**DRAFT**

**DECLARATION OF COVENANTS,**

**CONDITIONS AND RESTRICTIONS**

**AND RESERVATION OF EASEMENTS**

FOR

**[THE FIELDS AT LIBERTY WAY]**

A Commercial Owner's Association

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS** (“Declaration”) is made as of this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2016, by LIBERTY WAY INNKEEPERS, LLC, an Ohio limited liability company (the “Developer”), and LIBERTY WAY OWNER’S ASSOCIATION, INC. (the “Association”) under the following circumstances:

A. The Developer is the Owner of a certain parcel of real estate in West Chester Township, Butler County, Ohio and more particularly described in **Exhibit A** attached hereto and made a part hereof (the “Development Parcel”). The Development Parcel is made up of the “Holiday Inn Tract” more particularly described in **Exhibit B** attached hereto, and the “Remainder Tract” as identified in **Exhibit C** attached hereto. An initial site plan of the Development Parcel (the “Site Plan”), upon which certain of the initial “Common Facilities” are generally shown, is attached hereto as **Exhibit D**.

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_ [(“Hyatt Owner”)] is the owner of land adjacent to the Development Parcel, which is more particularly described on **Exhibit E** attached hereto (the “Hyatt House Parcel”).
2. The Developer desires to establish and create, and to subject the Development Parcel to certain covenants, conditions, restrictions and easements in order to benefit the development and value of the Development Parcel by: (i) providing for the common and non-exclusive use, enjoyment, preservation and maintenance of certain Common Facilities (as hereinafter defined); (ii) establishing standards to promote the uniform and complimentary development of the Development Parcel; (iii) establishing and providing for the administration of an “Association” (as hereinafter defined); and (iv) authorizing the Association to levy and collect assessments for the purposes described in this Declaration.
3. Additionally, due to the size, location, and nature of the potential development intended for the Development Parcel, including the Holiday Inn Tract and the adjoining Hyatt House Parcel, the Developer and Hyatt Owner desire to additionally subject the Hyatt House Parcel to this Declaration and to establish among themselves and their respective properties certain specific agreements, covenants, restrictions, and conditions between the Development Parcel and the Hyatt House Parcel.
4. The Association joins in this Declaration for the purpose of consenting to the agreements between the Development Parcel and the Hyatt House Parcel, and consenting to and agreeing to perform the duties and obligations imposed upon it by this Declaration.

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer hereby declares that all of the Development Parcel shall be, and the Hyatt Owner hereby declares that the Hyatt House Parcel shall be, held, transferred, sold, conveyed and occupied subject to the following covenants, provisions, terms, restrictions, easements, conditions, requirements, charges and liens which are for the purpose of, among other things, protecting the value and desirability of the Development Parcel and the Hyatt House Parcel (collectively, the “Liberty Way Project Parcels”). This Declaration: (i) shall be covenants running with the land; (ii) shall be binding upon the Developer, the Hyatt Owner, the Association, each “Owner” (as hereinafter defined), and all claiming by, through or under each such person; and (iii) shall (regardless of whether or not any such beneficiary owns an interest in any portion of the Liberty Way Project Parcels) inure to the benefit of and be enforceable by (A) the Developer; (B) the Hyatt Owner, (C) the Association; (D) each Owner; and (E) all claiming by, through or under each such person.

**ARTICLE I**

DEFINITIONS

As used in this Declaration, unless the context otherwise requires, capitalized terms shall have the following meanings:

1.01 “**Annual Assessment**”shall mean an assessment levied by the Association which is used to accomplish the duties and fulfill the purposes of this Declaration in accordance with Section 8.03 of this Declaration.

1.02 “**Association**” shall mean the [**LIBERTY WAY OWNER'S ASSOCIATION, INC.,]** an Ohio not for profit corporation, and any successor organization which operates and maintains the Common Facilities.

1.03 “**Board of Trustees**” or “**Board**”shall mean the Trustees of the Association to be elected pursuant to Article III of this Declaration.

1.04 “**Bylaws**”shall mean the bylaws or code of regulations of the Association, as amended from time to time. Copies of current Bylaws are available to any interested party free of charge by making a written request for the same from the Association.

1.05 “**Common Expense**”shall mean the expenses of operating the Association as required by this Declaration; and maintaining, repairing, replacing, and operating the Common Facilities, including reasonable reserves; all as may be found to be necessary and appropriate by the Board of Trustees of the Association pursuant to this Declaration, the Bylaws, and the Articles of Incorporation of the Association.

