

COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2022 - 8

By Mary K. Brown Sponsored By Mayor Cyril M. Kleck

AN ORDINANCE

AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE CENTURY HOME GARDEN DISTRICT HOMEOWNERS' ASSOCIATION FOR THE PURPOSE OF INCLUDING 106 JACOB STREET (PERMANENT PARCEL NO. 364-06-022), IN THE CENTURY HOME GARDEN DISTRICT, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. 2016-84, the City acquired several non-owner-occupied residential properties, including that property located at 106 Jacob Street, in exchange for a municipal parking lot located at 102 Front Street; and

WHEREAS, in Ordinance No. 2016-84, Council recognized that investing in the renovation, remodeling and other work at residential properties in a concentrated area improves the values of properties in the college area and throughout the community; and

WHEREAS, the Council of the City of Berea unanimously passed Resolution No. 2019-58, supporting the plan of the Administration to improve or renovate the properties, including the property located at 106 Jacob Street; and

WHEREAS, Resolution No. 2019-58 established a Home Ownership Zone in or near the College District and made a finding that the public interest is best served by requiring that City-owned properties be transferred subject to a permanent deed restriction requiring owner-occupancy; and

WHEREAS, since the passage of Resolution No. 2019-58, many property owners in the immediate neighborhood have established the Century Home Garden District Home Owners Association, which also requires properties to be owner occupied, as evidenced in Exhibit A, Declaration of Restrictions for the Century Home Garden District and By-Laws, which is attached hereto and incorporated by reference, and that the public interest would be best served by 106 Jacob Street becoming part of this homeowners' association prior to transfer of this property from the City to the subsequent home owner; and

WHEREAS, the Century Home Garden District Homeowners' Association was established for the purposes of preserving and enhancing the quiet, harmonious and single-family residential character of the neighborhood and to protect the neighborhood from the negative effects of absentee landlords and unsupervised tenants; and to preserve and protect the historic homes that reflect the history of Berea; and to solidify and strengthen the cooperative, collaborative and decades-long effort to preserve the neighborhood by the homeowners, Baldwin Wallace University and all of whom recognize the importance of this neighborhood and seek to preserve it; and

WHEREAS, the City intends to sell the property with a deed restriction in accordance with Resolution No. 2019-58; and

WHEREAS, the Council of the City of Berea and Administration fully supports the mission of the homeowners' association and further desires that the property located at 106 Jacob Street, Permanent Parcel No. 364-06-022, be added to properties included in the Century Home Garden District.

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

SECTION 1. That the Mayor of the City of Berea is hereby authorized to enter into an Agreement with the Century Home Garden District Homeowners' Association, for the purpose of including 106 Jacobs Street in the District, in substantial conformance with the Agreement attached hereto as Exhibit B and incorporated by reference.

COUNCIL CHAMBER

City of Berea, Ohio

Ord. _____ No. 2022-8
By Brown Sponsored By Mayor Klean

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, and for the further reason that it is immediately necessary to engage in efforts to market and sell this property in order to benefit the economic interests of homeowners and to preserve City neighborhoods. 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: March 21, 2022

ATTEST: [Signature]
Clerk of Council

[Signature]
President of Council
APPROVED: March 22, 2022
[Signature]
Mayor

APPROVED AS TO FORM:
[Signature]
Director of Law

BYLAWS OF THE CENTURY HOME GARDEN DISTRICT OWNERS ASSOCIATION

1. DECLARATION; APPLICABILITY; OFFICE

- a) Name. The name of the association is the Century Home Garden District Owners Association ("The Association"), an Ohio nonprofit corporation.
- b) Declaration. The terms, provisions, conditions and restrictions of the attached Declaration, as they relate to the Association and the members, (as defined below) Board of Directors, officers and committees, are incorporated by reference with the same force and effect as if fully set out in these Bylaws.
- c) Applicability. These Bylaws are binding on all present or future Owners or Permitted Occupants (each as defined in the Declaration) of the Property (as defined in the Declaration) or other persons using any improvements or facilities located on the Property in any manner. Upon the acquisition, rental, use or other act of occupancy of any Parcel (as defined in the Declaration), or any other portion of the Property by any person, these Bylaws shall be deemed accepted and ratified by that person.
- d) Office. The principal office of the Association shall be at such place within reasonable proximity to the Property as the Board of Directors may designate.

2. DEFINITIONS

All terms used at any place in these Bylaws that begin with capital letters, other than words that would normally be capitalized, unless the context otherwise requires, shall have the meanings set forth in the Declaration.

3. MEMBERSHIP AND VOTING RIGHTS

- a) Membership. The members of the Association shall include, and shall be limited to, the Owners.
- b) Voting Rights.
 - i. Each Parcel = 1 Total Vote. Except as provided in the next paragraph, each member shall be entitled to vote, with regard to matters submitted to the members for a vote, a number of votes equal to the number of Parcels owned by that member at the time of the vote. If a Parcel is owned by more than one person or entity, only one vote total can be cast for that Parcel. If co-Owners of a particular Parcel cannot mutually agree on how their vote shall be cast, no vote shall be cast with respect to that Parcel.
 - ii. Revocation of Voting Rights. Any member who has been issued a notice of

Default pursuant to the Declaration, or who is otherwise in Default, shall not be in good standing and shall not be entitled to vote during any period in which the Default or suspension continues.

- iii. Actions by Members. Unless otherwise prescribed by law, the Declaration or these Bylaws, the affirmative vote of a majority of the votes present at a meeting at which a quorum is present shall be necessary for the authorization or taking of any action voted upon by the members.

