a Living Unit must be recorded with the Cuyahoga County Fiscal Office. A recorded copy of the land contract must be delivered to the Board of Directors within 30

days of its recording. Any unrecorded land contract is a prohibited lease.

(d) The Board may adopt and enforce Rules and definitions in furtherance, but not in contradiction, of the above provisions, including, without limitation, Rules to address and eliminate attempts to circumvent the meaning or intent of this Article III, Section B (10) and in furtherance of the preservation of Riverside Gardens as an owner-occupied community and against the leasing of Living Units for investment or other purposes.

(e) The Board has full power and authority to deny the occupancy of any Living Unit by any person or family if the Board, in its sole discretion, determines that the Owner of such Living Unit is intending or seeking to circumvent the meaning, purpose, or intent of this Article III, Section B (10).

CURRENT HOA DECLARATIONS & BY-LAWS		PROPOSED AMENDMENTS TO HOA DECLARATIONS AND BY-LAWS
Requirement that City Council approve HOA leasing restrictions	YES	NO
Is owner authorized to lease their unit?	General rule is that the unit is owner-occupied.	General rule is that the unit is that the unit is owner-occupied.
Exception to the general rule - Developer's right	The Developer can lease unit if unable to sell within 6 months of building the unit, but thereafter must make reasonable efforts to sell.	
Exception to the general rule - Foreclosure	If property is subject to foreclosure, the lender may lease the unit.	
Exception to the general rule - Parent/child		Units may be occupied by parents or children of owner.
Exception to the general rule - Hardship		Owner has the right to lease their unit for a one-time period to a specified renter for a period of 24 consecutive months.
Exception to the general rule - Holdover units		If the unit is sold, the owner may remain in the unit for up to 90 days until the title transfers.
Exception to the general rule - Land contracts		If a land contract is recorded, the purchaser may occupy the unit. Unrecorded land contracts do not qualify for the exception.
		Units may not be leased to any business entity for the purpose of corporate housing.
		Units may not be sub-leased.
		Individual rooms or portions of the unit may not be leased.
		Tenant must abide by Declaration and By-laws.
		Owner remains responsible for all obligations set forth in the Declaration and By-laws.
		Tenant is jointly and severally liable for the conduct of the tenant and for damages to property of the HOA.
		HOA may evict any tenant.
		HOA may deny occupancy if they learn that the owner and/or occupant attempts to circumvent these requirements.

Safeguards if an exception is allowed