1.06 “**Common Facilities**”means all real and personal property from time to time designated pursuant to this Declaration to be owned by, maintained by (at the Association's expense), or leased to the Association for the benefit of Owners, Tenants, their guests and invitees, and all easements or licenses benefitting the Common Facilities or any part thereof. Such' real and personal property may, include without limitation open space land, common landscaping features, periphery fencing, irrigation and fountain systems and equipment, lakes and streams and retention ponds, detention facilities, joint driveways, pedestrian facilities, hiker-biker trails, in common signage and graphics, outdoor lighting, outdoor furnishings, design amenities and theme improvements or other common facilities and facilities needed in connection with water supply or sewage disposal installations or steam, gas and electric lines or installations. The initial Common Facilities include the items described or shown on **Exhibit F** attached hereto and made part hereof, some of which are more specifically defined and delineated herein. The Common Facilities shall also include easements in favor of the Association over, on, across and under the Liberty Way Project Parcels. [DETERMINE OTHER SPECIFIC ITEMS UPON RECEIPT OF DRAWINGS]

1.07 **"Developer"** shall mean Liberty Way Innkeepers, LLC, an Ohio limited liability company, and its successors, successors-in-title, or assigns who acquire title to any portion of the Development Parcel for the purposes of development or sale who are specifically designated as the successor Developer in a duly recorded instrument executed by the Developer.

1.08 “**Development Parcel**”shall mean that real property which is described in **Exhibit A** attached hereto.

1.09 “**Development Period**”shall mean the period commencing on the date of this Declaration and expiring upon the earlier to occur of: (i) the date that is thirty (30) years after the date of this Declaration; or (ii) the date Developer records in the office of the Recorder ofButler County, Ohio a notice that Developer no longer owns any of the Development Parcel [other than the Holiday Inn Tract].

1.10 “**General Assessment**”shall mean an assessment levied to fund Common Expenses. Itshall include Annual and Special assessments.

1.11 “**Holiday Inn Tract**” shall mean that portion of the Development Parcel which is more particularly described in **Exhibit B** attached hereto and made a part hereof.

1.12 “**Hyatt House Parcel**”shall mean that real property which is more particularly described in **Exhibit E** attached hereto and made a part hereof.

1.13“**Liberty Way Project Parcels**” shall mean collectively, the Development Parcel and the Hyatt House Parcel.

1.14 “**Limited Common Facilities**”shall mean those Common Facilities which the Association determines, pursuant to this Declaration, are beneficial primarily to a certain Lot or Lots, and therefore, the maintenance, operating, and repair costs related to such Common Facilities are shared among the Owners of Lots receiving the primary benefit from such Limited Common Facilities. The initial Limited Common Facilities, if any, are expressly described on **Exhibit D** attached hereto and made a part hereof.

1.15 “**Lot**”shall mean any portion or tract of land which is a separate tax parcel within the Development Parcel.

1.16 “**Maintenance Standards**”shall mean those standards imposed by this Declaration related to maintaining and repairing the Liberty Way Project Parcels and improvements located thereon, as the same may be modified from time to time, as provided herein. Notwithstanding the foregoing, the minimum standards with respect to the Maintenance Standards at all times shall be that of a first-class development, and shall require compliance with all applicable laws.

1.17 “**Member**”shall mean any Owner and shall include “**Class A Members**” and the “**Class B Member**” (as defined in Article Ill).

1.18 “**Owner**”shall mean the record owner (whether one or more persons or entities) of the fee simple title to any Lot; provided, however, that “**Owner**” shall not mean any person or entity who is a mortgagee or otherwise holds an interest in a Lot merely as security for the performance of an obligation and shall not include the Association.

1.19 “**Remainder Tract**” shall mean that portion of the Development Parcel which is more particularly described in **Exhibit C** attached hereto and made a part hereof.

1.20 “**Rules and Regulations**”means those rules and regulations related to the use of Common Facilities or the operation of the Association which may be adopted and modified from time to time by the Board pursuant to this Declaration.

1.21 “**Special Assessment**”shall mean a General Assessment levied in accordance with Section 8.04 of this Declaration.

1.22 “**Supplement to Declaration**”shall mean a supplement to this Declaration which subjects additional real property to this Declaration or designates additional Common Facilities, as provided herein.

1.23 “**Storm Water Facilities**”shall mean and refer to storm sewers, storm sewer swales, streams, ditches, catch basins, drainage lines, manholes and detention basins situated on storm sewer easements or private drainage easements encumbering certain of the Lots as designated on the record plan or plats for the Development Parcel for the common use and enjoyment of the Owners, as described in **Exhibit F**  attached hereto.

1.24 “**Tenant**”shall mean any person, corporation, partnership or other entity occupying any Lot or portion of a Lot pursuant to a written or oral lease with the Owner thereof or with any other person or entity claiming by, through or under an Owner.

1.25 “**Voting Percentage**”shall mean the share of voting power allocated to a Member by virtue of being an Owner of a Lot on the [Development Parcel]. Voting Percentage for each Member shall be equivalent to the percentage of such Member's Lot acreage to the total acreage of all Members' Lots. The Voting Percentage shall be adjusted if additional real property is subjected to this Declaration, or if at the time of any vote, any Member has lost its voting rights pursuant to this Declaration. Current percentages are set forth in **Exhibit G** attached hereto and made a part hereof.

Capitalized terms not defined in this Article I shall have the meanings assigned to such terms by other provisions of this Declaration.

**ARTICLE II**

PROPERTY SUBJECT TO DECLARATION

2.01 **Real Property.** The Liberty Way Project Parcels which are and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is all that real property described in **Exhibit A** attached hereto and made a part.