4. MEETINGS OF MEMBERS; QUORUM; PROXIES

- a) Time and Place of Meeting. Meetings of the members may be held at such locations as deemed appropriate by the Board, located within the City of Berea. **At the option of the Board, meetings may also be held by a video conference.** The date and time of all meetings shall be as specified by the Board in its notice of the meeting.
- b) Annual Meeting. The annual meeting of members for the purpose of electing Directors and for the transaction of such other business as may properly come before the meeting shall be held in the first quarter of every year or at such other date as may be determined by the Directors.
- c) Special Meetings. The Secretary of the Association shall call a special meeting of the members (i) when directed by the President of the Association, (ii) upon the resolution of a majority of the Board of Directors, or (iii) upon the presentation to the Secretary of the Association of a petition signed by members holding at least fifty percent (50%) of the total votes of the Association.
- d) Quorum; Adjournment. Members present in person or by proxy holding at least twenty-five (25%) percent of the total votes of the members or members present in person or by proxy holding at least 15 total votes, whichever is greater, of the Association shall constitute a quorum for any annual meeting or special meeting. If a Quorum is not established at the meeting, then the Board may adjourn the meeting and reschedule the same within 60 days. At the second scheduled meeting, the members present in person or by proxy shall constitute a Quorum, regardless of whether or not the 25% or 15 vote threshold is met. The Board shall provide notice of the second meeting in the same manner as it is required to provide notice of the first meeting. However, the Board may include in one meeting notice dates for both the first and second meetings.
- e) Notice of Meeting; Waiver. Written notice of each meeting of members shall be given not less than 7 days nor more than 60 days before it is to be held. Each notice shall specify the date, time and place of the meeting, and, in the case of a special meeting, shall specify the purposes of the meeting. Delivery of notices will be pursuant to the terms set forth in the Declaration, which allows for personal delivery, delivery by

U.S. mail, and (at the Owner's election), electronic mail.

Any member may waive notice of a meeting by doing so in writing before or after the meeting. Furthermore, attendance at a meeting, either in person or by proxy, shall constitute a waiver of notice and of any and all objections to the place or time of such meeting or the manner in which it has been called or convened, unless a member attends the meeting solely for the purpose of stating, at the beginning of such meeting, any objection or objections relating to the notice of such meeting.

- f) Action by Association Without Meeting. Any action that may be taken at a meeting of the members may be taken without a meeting if written approval and consent, setting forth the action authorized, shall be signed by members having a majority of the total votes of the Association. This written consent shall be filed with or entered upon the books of the Association. Electronic signatures are acceptable.
- g) Proxies. Members may vote or act in person or by proxy. The person designated a proxy need not be a member. A member shall designate a proxy by written notice to the Board of Directors and, except as otherwise provided in these Bylaws, may revoke the designation at any time upon written notice to Board. A proxy shall be revoked automatically upon the member's conveyance of all Parcels owned by him or her. If a first mortgagee has been designated a proxy under the terms of a first mortgage covering a Parcel, the presentation to the Board of a copy of the mortgage containing the proxy designation shall be notice of that designation, and, if the mortgage so states, of the irrevocability of that designation. Written notice to the Board or notice in a meeting of the revocation of a proxy designation shall not affect any vote or act previously taken.

5. BOARD OF DIRECTORS; POWERS; NUMBER; MEETINGS

- a) General Powers. Except where the law, the Declaration, the Articles of Incorporation or the Bylaws require that action be otherwise authorized or taken, all of the authority of the Association shall be exercised by or under the direction of the Board of Directors.
- b) Number of Directors. Until changed by amendment to these Bylaws, there shall be minimum to a maximum of five Directors of the Association and, at the option of the Board, an honorary, non-voting fourth Director who shall be a representative of Baldwin Wallace University, as set forth herein (referred to herein as the "BW Director") and an honorary non-voting fifth Director who shall be a representative of the City of Berea, as set forth herein (referred to herein as the "City Director")
- c) Election; Term of Office; Qualifications. The initial Board of Directors shall consist of Marlene Shurell, Erika Coble, and James Poole. The initial Board of Directors shall serve until the Association's First Annual Meeting. At that time, the members

will elect three to five Directors who will serve staggered terms of office as follows: One Director shall be elected for a term of one year and until his or her successor is elected and qualified, one Director shall be elected for a term of two years and until his or her successor is elected and qualified and the third through fifth Directors shall be elected for a term of three years and until his or her successor is elected and qualified. Thereafter, all successor Directors shall be elected for a term of three years. Each of the new Directors shall be a member, a spouse of a member, or in the case of an Owner that is not an individual, a principal, member of a limited liability company, partner, director, officer, trustee or employee of the Owner.

- d) Procedure for Election. At each annual meeting, the members shall elect a Director to succeed to the office of the Director whose term is scheduled to expire at that meeting.
- e) Removal or Resignation. Any Director may be removed at any time, with or without cause, by the affirmative vote of members holding at least 67% of the total votes of the Association, or, with cause, by the Board of Directors. Any Director may resign at any time by giving written notice to the Board of Directors. The resignation shall take effect on the date of receipt of the notice or at any later time specified in the notice, and, unless otherwise specified, the acceptance of the resignation shall not be necessary to make it effective. When there is an opening on the Board of Directors due to removal, resignation or other reason a successor shall be elected by the Board of Directors to fill the position until the next Annual Meeting.
- f) Fees and Compensation. No fee or compensation shall be paid by the Association to Directors for their services as Directors.
- g) BW Director and City Director. The Board may appoint a BW Director and City Director, who will be nominated by Baldwin Wallace University and the City of Berea, respectively. The BW Director and City Director may attend Board meetings and meetings of the Association and may provide advice to the Board and Association. The BW Director and City Director shall not have any voting rights either for the Board or the Association and may be removed upon the affirmative majority vote of the Board.
- h) Meetings. The annual meeting of the Board of Directors shall be held without notice at the same place and immediately after the annual meeting of the members. The annual meeting shall be held for the purpose of electing officers and transacting any other business. Special meetings of the Board of Directors may be called by the President of the Association or a majority of the Directors on at least 3 days' notice to each Director, given personally or by mail, telephone, or email, which notice shall state the time and place of the meeting. The Board may hold a meeting by any method of communication, including electronic or telephone communication, provided that each member of the Board can hear or read in real time and participate

in and respond to every other member of the Board. No Owner other than a Director may attend or participate in any discussion or deliberation of a meeting of the Board unless the Board expressly authorizes that Owner to attend or participate.

