



# KAMAN & CUSIMANO LLC

COMMUNITY ASSOCIATION ATTORNEYS

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July 14, 2023

Gardens of Walden Condominium  
c/o Jonelle Dittrich, Community Association Manager  
Reserve Realty Management  
480 West Aurora Road  
Sagamore Hills, Ohio 44067

Re: SB61 - Ohio Condominium Act Amendments

Dear Ms. Dittrich:

Enclosed, please find the *original*, fully executed and recorded amendments to the Declaration of Condominium Ownership for The Gardens of Walden Condominium. The amendments were filed with the Portage County Recorder's Office on June 30, 2023, at Instrument No. 202308588. The amendments became binding and effective on the date they were filed. Please keep the original amendments in the Association's *permanent* file.

The Board must notify every unit owner that the amendments have been filed for record with the County. The Board's notice should, at a minimum, indicate the date the amendments were recorded and the County's Instrument number. The Board may send the notice by regular U.S. mail, or hand delivery.

Along with the notice to the owners, the Board can include a copy of the recorded amendments, so that owners are more likely to pass the amendments on to future buyers. Alternatively, the Board may indicate how owners can obtain a copy of the recorded amendments, such as by requesting a copy from the Association, or by obtaining a copy directly from the County Recorder's Office.

Now that the amendments have been recorded and delivered to the Association, our work on this matter is complete and I have closed our file accordingly. It has been our pleasure to work together with the Association on this matter.

Should you or any of the Board members wish to further discuss this matter, please do not hesitate to telephone our office.

Sincerely yours,



JEFFREY E. KAMAN

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Enclosure

cc: All Board members (via electronic mail only)



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Fee Amt: \$94.00 Page 1 of 9  
Portage County Ohio  
Lori Calcei County Recorder

File **202308588**

AMENDMENTS TO THE  
DECLARATION OF CONDOMINIUM OWNERSHIP  
FOR  
THE GARDENS OF WALDEN CONDOMINIUM

PLEASE CROSS MARGINAL REFERENCE WITH THE DECLARATION OF  
CONDOMINIUM OWNERSHIP FOR THE GARDENS OF WALDEN CONDOMINIUM  
RECORDED AT VOLUME 1002, PAGE 1036 ET SEQ. OF THE PORTAGE COUNTY  
RECORDS.

AMENDMENTS TO THE  
DECLARATION OF CONDOMINIUM OWNERSHIP FOR  
THE GARDENS OF WALDEN CONDOMINIUM

RECITALS

- A. The Declaration of Condominium Ownership for The Gardens of Walden Condominium (the "Declaration") and the Bylaws of The Gardens of Walden Condominium Association, Exhibit D of the Declaration (the "Bylaws"), were recorded at Portage County Records Volume 1002, Page 1036 et seq.
- B. Ohio Revised Code Section 5311.05(E)(1)(c) authorizes the Board of Directors (the "Board"), without a vote of the Unit Owners, to amend the Declaration "to bring the Declaration into compliance with this Chapter."
- C. The Board approved the following matters to be modified (the "Amendments") to bring the Declaration into compliance with Ohio Revised Code Chapter 5311 ("Chapter 5311").
- D. Each of the changes set forth in these Amendments are based on or in accordance with Chapter 5311.
- E. The proceedings necessary to amend the Declaration and Bylaws as permitted by Chapter 5311 and the Declaration have in all respects been complied with.

AMENDMENTS

The Declaration of Condominium Ownership for The Gardens of Walden Condominium is amended by the Board of Directors as follows:

- (1) **INSERT a NEW PARAGRAPH** to the end of **DECLARATION ARTICLE XIV, SECTION E**. Said new addition to the Declaration, as recorded at the Portage County Records, Volume 1002, Page 1036 et seq., and as amended at Instrument No. 200514257, is:

The Board will impose the following enforcement procedure for levying enforcement assessments:

- 1) Prior to imposing a charge for damages or an enforcement assessment, the Board will give the Unit Owner a written notice, which may be in the form of electronic mail to an electronic mail address previously provided by the Unit Owner in writing, that includes:



- a. A description of the property damage or violation;
- b. The amount of the proposed charge or assessment;
- c. A statement that the Unit Owner has a right to a hearing before the Board to contest the proposed charge or assessment;
- d. A statement setting forth the procedures to request a hearing;
- e. A reasonable date by which the Unit Owner must cure the violation to avoid the proposed charge or assessment.

2) Hearing Requirements:

- a. To request a hearing, the Unit Owner must deliver a written notice to the Board not later than the tenth day after receiving the notice required above. If the Unit Owner fails to make a timely request for a hearing, the right to that hearing is waived, and the Board may immediately impose a charge for damages or an enforcement assessment.
- b. If a Unit Owner timely requests a hearing, at least seven days prior to the hearing the Board will provide the Unit Owner with a written notice that includes the date, time, and location of the hearing.
- c. The Board will not levy a charge or assessment before holding a properly requested hearing.