2.02 **Additional Property.** During the Development Period, the Developer shall have the unilateral right, privilege, and option, from time to time at its discretion, to subject to the provisions of this Declaration and the jurisdiction of the Association any additional real property located adjacent to or near the Development Parcel by executing and recording a Supplement to this Declaration, which shall contain a description of the real property being added and a Declaration by Developer that such real property shall be subject to this Declaration. Such Supplements to the Declaration shall not require the consent of the other Owners, and shall be effective upon the recording of the same. The right, privilege and option to add real property to this Declaration may be assigned by Developer to the assignee or transferee of Developer's rights hereunder.

2.03 **Reservation of Easements.** Subject to the terms hereof, as long as construction of improvements or the initial sale of Lots shall continue, or if any part of the Development Parcel remains to be developed, the Developer and any contractor hired by the Developer shall have the right and easement to enter upon such portion of the Common Facilities and the Development Parcel as the Developer may deem necessary, and may conduct such activities as, in the sole opinion of the Developer, may be required for the development and construction related to the Development Parcel. This reserved easement specifically includes, but is not limited to: (a) the right of access, ingress, and egress, and vehicular and pedestrian traffic, over and upon such property; (b) the right to tie into or otherwise connect and use (without a tap-in or any other fee for so doing), replace, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under, or over the Development Parcel; (c) the right to carry on sales and promotional activities on the Holiday Inn Tract; and (d) the right to construct and operate signs, construction trailers, and sales offices on the Holiday Inn Tract.

**ARTICLE III**

MEMBERSHIP IN AND ADMINISTRATION OF THE ASSOCIATION BOARD

3.01 **Membership.** Every Owner of a Lot, by virtue of such ownership, shall automatically become a Member of the Association, subject to the terms hereof. No such Owner may effectively disclaim its Membership or its status as a “Member” under this Declaration. During the Development Period, the Association shall have Class A Members (being all Owners except the Developer) and a Class B Member (being the Developer). After the Development Period expires, the Class B membership class shall terminate, and the Developer, if it is then an Owner, shall become a Class A Member and continue as such as long as it remains an Owner. All Members shall abide by the Association's Bylaws and Rules and Regulations, shall pay all assessments charged hereunder when due, and shall comply with decisions of the Association's Board of Trustees and the Developer, subject to the terms hereof. In the event any other Owner fails to perform any of its obligations under this Declaration for a period of thirty (30) days after the Developer has provided written notice to such Owner (in the manner provided above), then in such event, the Developer shall have the right and authority (but not the obligation) to act on behalf of the Association or such other Owner, as applicable, including all rights of the Association to assess the cost of the same to the other Owners (if attributable to the Association) or to assess the cost of the same to the such Owner and to have such costs secured by liens upon all other Owner's Lots (if attributable to the Association) or to such other Owner. The foregoing thirty (30) day time period shall, in the event of any emergency, be reduced to such shorter period of time as shall be necessary to address such emergency without otherwise affecting the terms of these foregoing provisions. Such actions by the Developer shall be binding upon all Owners and the Association. Upon a change of ownership of any Lot, the new Owner shall provide written notice thereof to the Association. The share of a Member or an Owner in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner, except as an appurtenance to the Lot of such Member.

3.02 **Purpose of Association.** The objectives and purposes of the Association shall include: (a) the development, maintenance, and improvement of the Common Facilities; (b) the maintenance and routine care of certain lawn areas and landscaping; (c) the use and enjoyment of the Common Facilities; (d) the resolution of any disputes between Owners of Lots; (e) the enforcement of the terms and provisions of this Declaration; and (f) such other responsibilities as may, from time to time, be accepted by affirmative vote of the Members, including the Class B Member, if the Development Period has not yet expired, all in accordance with the terms hereof. The Association shall be responsible for the foregoing objectives and purposes, and for insuring all Common Facilities for which it is responsible, for its own benefit and for the benefit of all Owners.

3.03 **Administration.** The administration of the Association shall be by the Board of Trustees in accordance with the Bylaws and provisions of this Declaration. In the event of a conflict between the Bylaws and the provisions of this Declaration, the provisions of this Declaration shall prevail. Subject to the terms hereof, the Board of Trustees shall have full and complete authority to take all actions, to make all decisions, and to do all things that the Association is empowered to do, for and on behalf of the Association, without any vote of the Members of the Association, unless specifically prohibited from doing so by the Bylaws or this Declaration.

3.04 **Voting.** Each Member shall be entitled to vote on any Association matter dealing with the Development Parcel in accordance with the Member's Voting Percentage. Should Property be added to these covenants, that Property shall have its own percentage of payment established by such amendment to this Declaration.

3.05 **Disqualification.** Members who have failed to make payments of any sums due to the Association, or failed to observe any Maintenance Standards or Design Review Guidelines, or otherwise not complied with any requirements imposed by this Declaration, shall not be entitled to vote until such payment or such performance has been completed. No such disqualification shall have any effect on such Member's obligation to comply with all covenants, restrictions, and other requirements imposed pursuant to this Declaration.