Any Director may waive notice of a meeting by doing so in writing before or after the meeting. Attendance at a meeting of the Board of Directors shall constitute a waiver of notice and of any and all objections to the place or time of such meeting or the manner in which it has been called or convened, unless a Director attends the meeting solely for the purpose of stating, at the beginning of such meeting, any objections or objections relating to the meeting.

- i) Board of Directors Quorum. At all meetings of the Board of Directors, a majority of the Directors then in office shall constitute a quorum for the transaction of business.
- j) Action Taken by Directors. Except as otherwise provided in the Declaration, these Bylaws or by law, every act or decision by a majority of the Directors present in person at a duly-held meeting at which a quorum is present shall be regarded as the act of the Board of Directors.
- k) Action by Unanimous Written Consent Without Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if written consent, setting forth the action so taken, is signed by all members of the Board of Directors and that written consent is filed with or entered upon the books of the Association.
- l) Powers. The Board shall exercise all powers and authority, under law, and under the provisions of the Declaration and these Bylaws, that are not specifically and exclusively reserved to the Owners by law or by other provisions thereof, and without limiting the generality of the foregoing, the Board shall have the right, power and authority to:
 - i. Hire and fire managing agents, attorneys, accountants, and other independent professionals and employees that the Board determines are necessary or desirable in the management of the Property and the Association;
 - ii. Commence, defend, intervene in, settle, or compromise any civil, criminal, or administrative action or proceeding that is in the name of, or threatened against, the Association, the Board of Directors, or the Property, or that involves two or more Owners and relates to matters affecting the Property;
 - iii. Enter into contracts and incur liabilities relating to the operation of the Property;

- iv. Enforce all provisions of the Declaration and Bylaws;
- v. Adopt and enforce rules relating to enforcement of the terms of the Declaration;
- vi. Grant temporary waivers of the restrictions set forth in the Declaration in extraordinary circumstances as set forth in these Bylaws;
- vii. Levy the following charges and assessments: interest and charges for the late payment of assessments; returned check charges; enforcement assessments for violations of the Declaration, the Bylaws, and the Rules and Regulations of the Association;
- viii. Adopt and amend Rules and Regulations that regulate the collection of delinquent assessments and the application of payments of delinquent assessments;
- ix. Impose reasonable charges for preparing, recording, or copying the Declaration, Bylaws, amendments to the Declaration and Bylaws, or statements of unpaid assessments;
- x. Suspend the voting privileges of an Owner who is delinquent in the payment of assessments for more than thirty days;
- xi. Purchase insurance and fidelity bonds the Directors consider appropriate or necessary;
- xii. Exercise powers that are: Conferred by the Declaration or the Bylaws; necessary to incorporate the Association as a nonprofit corporation; permitted to be exercised in this state by a nonprofit corporation; or necessary and proper for the government and operation of the Association.

m) Duties.

It shall be the duty of the Board to:

- i. Cause to be kept a complete record of all its acts and corporate affairs, including the following:
 - (1) Correct and complete books and records of account that specify the receipts and expenditures relating to the Common Elements and other common receipts and expenses;
 - (2) Records showing the collection of common expenses from the Owners;
 - (3) Minutes of the meetings of the Association and the Board of Directors;

- (4) Records of the names and addresses of the Owners.
- ii. Annually adopt and amend an estimated budget for revenues and expenditures. The Association does not own any common elements and therefore the Board does not need to set aside a reserve for repair or replacement of capital items.
 - iii. Collect assessments for common expenses from Owners in accordance with the Declaration.
- n) Temporary Waivers of Enforcement of Restrictions. There may be some limited circumstances in which the Board may deem it necessary to grant a temporary waiver of the enforcement of the restrictions set forth in the Declaration. For example, if the Permitted Occupant has died or suffered a serious injury or illness, said Permitted Occupant may not be able to reside at a Parcel. The Board may establish Rules and Regulations pursuant to which it may grant a temporary waiver of the enforcement of restrictions, personal to the affected Owner. Said waiver terminates upon the date set forth in the waiver provided by the Declaration or upon a transfer of title of the Parcel, whichever date occurs first.