3) The Board may allow a reasonable time to cure a violation described above before imposing a charge or assessment.

4) Within 30 days following a hearing at which the Board imposes a charge or assessment, the Association will deliver a written notice of the charge or assessment to the Unit Owner.

5) The Association will deliver any written notice required above to the Unit Owner or any occupant of the Unit by personal delivery, by electronic mail, by certified mail, return receipt requested, or by regular mail.

(2) MODIFY the 1st SENTENCE of the 1st PARAGRAPH of DECLARATION ARTICLE VIII, SECTION D. Said modification to the Declaration, as recorded at Portage County Records, Volume 1002, Page 1036 et seq., and as amended at Instrument No. 200514257, is: (new language is underlined)

The Association shall have a continuing lien upon the estate or interest in any unit of the owner thereof and its percentage of interest in the common elements for the payment of the portion of the common expenses chargeable against such unit which remain unpaid for ten (10) days after the same have become due and payable, from the time a certificate therefor, subscribed by a designated representative of the Association, is filed with the Recorder of Portage County, Ohio, pursuant to authorization given by the Board of Directors of the Association.

(3) INSERT a NEW PARAGRAPH to the end of BYLAWS ARTICLE VI, SECTION 6. Said new addition to the Bylaws, Exhibit D of the Declaration, as recorded at Portage County Records, Volume 1002, Page 1036 et seq., is:

The Association, as determined by the Board, is not required to permit the examination and copying of any of the following from books, records, or minutes that contain any of the following:

(a) Information that pertains to Condominium Property-related personnel matters;

(b) Communications with legal counsel or attorney work product pertaining to pending litigation or other Condominium Property-related matters;

(c) Information that pertains to contracts or transactions currently under negotiation, or information that is contained in a contract or other agreement containing confidentiality requirements and that is subject to those requirements;

(d) Information that relates to the enforcement of the Declaration, Bylaws, or Association rules against a Unit Owner;

(e) Information the disclosure of which is prohibited by state or federal law; or

(f) Records that date back more than five years prior to the date of the request.

(4) MODIFY BYLAWS ARTICLE II, SECTION 2. Said modification to the Bylaws, Exhibit D of the Declaration, as recorded at Portage County Records, Volume 1002, Page 1036 et seq., is: (deleted language is crossed out; new language is underlined)

Section 2. Number and Qualifications.

The Board shall consist of three (3) persons, all of whom, except as otherwise provided, must be owners and occupants of a unit. However, a spouse of a unit owner who is not the owner of any fee interest in the unit may be nominated and serve as an officer and member of the Board of Directors. If a Unit Owner is not an individual, that Unit Owner may nominate for the Board of Directors any principal, member of a limited liability company, partner, director, officer, or employee of that Unit Owner. The majority of the Board will not consist of Unit Owners or representatives from the same Unit unless authorized by a resolution adopted by the Board of Directors prior to the Board majority being comprised of Unit Owners or representatives from the same Unit. ~~No Board member appointed by Developer need be an owner or occupant of a unit.~~

(5) INSERT a NEW DECLARATION ARTICLE XIII, SECTION D entitled "Board Amendments." Said new addition to the Declaration, as recorded at Portage County Records, Volume 1002, Page 1036 et seq., is:

D. Board Amendments. Without a Unit Owner vote, the Board may amend the Declaration in any manner necessary for any of the following purposes:

1) To meet the requirements of institutional mortgagees, guarantors and insurers of first mortgage loans, the federal national mortgage association, the federal home loan mortgage corporation, the federal housing administration, the veterans administration, and similar institutions;

2) To meet the requirements of insurance underwriters;

3) To bring the Declaration into compliance with the Ohio Condominium Act (Revised Code Chapter 5311);

4) To correct clerical or typographical errors or obvious factual errors in the Declaration or an exhibit to the Declaration;



5) To designate a successor to the person named to receive service of process for the Association. If the Association is incorporated in Ohio, this may be accomplished by filing with the Secretary of State an appropriate change of statutory agent designation;

6) To delete as void, any provision within the Declaration or Bylaws, or in any applicable restriction or covenant, that prohibits, limits the conveyance, encumbrance, rental, occupancy, or use of property subject to Revised Code Chapter 5311 on the basis of race, color, national origin, sex, religion, or familial status; or

7) To permit notices to Unit Owners, as required by the Declaration or Bylaws, to be sent by electronic mail and, if returned undeliverable, by regular mail, provided the Association has received the prior, written authorization from the Unit Owner.