3.06 **Assignment of Voting Rights to Tenants.** Any Class A Member may assign its voting rights to a Tenant of its Lot for the term of such Tenant's lease. Written notice of such assignment shall be given to the Association, but no such assignment shall relieve the Class A Member from its obligations under this Declaration.

3.07 **Board of Trustees.** The Board of Trustees of the Association shall consist of three (3) Trustees who need not be Owners or Members. Until the first annual meeting of the Members, all three (3) Trustees shall be appointed by the Class B Member who shall serve until their respective successors are elected and qualified. Except as otherwise herein provided, Trustees shall be elected for one (1) year terms of office and shall serve until their respective successors are elected and qualified. Any vacancy which occurs in the Board, by reason of death, resignation, removal, or otherwise, may be filled at any meeting of the Board of Trustees by the affirmative vote of the remaining Trustees representing the same class of Members who elected the Trustee whose position has become vacant, or if there are no such remaining Trustees, by a special vote of the Members that elected the Trustee whose position has become vacant. At the first annual meeting of the Members, and at each annual meeting of the Members thereafter until the Development Period has expired, the Class A Members shall elect one (1) Trustee and the Class B Member shall elect two (2) Trustees. At the first annual meeting of the Members after the last day of the Development Period, and at each such annual meeting thereafter, the Class A Members shall elect two (2) Trustees and the Owner of the Cabela's Tract may appoint the third Trustee. The Class B Member may, at any annual meeting of the Members, relinquish to the Class A Members the Class B Member's right to elect one or more Trustees.

3.08 **Notice of Annual Meeting.** Notice of the annual meeting of the Members shall be given by the Board to each Member entitled to vote at such meeting either personally or by mail addressed to such Member at such Member's address appearing upon the records of the Association at least fifteen (15) days (but not more than sixty (60) days) in advance of such meeting. Such notice shall specify the place, date and hour for the meeting. The Members may establish another procedure for the notice of the annual meeting for Members, provided that such other procedure is approved by the Class B Member, if during the Development Period.

**ARTICLE IV**

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.01 Common Facilities. The Association shall be responsible for the exclusive management and control of the Common Facilities and shall keep them in good, clean, attractive, working and sanitary condition, order, and repair and in accordance with the Maintenance Standards.

4.02 Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. The Association shall accept any of the Liberty Way Project Parcels or any improvements or personal property located thereon then-owned by the Developer and conveyed to the Association by the Developer or the Hyatt Owner as Common Facilities, and subject to the terms hereof, the Developer may from time to time and at any time during the Development Period designate additional property owned by it to be Common Facilities by executing and recording a Supplement to this Declaration describing the additional Common Facilities and declaring the same to be additional Common Facilities subject to this Declaration. No Members or Owners, other than the Developer, if and to the extent such additional Common Facilities are located on any portion of the Development Parcel owned by the Developer, or other than the Hyatt Owner, if and to the extent such additional Common Facilities are located on any portion of the Hyatt House Parcel, shall be required to execute or consent to any such Supplement to Declaration, and the designation of such property as Common Facilities shall be effective as of the date such Supplement to Declaration is recorded.

4.03 **Powers of the Association with Respect to Committees.** Subject to the terms hereof, the Association, acting by and through its Board of Trustees, shall have the absolute power to veto any decision or action taken or contemplated to be taken by any committee with respect to approval or disapproval of any proposed development of a Lot. Subject to the terms hereof, the Association shall also have the absolute power to require specific action to be taken by any committee in connection with any obligations or responsibilities hereunder, other than with respect to the approval or disapproval of any proposed development of a Lot. Without limiting the generality of the foregoing, but subject to the terms hereof, the Association may require specific maintenance or repairs or aesthetic changes to be directed by a committee, may require that a proposed budget include certain items and that expenditures be made therefor, or may veto or cancel any contract providing for maintenance, repair or replacement of the property governed by any such committee.

**ARTICLE V**

PROPERTY RIGHTS IN THE COMMON FACILITIES

5.01 **Rights of Enjoyment in Common Facilities.** Each Member, its Tenants, and their respective invitees, shall have a right and non-exclusive easement for the use and enjoyment of the Common Facilities, and such right and easement shall be appurtenant to, and shall pass with the title of, each Lot. Such rights and privileges shall be subject to the following:

1. the right of the Board to adopt, enforce, and from time to time to amend, reasonable Rules and Regulations to be imposed upon Members pertaining to the use of the Common Facilities, subject to the terms hereof;
2. the right, upon approval by the Class B Member if during the Development Period, and upon authorization of the Board, to grant easements or rights of way, or to convey or lease Common Facilities located on, or consisting of, any of the Development Parcel to any public agency or utility provider;
3. the right of Developer to create additional Lots on the Remainder Tract, and to transfer and/or convey additional Common Facilities to the Association, as described above and subject to the limitation contained above in Section 4.02 related to the Common Facilities located on, or consisting of, any part of the Development Parcel, in which event the Association shall accept such conveyance or transfer; and
4. all other easements, restrictions, and rights to which the Development Parcel is subject.