6. OFFICERS

- a) Enumeration and Election of Officers. The officers of the Association shall be at a minimum a President, a Secretary, a Treasurer. The Board may create such other offices as it deems appropriate. The Board of Directors shall elect the officers of the Association at each annual meeting. All officers shall be members of the Board of Directors. Directors may hold more than one office. The Board of Directors may remove any officer at any time, with or without cause, by a vote of the majority of Directors at a meeting at which a quorum is present. The Board of Directors may fill any vacancy in any office occurring from whatever cause.
- b) Compensation. No fee or compensation shall be paid by the Association to any officer for his or her services as an officer.
- c) Duties of Officers. The duties of the officers of the Association shall be as set forth below:
 - i. *President*. The President shall preside at all meetings of the Board of Directors and members and shall sign any contracts, notes, deeds or other papers requiring the President's signature, and shall have such other duties as may from time to time be required of the President by the Board of Directors.
 - ii. *Secretary*. The Secretary shall keep minutes of all the proceedings of the Board of Directors and the members, make proper record of the same and furnish copies of such minutes to the President prior to the next meeting of the Board of Directors

or the members, as the case may be; sign all bonds, contracts, notes, deeds and other papers executed by the Association requiring such signature; give notice of meetings of Directors and members; keep such books as may be required by the Board of Directors; and perform such other and further duties as may from time to time be required by the Board of Directors.

iii. *Treasurer.* The Treasurer shall have general supervision of all finances. The Treasurer shall receive and have in charge all money, bills, insurance policies and similar property belonging to the Association and shall do with the same such as may, from time to time, be required by the Board of Directors. The Treasurer shall cause to be kept adequate and correct accounts of the business transactions of the Association and on the expiration of his or her term of office shall turn over to the succeeding Treasurer or to the Board of Directors the property, books, papers and money of the Association.

7. ASSESSMENTS

- a) Budget; Annual Assessments. Not later than November 30 of each year, the Board of Directors shall estimate the amount of the Common Expenses of the Association for the next calendar year and prepare a budget based upon those estimates. Based upon the estimated budget, the Board of Directors shall fix the amount of the annual assessment for the Association, which shall be divided equally among the Parcels. The annual assessment shall be payable in the manner provided in the Declaration.
- b) Special Assessments. Subject to the restrictions in the Declaration, the Board of Directors may levy, in any year, special assessments for the purposes described in the Declaration. Special assessments shall be due and payable on the dates fixed by the Board of Directors and shall be payable in a single installment unless the Board of Directors permits payment in more than one installment.
- c) Individual Assessments. The Association may assess an individual Parcel as provided in the Declaration and will provide the notice for the same as required in the Declaration.
- d) The Board of Director's failure or delay to prepare an annual estimated budget or to give timely notice of an assessment shall not release any Owner from the obligation to pay the assessment whenever the amount of the assessment has been determined and written notice has been given.

8. INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND VOLUNTEERS

To the extent permitted by law, the Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed civil,

criminal, administrative or investigative action, suit or proceeding, other than an action by or in the right of the Association, by reason of the fact that he or she is or was a Director, officer, employee, agent or volunteer of the Association, or is or was serving at the request of the Association as a Director, officer, employee, agent or volunteer of another corporation, domestic or foreign, nonprofit or for profit, or a partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with the action, suit or proceeding, if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, if he or she had no reasonable cause to believe his or her conduct was unlawful.

9. CONFLICTS; AMENDMENTS

- a) Conflicts. If there are conflicts or inconsistencies between the provisions of Ohio law, the Articles of Incorporation of the Association or the Declaration and these Bylaws, the provisions of Ohio law, the Declaration and these Bylaws, in that order, shall prevail.
- b) Amendment. These Bylaws may be amended at any meeting of the members duly called and held for that purpose. The amendment must be adopted by the members holding at least seventy-five percent (75%) of the total votes of the Association.

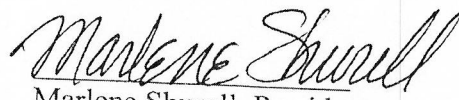
10. BOOKS AND RECORDS

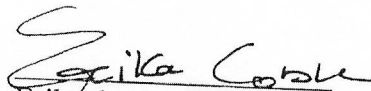
- a) Books and Records of the Association. Until otherwise prohibited by this Section, any Owner may examine and copy the books, records, minutes and financial statements of the Association during normal business hours or under other reasonable circumstances upon request to the Association. The rights set forth in this Section shall be subject to reasonable standards set forth in Rules and Regulations the Board promulgates, which may include, but are not limited to, standards governing the type of documents that are subject to examination and copying, the times and locations at which those documents may be examined or copied, and the specification of a reasonable fee for copying the documents. Without limiting the foregoing, unless approved by the Board, an Owner may not examine or copy any of the following from books, records, and minutes:
 - i. Information that pertains to Property-related personal matters;
 - ii. Communications with legal counsel or attorney work product pertaining to potential, threatened or pending litigation, or other Property-related matters;
 - iii. 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;
- iv. Information related to the enforcement of the Declaration, Bylaws, or Rules and Regulations of the Association against other Owners;
 - v. Information the disclosure of which is prohibited by state or federal law.

Adopted on 11.11, 2020.

Initial Board of Directors:


Marlene Shurell, President


Erika Coble, Secretary

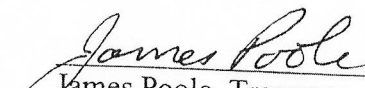

James Poole, Treasurer

EXHIBIT B
AGREEMENT

THIS AGREEMENT, made and entered into on the date shown on the signature page herein below, by and between the **CITY OF BERE**A (hereinafter referred to as "Berea") and the **CENTURY HOME GARDEN DISTRICT HOMEOWNERS' ASSOCIATION** (hereinafter referred to as "HOA");

WHEREAS, pursuant to Ordinance No. 2016-84, the City acquired five non-owner-occupied residential properties, including 106 Jacob Street, in exchange for a municipal parking lot located at 102 Front Street; and

WHEREAS, in Ordinance No. 2016-84, the City acknowledged that the character of a neighborhood improves when residential properties are owner-occupied; and

WHEREAS, the City has completed renovations of the home located at 106 Jacobs Street and intends to sell the property through submission of offers;

WHEREAS, Resolution No. 2019-58 established a Home Ownership Zone in or near the College District, finding that the public interest would be best served by requiring that City-owned properties be transferred subject to a permanent deed restriction requiring owner-occupancy; and