Any Unit Owner who is aggrieved by an amendment to the Declaration that the Board of Directors makes in accordance with the above may commence a declaratory judgment action to have the amendment declared invalid as violative of the above. Any action filed to contest the validity of the amendment must be filed in the appropriate court of common pleas within one year from the date of the recordation of the amendment.

(6) MODIFY BYLAWS ARTICLE II, SECTION 5(b). Said modification to the Bylaws, Exhibit D of the Declaration, as recorded at Portage County Records, Volume 1002, Page 1036 et seq., and as amended at Instrument No. 200514257, is: (deleted language is crossed out; new language is underlined)

(b) Commence, defend, intervene in, settle, or compromise any civil, criminal, land use planning or administrative action or proceeding that is in the name of, or threatened against, the Association, the Board, or the Condominium Property, or that involves two or more Unit Owners, impacts zoning, or otherwise—and relates to matters affecting the Condominium Property;

(7) INSERT a NEW PARAGRAPH to the end of BYLAWS ARTICLE IX. Said new addition to the Bylaws, Exhibit D of the Declaration, as recorded at Portage County Records, Volume 1002, Page 1036 et seq., is:

In addition, notices may be delivered using electronic mail subject to the following:



(a) The Association may use electronic mail or other transmission technology to send any required notice only to Unit Owners, individually or collectively, who have given the Association written consent to the use of electronic mail or other transmission technology. Any Unit Owner who has not given the Association written consent to use of electronic mail or other transmission technology will receive notices by either regular mail or hand delivered.

(b) An electronic mail or transmission technology to a Unit Owner is not considered delivered and effective if the Association's transmission to the Unit Owner fails, e.g. the Association receives an "undeliverable" or similar message, or the inability to deliver the transmission to the Unit Owner becomes known to the person responsible for sending the transmission. If the electronic mail or transmission is not delivered or effective, the Association will deliver the notice or other communication to the Unit Owner by either regular mail or hand delivered.

(8) MODIFY the 1st SENTENCE of BYLAWS ARTICLE VI, SECTION 3. Said modification to the Bylaws, Exhibit D of the Declaration, as recorded at Portage County Records, Volume 1002, Page 1036 et seq., is: (deleted language is crossed out; new language is underlined)

The Association shall build up and maintain a reasonable reserve for contingencies and replacements in an amount adequate to repair and replace major capital items in the normal course of operations without the necessity of special assessments, unless the Unit Owners, exercising not less than a majority of the voting power of the Association, waive the reserve requirement in writing annually.

(9) DELETE BYLAWS ARTICLE II, SECTION 12 entitled "Bonding and Compensation" in its entirety. Said deletion to the Bylaws, Exhibit D of the Declaration, as recorded at Portage County Records, Volume 1002, Page 1036 et seq.

INSERT A NEW BYLAWS ARTICLE II, SECTION 12 entitled "Fidelity Coverage." Said new addition to the Bylaws, Exhibit D of the Declaration, as recorded at Portage County Records, Volume 1002, Page 1036 et seq., is:

Section 12. Fidelity Coverage. The Board must maintain blanket fidelity, crime, or dishonesty insurance coverage for any person who controls or disburses Association funds. As used in this section, "person who controls or disburses Association funds" means any individual with authority or

access to sign checks, conduct electronic transfers, or otherwise withdraw funds from any Association account or deposit, including the following:

- (a) A management company's principals and employees;
- (b) A bookkeeper;
- (c) The president, secretary, treasurer, any other board member, or employee of the Association.

All of the following apply to the insurance coverage required under this section:

1) Coverage shall be for the maximum amount of funds that will be in the custody of the Association or its designated agent at any one time plus three months of operating expenses.

2) The insurance shall be the property of and for the sole benefit of the Association and shall protect against theft, embezzlement, misappropriation, or any other unauthorized taking or loss of Association funds.

3) The policy shall include in its definition of "employee" the manager and the managing agent of the Association's funds or provide for this inclusion by an endorsement to the policy.

4) The policy shall name the Association as the insured party and shall include a provision requiring the issuer of the policy to provide a ten-day written notice to the Association's president or manager in the event of cancellation or substantial modification of the policy. The manager or managing agent, if any, of the Association shall be the designated agent on the policy.

5) If there is a change in the manager or the managing agent of the Association, then within ten days of the effective start date, the new manager or managing agent shall notify the insurer of such change.

Any conflict between the above provisions and any other provisions of the Declaration and Bylaws will be interpreted in favor of the above amendments. The invalidity of any part of the above provision will not impair or affect in any manner the validity or enforceability of the remainder of the provision. Upon the recording of these amendments, only Unit Owners of record at the time of the filing have standing to contest the validity of this amendment, whether on procedural, substantive, or any other grounds. Any challenge to