5.02 **Limited Common Facilities.** During the Development Period and subject to the terms hereof, the Developer may from time to time determine that there are certain Common Facilities, such as, by way of example only, driveways, which serve and benefit more than one Lot, but primarily less than all of the Lots. The Developer shall designate any such Common Facilities as Limited Common Facilities by executing and recording a Supplement to this Declaration wherein the Developer shall describe the Limited Common Facilities, establish the same by declaring them to be subject to this Declaration, describing the Lots to be benefitted by such Limited Common Facilities, and indicating how the costs of maintaining and repairing such Limited Common Facilities will be shared among the Owners of the Lots receiving the primary benefit from such Limited Common Facilities. The signature or consent of any other Members or Owners to any such Supplement to this Declaration shall not be necessary.

**ARTICLE VI**

RULES AND REGULATIONS

Subject to the terms hereof, the Board of Trustees of the Association may adopt and amend Rules and Regulations related to the use of the Remainder Tract by Members. No such Rules or Regulations may be adopted or amended during the Development Period, without the consent of the Developer. Written notice of any meeting of the Board to consider proposed Rules and Regulations or any amendments thereto shall be given in writing to all Members at least twenty (20) days in advance and shall set forth the time, place and purpose of the meeting. All Members then entitled to vote pursuant to this Declaration shall be entitled to attend any such meeting.

**ARTICLE VII**

MAINTENANCE

7.01 **Association's Responsibilities.** The Association shall maintain and keep in good repair all Common Facilities, including Limited Common Facilities, if any, consistent with the Maintenance Standards and using funds as hereinafter provided. Maintenance shall include, but shall not be limited to, repair and replacement of all landscaping, structures, and other improvements situated upon and within land included as Common Facilities, and landscaping on medians and rights-of-way abutting any of the Development Parcel (to the extent permitted by the local government). Notwithstanding anything herein to the contrary, the Board of Trustees may elect to discontinue the operation of any fountain or similar aesthetic device included as a Common Facility if, in its sole discretion, the Board determines that doing so is in the best interest of the Association, provided the same is either removed or maintained in a manner consistent with the Maintenance Standards.

7.02 **Owner's Responsibility.** Each Member shall maintain its Lot and all structures and other improvements thereon in a manner consistent with the Maintenance Standards referenced herein unless such maintenance responsibility is otherwise assigned and assumed pursuant to any additional Declaration applicable to such Lot. If any Member fails to properly perform its maintenance responsibility, the Association may perform such maintenance and assess all costs incurred by the Association against the Lot and the Member in accordance with Article VIII, Section 8.05 of this Declaration; provided, however, except when entry is required due to an emergency situation, the Association shall afford the Member reasonable notice of, and an opportunity to cure, the problem prior to entry. Each Owner shall be responsible for the payment of all taxes and assessments levied against its Lot, subject to any separate agreement between one or more Owners, if any.

7.03 **Maintenance Standards.** The initial Maintenance Standards shall require the Development Parcel and all improvements thereon to be maintained consistent with a first-class development, including, but not limited to the following:

1. maintenance of pavement in a level and smooth condition, free of potholes, with the type of material as originally used or a substitute equal in quality as reasonably approved by the Design Review Committee;
2. removal of all trash and debris, and washing or sweeping as may be reasonably possible;
3. removal of snow and ice from paved surfaces and sidewalks as soon as reasonably practicable;
4. maintenance of appropriate parking area entrance, exit and directional markers, and other traffic control signs or other signs designated as Common Facilities pursuant to this Declaration as are reasonably required, and as are permitted by the governmental authority having jurisdiction;
5. cleaning of lighting fixtures and re-damping as needed;
6. re-striping of driveways and repairing areas as required to keep such items clearly visible;
7. maintenance of all storm water facilities as necessary in order to keep such facilities in good working condition;
8. trimming, mowing and landscaping of open areas and of the grass and plants located therein in order to keep such open areas in an attractive condition;
9. keeping the exterior appearance of all structures and improvements ina good and attractive condition; and
10. if any structure or improvement is damaged or destroyed by fire or other casualty and not restored or reconstructed, causing such structure or improvement to be razed and clearing the land upon which such structure or improvement is located within ninety (90) days after such destruction (unless the restoration or reconstruction commences during such ninety (90) day period), subject to reasonable extensions if necessary due to settlement or adjustment of insurance claims related thereto.

7.04 **Amendment and Supplements.** The Board shall have the right to, but shall not be required to, and may from time to time amend and/or supplement the Maintenance Standards described in Section 7.03 pertaining to the maintenance, repair, and appearance of all Lots, and the exterior of all structures and improvements thereon. If any maintenance statute, ordinance, resolution, regulation or order of the State of Ohio, any other political subdivision or governmental instrumentality of the State of Ohio, is more stringent with regard to a Lot than a comparable provision of the Maintenance Standards, such more stringent provision shall be deemed incorporated in the Maintenance Standards.