WHEREAS, since the passage of Resolution No. 2019-58, several properties owners in the immediate neighborhood have established the Century Home Garden District Home Owners Association, which also requires properties to be owner occupied and the public interest would be best served by 106 Jacob Street becoming part of this homeowners' association prior to transfer of this property from the City to the subsequent home owner; and

WHEREAS, the Century Home Garden District Homeowners Association was established for the purposes of preserving and enhancing the quiet, harmonious and single-family

residential character of the neighborhood and to protect the neighborhood from the negative effects of absentee landlords and unsupervised tenants; and to preserve and protect the historic homes that reflect the history of Berea; and to solidify and strengthen the cooperative, collaborative and decades-long effort to preserve the neighborhood by the homeowners, Baldwin Wallace University and all of whom recognize the importance of this neighborhood and seek to preserve it; and

WHEREAS, the City intends to sell the property with a deed restriction in accordance with Resolution 2019-58 and fully supports the mission of the HOA and further desires that the property located at 106 Jacob Street, Permanent Parcel No. 364-06-022, be added to properties included in the Century Home Garden District.

NOW, THEREFORE, in consideration of the terms and conditions hereinafter set out in this Agreement, and for other good, valuable, and sufficient consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, Berea and the Century Home Garden District Homeowners Association do hereby mutually covenant and agree that:

1. The HOA shall meet within twenty (20) days of the execution of this Agreement for the purpose of approving the application of the City of Berea, owner of the property located at 106 Jacob Street, Berea, OH (Permanent Parcel No. 364-06-022), to join the Century Home Garden District.
2. Within ten (10) days of approval, the HOA agrees to record at the Office of the Cuyahoga County Recorder, those documents required to amend their Declaration of Restrictions and By-laws to include the property located at 106 Jacob Street.
3. The Parties understand that the City of Berea intends to sell the property at 106 Jacob Street and that any amendment to the Declarations of Restrictions and By-laws shall be recorded prior to closing.

4. The Century Home Garden District agrees that the Initial Assessment, referred to in Item 5(c) of the Declarations shall be paid out of Escrow at the time of closing.
5. This Agreement shall terminate immediately if the City's application to include the property at 106 Jacob St. in the Century Home Garden District is disapproved.
6. This Agreement constitutes the entire agreement between the parties regarding the subject matter and all prior conversations and writing are merged herein and it shall not be modified unless in writing and duly executed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, this _____ day of _____, 2022.

CITY OF BERE:

**CENTURY HOME GARDEN
DISTRICT:**

By: CYRIL KLEEM

Title: Mayor, City of Berea

By:

Title:

DECLARATION OF RESTRICTIONS FOR THE CENTURY HOME GARDEN DISTRICT

This Declaration of Restrictions for the Century Home Garden District (the "Declaration") is hereby entered into by the owners of the real property described in Exhibit A, attached hereto.

A. The individuals executing this Declaration are the owners of certain real property located in the City of Berea, County of Cuyahoga, State of Ohio, which property is described in detail in the attached Exhibit A (referred to herein as the "Owners").

B. The properties described in Exhibit A (referred to herein collectively as the "Property" and individually as "Parcels") are generally located in a neighborhood in the City of Berea, which is bounded by the following streets: To the North by Bagley Road, to the West by the historical West Alley (located between Seminary Street and Front Street); to the East by Tressel Street; and to the South by School Street. This neighborhood has been historically known as the "SOBO" Neighborhood and is more specifically illustrated within the boundaries shown on the 2020 Zoning Map of Berea Ohio as the "R-SF-A Zoning District."

To be clear, not all properties located within the area described above are subject to this Declaration. Only the Parcels owned by the Owners which are described in Exhibit A are subject to this Declaration. Additional Parcels may be added in the future, via an amendment to this Declaration.

C. The Owners desire to subject the Parcels to certain restrictions, as stated below and as may be described in the attached Bylaws, in order to:

- (1)** Preserve and enhance the quiet, harmonious and single family residential character of the neighborhood and to protect the neighborhood from the negative effects of absentee landlords and unsupervised tenants;
- (2)** Preserve and protect the historic homes that reflect the history of Berea; and
- (3)** Solidify and strengthen the cooperative, collaborative, and decades-long effort to preserve the neighborhood by the homeowners, Baldwin Wallace University and the City of Berea, all of whom recognize the importance of this neighborhood and seek to preserve it.

D. The Owners have formed an Ohio non-profit corporation known as the Century Home Garden District Owners Association (the "Association"), which shall be responsible for the administration and enforcement of the provisions of this Declaration and the attached Bylaws.

THEREFORE, for the reasons stated above, the Owners, for themselves and their successors in interest, heirs, and assigns, hereby declare the Property subject to the following restrictions, which they deem to be reasonable. Said restrictions are intended to run with the land and be enforceable against all future owners of the Property.

1. DEFINITIONS

As used in this Declaration and the Bylaws:

a) "**Tier 1 Parcels**" are Parcels which currently contain a single-family residence. The Tier 1 Parcels include the Parcels which are identified on Exhibit A as a "Tier 1 Parcel."

b) "**Tier 2 Parcels**" are Parcels which currently contain a duplex (two attached single-family residences) as part of their original building design and were not converted to a duplex or multiplex at a later date. The Tier 2 Parcels include the Parcels which are identified on Exhibit A as a "Tier 2 Parcel."

c) A "**Permitted Occupant**" includes:

(1) In the case of a Parcel owned by an individual, the Permitted Occupant is the individual or individuals in title.

(2) In the case of a Parcel owned by a Trust or a Trustee of a Trust, the Permitted Occupant is the Trustee, or if there is more than one Trustee, then all such Trustees.

(3) In the case of a Parcel owned by a limited liability company, the Permitted Occupant is the member of the company owning a majority interest in the company (or if the company has more than one member with equal membership interests that constitute the majority interest, then all such members).

(4) In the case of a Parcel owned by a corporation, the Permitted Occupant is the majority shareholder of the corporation (or if the corporation has more than one shareholder with equal ownership interests that constitute the majority interest, then all such shareholders).

(5) In the case of a Parcel owned by a partnership, the Permitted Occupant is all of the general partners.

d) The term "**Principal Place of Residence**" as used herein means a primary residence. Factors which determine whether or not a Parcel is a Principal Place of Residence may include, but are not limited to: whether or not the Parcel is occupied at least a majority of the year by the Permitted Occupant; and whether or not the Parcel's address is the primary address used by the Permitted Occupant (particularly with respect to government issued identification cards or the address listed on the Permitted Occupant's federal and state taxes or voting registration or bank accounts, etc.).

2. OWNER OCCUPANCY RESTRICTION

The Owners for themselves and their successors in interest, heirs, and assigns, hereby agree that all Parcels subject to this Declaration shall be subject to an Owner Occupancy Restriction, as stated below:

a) All Tier 1 Parcels shall be occupied, at a minimum, by the Permitted Occupant who shall utilize the Parcel as his/her principal place of residence. Other individuals may also occupy the Parcel along with the Permitted Occupant. However, no more than three (3) individuals who are not related by blood, marriage, or adoption to at least one of the Permitted Occupants may reside together within said Parcel, in addition to the Permitted Occupant.

b) With respect to Tier 2 Parcels, at least one of the two adjoining single-family residences shall be occupied, by the Permitted Occupant(s) of the Tier 2 Parcel who shall utilize the Parcel as his/her principal place of residence. Other individuals may also occupy the Parcel along with the Permitted Occupant. However, no more than three (3) individuals who are not related by blood, marriage, or adoption to at least one of the Permitted Occupants, may reside together within said Parcel, in addition to the Permitted Occupant.

3. LEASING RESTRICTION

The Owners for themselves and their successors in interest, heirs, and assigns, hereby agree that all Parcels subject to this Declaration shall be subject to a Leasing Restriction, as stated below:

- a) No Owner of a Tier 1 Parcel shall lease said Parcel, or any part thereof, to another person or entity.
- b) As stated above, Tier 2 Parcels consist of two adjoining single-family residences. One such residence must be occupied by a Permitted Occupant pursuant to Paragraph 2 above and no portion of that residence may be leased to another person or entity. Owners of a Tier 2 Parcel may lease the other residence to another person or entity. However, any such lease must be in writing and for a term of not less than one (1) year.
- c) Under no circumstances may an Owner lease out any portion of a Parcel for a short-term rental (such as an Air BNB, VRBO, or Home Away or similar rental).

4. THE ASSOCIATION

- a) The Association shall be governed by its Board of Directors (the "Board"), who shall be appointed or elected by the members of the Association in accordance with the voting rights and the other rights and proceedings set forth in the Bylaws. All provisions of the Bylaws of the Association are incorporated into this Declaration by reference.
- b) The Association, through its Board, may, in its sole discretion, grant a temporary waiver of the enforcement of the restrictions contained herein in extraordinary circumstances (such as death or serious illness of a Permitted Occupant), as set forth in the Bylaws.

5. COMMON EXPENSES OF THE ASSOCIATION / LIEN FOR PAYMENT

- a) "Common Expenses" mean those costs and expenses incurred by the Association in the administration, governance or maintenance of the Association, including, but not limited to, all costs of the administration and operation of the Association and attorney fees and legal costs of the Association.
- b) Each Owner, by execution of this Declaration, and said Owner's successors, heirs, and assigns, agrees to pay to the Association assessments as set forth herein. The assessments (including, without limitation, late charges, costs of collection, and other charges as provided

below) shall be a charge and lien on each Parcel described in Exhibit A and shall also be the personal obligation of the Owner of each Parcel, to the extent and for the period provided in this Section.

c) Initial Assessment. Upon sale or conveyance of any of the property described in Exhibit A, each new Owner will pay an Initial Assessment of \$250.00 and will execute a form proscribed by the Association attesting that they have read, understand, agree with, and will comply with the Declaration and Bylaws.

d) Annual Assessment. The Association shall be entitled to collect from all Owners an annual assessment for Common Expenses and other purposes described herein. The amount of the Annual Assessment shall be determined by the Board. The initial Annual Assessment for 2021 shall be \$25.00. The Board may adjust the Assessment amount in accordance with the Bylaws. At the time an Owner pays the Annual Assessment, the Owner will execute a form proscribed by the Association attesting that they are in compliance with the Declaration and Bylaws.

e) Operating Shortfalls. If in any year the Common Expenses exceed the income from the annual assessment, the amount of any operating deficit may, at the Board's discretion's option, be charged to the Owners by means of a special assessment or charged against any reserve funds held by the Association. Special Assessments that total no more than \$100.00 per Parcel in any given year do not require consent of the Members. Any Special Assessments in excess of that amount require an affirmative vote of sixty-seven percent (67%) of the total vote of the Members.

f) Individual Assessment. An Individual Assessment may be charged by the Board against an Owner for failure to pay assessments as required under the Declaration and Bylaws and may also be charged as a fine for failure to comply with the Declaration or Bylaws. Such Individual Assessment may include enforcements costs such as attorney fees, and court costs.