7.05 **Drainage Swales, Service Lines.** Each open storm water drainage way on any Lot including, without limitation, the Development Parcel, or any portion thereof, shall be maintained by the Owner of such Lot in good condition and repair so that there will be no interference with the normal flow of water therein. Neither the Owner nor anyone claiming by, through, or under the Owner shall, except in an emergency, alter the location or grade of any such drainage way without the prior written consent of the Association. Each water service line connecting a structure on a Lot with a water main and each sanitary sewer service line shall be maintained by the Owner of such Lot, unless and to the extent any such line is declared to be a Common Facility pursuant to this Declaration.

7.06 **Right of Entry.** The Association, through its authorized officers, employees, and agents, shall have an easement and right to enter upon any Lot (but not any building(s) thereon) at all reasonable times and upon reasonable advance notice for the purpose of making inspections to determine compliance with the Maintenance Standards, without the Association or such officer, employee or agent being deemed to have committed a trespass or wrongful act solely by reason of such entry or such action or actions; provided, however, any such entry shall be performed in such a manner so as to minimize interference with such Owner's operations on its Lot.

7.07 **Developer Approval.** During the Development Period, Maintenance Standards may only be amended or supplemented with the prior written consent and approval of the Developer.

**ARTICLE 8**

COVENANT FOR ASSESSMENTS

8.01 **General Assessments and Charges.**

(a) Subject to the limitations regarding the Holiday Inn Tract, the Developer and each Owner of any Lot covenant and agree to pay to the Association, General Assessments including:

1. Annual Assessments for maintenance, operation, and a capital reserve, which, for each Lot benefitted by any Limited Common Facilities, shall include the maintenance and repair costs for such Limited Common Facilities allocated to such Lot;
2. Special Assessments necessary to supplement Annual Assessments or for capital improvements to Common Facilities;
3. interest on late payment of General Assessments at the interest rate described in Section 8.07;
4. charges for the breach of the provisions of this Declaration; and
5. all costs (including attorneys' fees) incurred by the Association to enforce this Declaration, the Bylaws, the Design Review Guidelines, the Maintenance Standards, and the Rules and Regulations.

(b) The payment of General Assessments and such other charges, together with any interest thereon at the interest rate described in Section 8.07 and costs of collection thereof as hereinafter provided, shall be secured by a continuing lien, until paid in full, upon the Lot and its improvements against which each such assessment or charge is made. The lien shall be enforceable by judicial sale and ordered application of sale proceeds. Each such General Assessment or charge, together with interest and costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner at the time when the assessment became due and payable or when such charge was imposed.

8,02 **Initial Assessment.** Until the Association shall establish the Annual Assessment, the initial Annual Assessment for each Lot not owned by the Developer and transferred to a third party shall be $\_\_\_\_\_\_\_\_ per acre (prorated for fractional acres) per month, beginning and due and payable on the first day of the month next following its transfer to an Owner and payable thereafter in semi-annual installments, payable on June 1 and December 1of each year. Until all of the Lots are sold, the Developer shall contribute on an annual basis to the Association $\_\_\_\_\_\_\_\_ per year for each undeveloped acre of the Development Parcel which it owns. In the event the Developer develops a Lot, the Developer shall pay assessments as any other Owner. Assessments will be prorated in the event of ownership for a portion of the year on a calendar year basis. For purposes of clarification (and without limiting the terms of Section 8.01(B) above), this Section 8.02 is subject to Section 8.01(B) above.

* 1. **Annual Assessments.**

(a) Annual Assessments levied by the Association shall be used to accomplish its duties provided herein and to fulfill the purposes of this Declaration.

(b) Subject to the terms hereof, each Lot in the Development Parcel shall share according to its Voting Percentage in all Annual Assessments levied by the Association (except for the costs of maintaining and repairing Limited Common Facilities, which shall be allocated as determined by the Developer as and when such Limited Common Facilities are subjected to this Declaration). Each Lot added by an amendment to this Declaration shall specify how assessments will be allocated to that real property brought into the Association.

(c) Beginning on \_\_\_\_\_\_\_\_\_\_\_\_, 201\_\_\_\_, and annually thereafter, the Annual Assessment shall be set by a majority vote of the Board of Trustees upon consideration of the proposed annual budget submitted by the “Common Facility Budget Committee”, if any, subject to the terms hereof. Any Annual Assessment not replaced by a succeeding Annual Assessment shall be automatically extended on the same basis until replaced by another Annual Assessment. The Board of Trustees of the Association, after consideration of the current maintenance cost and future needs of the Association, on or before December 1st of each year, shall prepare a proposed budget for the Association for the next calendar year. The proposed budget shall be sent to all Members and to the Developer at least fifteen (15) days in advance of the annual meeting or at a meeting duly called for the purpose of discussing and approving the budget. The notice shall set forth the time, place and purpose of the meeting.

(d) Subject to the terms hereof, each Owner shall pay to the Association in semi-annual installments, in advance, on or before the first day of June and December, one-half (1/2) of the Annual Assessment against the Owner's Lot.No Owner may waive or otherwise avoid liability for any Assessment by non-use of the Common Facilities or by abandonment of its Lot or by any other means or manner.