g) Payment. Unless otherwise determined by the Board, all Assessments shall be payable within 30 days of billing. The Board shall have the power at any time to adopt such billing, collection and payment procedures as it shall deem appropriate (including imposition of late fees and interest on late payments).

h) Personal Obligation. Any Assessments becoming due and payable during the period that an Owner owns a Parcel, together with any related penalties and costs of collection, shall constitute the personal obligation of that Owner and shall remain the personal obligation of that Owner until paid.

i) Perfection and Priority of Liens. If an Assessment on any Parcel is not paid within the period established herein, the amount unpaid together with any related interest, administrative late fees, enforcement costs, collection costs, attorney's fees and paralegal fees, shall constitute a lien on that Parcel in favor of the Association. The Association may perfect the lien by recording a notice of lien with the Cuyahoga County Fiscal Office, subscribed by the president or other designated representative of the Association pursuant to authorization of the Board. The lien is a continuing lien upon the Parcel against which each Assessment is made, subject to automatic subsequent adjustments reflecting any additional unpaid interest, administrative late fees, enforcement assessments, collection costs, attorney's fees, paralegal fees, and court costs. The lien is valid for a period of five (5) years from the date of filing, unless it is sooner released or satisfied in the same manner provided by law for the release and satisfaction of mortgages or unless it is discharged by final judgment or order of a court in an action brought to discharge the lien. The lien is prior to any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments of political subdivisions and liens of first mortgages that have been filed for record prior to the recording of the lien.

j) Enforcement of Lien. Any lien established under this Declaration may be enforced by the Association in the same manner and to the same extent as in the case of foreclosure of a real property mortgage.

6. DEFAULT

a) Curing Defaults; Lien. If any Default occurs with respect to any Parcel under the provisions of this Declaration, the Board shall give written notice to the Owner, with a copy of the notice to any Permitted Occupant in Default and a copy to any first mortgagee of the Parcel who has requested copies of default notices, setting forth in reasonable detail the nature of the Default and the specific action(s) required to remedy the Default. If the Owner or Occupant shall fail to take the specific action(s) within 30 days after the mailing of the notice, the Board may, but shall not be required to, exercise any or all of its rights in this Declaration or otherwise available at law or in equity. The Board may exercise without notice any of its rights with respect to any Default if it determines that an emergency exists requiring immediate action.

Notwithstanding the foregoing, prior to imposing a charge for an Individual Assessment (or an enforcement assessment), the Board shall give the Owner a written notice and opportunity to cure the default including a description of the Parcel; the violation of the Declaration or Bylaws; the amount of the proposed charge or assessment; a statement that the Owner has the right to a hearing before the Board to contest the proposed charge or assessment; a statement setting forth the procedures to request a hearing; and a reasonable date by which the Owner must cure a continuing violation to avoid the proposed charge or assessment, if such an opportunity to cure is applicable. To request a hearing, the Owner shall deliver a written notice to the Board not later than the tenth (10th) day after receiving the notice described in this

paragraph. If the Owner fails to make a timely request for a hearing, the right to a hearing is waived, and the Board may immediately impose a charge for damages or an enforcement assessment. If an Owner requests a hearing, at least seven (7) days prior to the hearing the Board shall provide the Owner with a written notice that includes the date, time and location of the hearing. The Board shall not levy a charge or assessment before holding any hearing requested pursuant to this Section. Within thirty (30) days following a hearing at which the Board imposes a charge or assessment, the Association shall deliver a written notice of the charge or assessment to the Owner. Any written notice that this Section requires shall be delivered to the Owner or any Occupant of the dwelling unit by personal delivery, by certified mail, return receipt requested, or by regular mail.

b) Remedies. Nothing contained in this Section shall be deemed to affect or limit the rights of the Association, any Owner or Permitted Occupant, or their legal representatives, heirs, devisees, successors or assigns, by appropriate judicial proceedings, to enforce the provisions of this Declaration or recover damages for any Default. It is declared that irreparable harm will result to beneficiaries of this Declaration by reason of a Default, and, therefore, each beneficiary shall be entitled to relief by way of injunction or specific performance to enforce the provisions of this Declaration as well as any other relief available at law or in equity.

c) No Waiver. The failure of the Association, in any one or more instances, to exercise any right or privilege conferred in this Declaration, shall not constitute or be construed as the waiver of such right or privilege, including the right to cure any Default, but the same shall continue and remain in full force and effect as if no forbearance had occurred.

d) Rules and Regulations. The Board may adopt and enforce, and from time to time amend, reasonable rules and regulations (the "Rules and Regulations") regarding the administration, interpretation, and enforcement of this Declaration and the Bylaws. Each Rule and Regulation shall be consistent with and designed to further the purposes outlined in this Declaration. The Rules and Regulations may include, if the Board so elects, establishment of monetary fines for violations of this Declaration, the Bylaws or the Rules and Regulations, in such amounts as the Board may deem appropriate.

7. EFFECTIVE DATE

This Declaration shall take effect upon the recording of the same with the Cuyahoga County Fiscal Office, with the exception that the Owner Occupancy Restriction and the Leasing Restriction shall take effect on a date which is five (5) years from the date this Declaration is recorded. However, should title to a Parcel be transferred from an Owner

to an unrelated third party, the Owner Occupancy Restriction and the Leasing Restriction shall take effect as to the transferred Parcel on the date the document evidencing the transfer is recorded with the Cuyahoga County Fiscal Office.

8. EXISTING MORTGAGES, DURATION, AMENDMENT AND TERMINATION

a) Existing Mortgages: Some of the Parcels may be subject to mortgages which were filed prior to the date of recordation of the Declaration. It is understood by the Owners and the Association that, as to all such pre-existing mortgages, said mortgages take priority over any of the provisions in the Declaration and the Bylaws. If Parcels which are subject to pre-existing mortgages are sold at a sheriff's sale to satisfy said pre-existing mortgage, then such sale is free and clear of the provisions of these Declarations and the Bylaws.

b) Duration. This Declaration shall be deemed to create covenants running with the land and shall bind the Property and shall inure to the benefit of and be binding upon the Board, the Association, and each Owner, Permitted Occupant and their legal representatives, heirs, successors and assigns, and shall continue in full force and effect hereafter, without termination, except as provided herein.

c) Amendment or Termination. Any provision of this Declaration (including the addition or deletion of Parcels from Exhibit A) may be amended in whole or in part or terminated by a recorded instrument approved by the Owners of at least 75% of all Parcels.

The President of the Board shall determine whether the persons who have approved of any amendments or the termination of this Declaration constitute the Owners of the required percentage of Lots. Promptly after the approval of any amendment or termination of any part of this Declaration, the President of the Board shall cause to be recorded (a) the written instrument of amendment or termination executed in properly recordable form by the President of the Association, and (b) the certificate of the President of the Association that the Owners of at least 75% of all Parcels have approved such instrument.

9. MISCELLANEOUS

a) No Reverter or Right of First Refusal. No covenant, condition, restriction, or reservation of easement contained in this Declaration is intended to create, or shall be construed as creating, a condition subsequent or a possibility of reverter or a Right of First Refusal.

b) Notices. Any notice required or permitted to be given to an Owner or Permitted Occupant by the Board pursuant to the provisions of this Declaration shall be deemed given when personally delivered to the Parcel or mailed by United States mail, postage prepaid, addressed to that person's last address as it appears on the records of the Association. An Owner may elect to have notices delivered by electronic mail at an address designated by the Owner.

c) Invalidity. The determination by a court of competent jurisdiction that any provision of this Declaration is invalid for any reason shall not affect the validity of any other provision.

Executed by the Owners on the dates set forth next to their signatures as set forth on the following pages.

Executed by Patricia Jane Hartle James, owner of the property located below, on _____, 2020, who acknowledges that she has read the foregoing Declaration and attached Bylaws and is aware of the consequences of executing the same.

Address: 25 East Grand Street, Berea, Ohio 44017

PPN: 364-05-020

Patricia Jane Hartle James

STATE OF OHIO
COUNTY OF CUYAHOGA

The foregoing instrument was acknowledged before me on _____, 2020 by Patricia Jane Hartle James.

Notary Public

Executed by Robert C. Cromwell and Maureen A. Cromwell, owners of the property located below, on _____, 2020, who acknowledge that they have read the foregoing Declaration and attached Bylaws and are aware of the consequences of executing the same.

Executed by Robert C. Cromwell and Maureen A. Cromwell, owners of the property located below, on 11/5/2020, 2020, who acknowledge that they have read the foregoing Declaration and attached Bylaws and are aware of the consequences of executing the same.

Address: 29 Grand Street, Berea, Ohio 44017
PPN: 364-05-021



Robert C. Cromwell



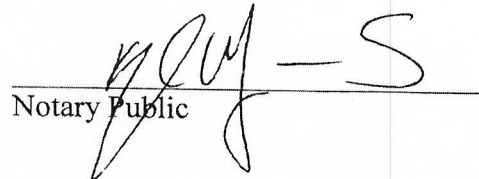
Maureen A. Cromwell

STATE OF OHIO
COUNTY OF CUYAHOGA

The foregoing instrument was acknowledged before me on 11/5/, 2020 by Robert C. Cromwell and Maureen A. Cromwell.



KYLE A. MORGAN-SWANEY
Notary Public, State of Ohio
My Comm. Expires 07/17/2021


Notary Public

**CENTURY HOME GARDEN DISTRICT OWNERS ASSOCIATION
MEMBERSHIP VOTE 2022-1**

The members of the Century Home Garden District Owners Association are being asked to vote on the following issue. A quorum agreement is required to pass.

Berea City Ordinances 2-5 and 2-6 were introduced for First Reading at the Berea City Council Meeting held on Tuesday 2/22/22 to introduce legislation in support of the Century Home Garden District Owners Association in the following way.

The City of Berea has completed work on the city-owned property at 106 Jacobs Street, and it is currently ready for sale.

As a condition of sale, they are proposing a double layer of protection for the property as follows.

As promised, the City will have their current strict owner occupied deed restriction on the property deed. As an additional condition of sale, they are proposing a requirement that the new owners will agree to join the Century Home Garden District Owners Association, and pay the HOA fee as part of the closing costs. The fee will be forwarded to the Century Home Garden District Owners Association Treasurer along with the paperwork.

The 2/22/22 City Council Meeting was attended by Marlene Shurell, Bob Cromwell and Erika Coble and we are in favor of this legislation. Your HOA member vote attached below will in turn confirm our group support for this legislation.

By signing, dating and initialing AYE, you are voting in support of this proposal. Vote NAY if you do not support this initiative.

Property Address: _____

Printed owner name(s) and date: _____

Owner signature (s): _____

Vote: Aye _____

 Nay _____

**MEMBERSHIP VOTING RESULTS
TALLIED ON 3/1/2022**

AYE: 15

NAY: 0

CENTURY HOME GARDEN DISTRICT OWNERS ASSOCIATION

I hereby agree to enter the following property into the Century Home Garden District Owners Association.

Executed by _____, owner of the property
located below on _____, 2022

Property Address: _____

Permanent Parcel Number: _____

Printed Name of Signer: _____

Signature of Signer: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me on _____, 2022

By _____ (name of Signer)

Notary Public