(e) The Board of Trustees shall, on or before September of each calendar year, appoint two (3) persons to serve on a Common Facility Budget Committee which shall review the services being provided with regard to the Common Facilities and the budgets for all such items. The Common Facility Budget Committee shall prepare and submit to the Board of Trustees by November 1 of each year such Committee's recommendations regarding the services to be provided by the Association and the proposed budget for the next calendar year. Such recommendations shall be nonbinding upon the Board of Trustees, but the Board of Trustees shall give weight to such recommendations when preparing the budget to be prepared and sent to all Members by December 1 as required by paragraph (c) above.

8.04 Special Assessments. Subject to the terms hereof, special Assessments may be imposed from time to time for any purpose, provided the Special Assessment is approved by the Members having at least a majority of the Voting Percentage for Members present, and during the Development Period, Developer, in a properly called meeting where all Members are given a reasonable opportunity to comment thereon. If any such Special Assessment is to be levied against the Holiday Inn Tract or if such Special Assessment is for capital improvements to Common Facilities, then such Special Assessment must be approved during the Development Period by the Developer. Notice of any meeting to consider a Special Assessment shall be given in writing at least thirty (30) days prior to the date of the meeting, which notice shall set forth the time and place of the meeting and shall specify the purpose or purposes for the Special Assessment and the suggested amount thereof.

8.05 Charge for Default. In the event of a breach by an Owner of any provision of the Declaration, Bylaws, Rules and Regulations, Maintenance Standards or Design Review Guidelines (including the costs of an action to enforce any provision hereof and attorneys' fees), and such Owner fails to cure such breach within thirty (30) days after receipt of notice of such breach from the Association, the Board of Trustees may levy a charge against the Lot and its improvements and the defaulting Owner, which charge shall constitute a lien against the Lot and its improvements. Such charge shall be payable in full twenty (20) days from the date Owner is notified of the levy of such charge.

8.06 Assessments Ledger and Certificates. The Board of Trustees shall prepare and maintain a ledger of all Lots and Assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Owner. The Association shall, upon request, furnish to any Owner (or its Lender) a written certificate signed by an officer of the Association setting forth the then current status of payments for assessments and charges against the Owner's Lot. Such certificate shall be conclusive evidence of the status of payment of all assessments and charges with respect to such Lot.

8.07 Effect of Non-Payment. In the event that any Assessment or charge due hereunder is not paid on the date when due, then the Annual Assessment shall be immediately due and payable and deemed delinquent. Unpaid Assessments and charges shall bear interest from the due date at an annual rate equal to the then announced prime rate of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, or its successor, plus five percent (5 %). The Association may institute an action to recover unpaid Assessments, charges and interest from the Owner, and/or it may sue to foreclose the lien against the Lot. Judgment for recovery shall include pre judgment interest on the total amount awarded, attorney fees, and such costs of the action as are permitted by law. A Member in default of payment or failure to observe Design Review requirements shall not have any right to vote on any matter, and such vote shall not be required, until all Assessments and charges due from such Member pursuant to this Declaration, plus interest and costs, are paid in full, but such Member shall continue to be subject to all of the other provisions, conditions and requirements imposed by this Declaration.

**ARTICLE IX**

DEVELOPER TO APPROVE PLANS

Subject to the terms hereof, including, but not limited to, the terms of Article XI below, the Developer is hereby authorized and shall have exclusive jurisdiction during the Development Period of all original construction upon and development of Lots and common facilities, and subsequent modifications, additions or alterations thereto.

9.01 **Submissions of Plans and Specifications,** During the Development Period, no structure, improvement, building, or landscaping on any Lot shall be constructed, remodeled, or altered in any way which materially changes the exterior appearance thereof, involves the erection of a new structure, improvement, or building, or otherwise increases the area under roof of any structure or building unless detailed plans and specifications therefor shall have been submitted to and approved by the Developer. The plans and specifications shall be in such form and shall contain such information as the Developer may reasonably require but shall, in all cases, unless waived by the Developer, include:

1. a site plan showing the location of all proposed and existing structures and buildings on the Lot and the approximate size in square footage of the first or ground floor of any building and the square footage of the entire Lot;
2. contours reflecting existing topography and a grading plan showing finished contours, existing environmental features and significant tree stands shall also be shown:
3. any proposed retaining walls;
4. proposed fencing;
5. architectural plans including structural cross-section, floor plan, decks or balconies, and elevations clearly depicting the design and exterior appearance including specification of materials, color scheme, trim and other details affecting the exterior appearance of the proposed buildings and other structures;
6. all landscaping and exterior lighting plans, including photometrics, all signage, and a plot plan showing the location of all buildings and other structures in relation to the Lot line and
7. parking layout with number of parking spaces.

Prior to submission of detailed plans and specifications for any building or other structure proposed for a Lot, the Developer may require, and any applicant may submit for tentative approval by the Developer, schematic or preliminary plans and specifications for any phase or stage thereof. The Developer shall either: (i) approve the plans and specifications; (ii) disapprove them; or (iii) approve them with conditions or qualifications.

9.02 **Violations,** If any building or other structure situated upon any Lot shall have been constructed, erected, placed, remodeled or altered other than in accordance with the detailed plans and specifications approved by the Developer, the Board shall notify the Owner of the Lot of the violation and the Board may, pursuant to Section 8.05 herein, levy a charge against the Owner and Lot in the event such violation is not corrected in a timely fashion. This provision shall be enforced as provided for in Section 8.07 of this Declaration. The Board may, waive any violation if it finds that such does not substantially conflict with the policies of the Board.

9.03 **Right of Entry.** The Board, through its authorized officers, employees, and agents, shall have the right to enter upon any Lot at all reasonable times for the purpose of ascertaining whether such Lot or the construction, erection, placement, remodeling, or alteration of any building or other structure thereon is in compliance with the provisions of this Article.

9.04 **Fees.** The Board may charge reasonable fees for the processing of plans and specifications. Such fees may cover the cost of such processing, including inspection costs. Such fees shall be payable at the time of submission of the respective item for approval and shall be paid to the Association.

9.05 **Basis of Approval.** Approval by the Developer shall be dependent upon its evaluation of the conformity and harmony of the proposed structure with the site and its natural features and other development; of the effect of the location and use of the improvements upon neighboring Lots; and of the conformity of the plans and specifications to the purpose and general intent of the Liberty Way Development.

**ARTICLE X**

NO LIABILITY FOR APPROVAL OR DISAPPROVAL

No approval of plans and specifications and no publication of standards shall be construed as representing or implying that such plans, specifications or standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as representing or guaranteeing that any structure built in accordance therewith will be built in a good and workmanlike manner. Neither the Design Review Committee nor the Association shall be responsible or liable for any defects in any Plans or Specifications submitted, revised, or approved pursuant to the terms of this Article, any loss or damage to any person arising out of the approval or disapproval of any plans or specifications, any loss or damage arising from the non-compliance of such plans and specifications with any governmental ordinances and regulations, nor any defects in construction undertaken pursuant to such Plans and Specifications.

**ARTICLE XI**

COVENANTS AND RESTRICTIONS FOR THE EXCLUSIVE BENEFIT OF THE HYATT HOUSE PARCEL AND THE DEVELOPMENT PARCEL

11.01 **Grant of Access Easement [TAILOR FOR SOUTH ACCESS EASEMENT AND THE SHARED NORTH ACCESS EASEMENT]**. Developer hereby grants to \_\_\_\_\_\_\_, its successors and assigns, for the benefit of \_\_\_\_ and any owner of the \_\_\_\_\_\_\_\_, a nonexclusive perpetual easement and right to use the driveway area depicted on the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ attached hereto as Exhibit \_\_\_\_ as the [“South Access Easement/North Access Easement]” (the “Access Easement Area”) for the specific purpose of providing access, ingress, and egress, for vehicular and pedestrian traffic, to and from the \_\_\_\_\_\_\_ Property to the \_\_\_\_\_\_\_\_\_\_\_ roadways situated \_\_\_\_\_\_\_\_\_\_\_\_ which provides access to Liberty Way (the “Access Easement”). The Access Easement is for purposes of providing access for vehicular and pedestrian traffic only, and shall not in any event be construed to grant \_\_\_\_\_\_\_\_ any right to park vehicles or trucks on a portion of the Development Parcel. \_\_\_\_\_\_ acknowledges and agrees that it has no right to park any vehicles on the \_\_\_\_\_\_\_\_\_\_\_. Pursuant to the mutual benefit of both parties, the Owners of the Hyatt House Parcel and the HIX (Developer) Parcel, hereby agree to the creation, dedication and cost sharing of roadways, walkways, utilities and easements as indicated in attached Exhibit “F-1” and Exhibit “F-2”, dated 9/12/16.

## 11.02 Construction of the Access Easement Area. Developer will complete construction of the parking lot, driveway and curb-cuts situated on the Development Parcel, as generally depicted on the Survey Plat attached as Exhibit (the ”Developer Improvement Plans”), during the course of constructing the improvements on the Developer Parcel. The driveway improvements constructed on the Development Parcel in the Access Easement Area shall be suitable for car and truck traffic. \_\_\_\_\_\_ will be responsible for constructing, at its sole cost and expense, the curb-cut and curbing on the \_\_\_\_\_ Property in order to provide access over the Development Parcel in the area of the Access Easement Area, in connection with \_\_\_\_ completing construction of improvements on the \_\_\_\_\_\_\_ Property. Developer and \_\_\_\_\_ acknowledge and agree that \_\_\_\_\_\_\_ shall only be entitled to the single curb-cut from the CI Property across the Development Property in the exact location depicted on the Survey Plat.

## 11.03 Maintenance of the Access Easement Area. Developer and \_\_\_\_\_\_\_ shall share responsibility on a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ basis, for the cost and expense of maintaining, repairing and replacing the paved surfaces now or hereafter situated in the Access Easement Area so as to maintain the access driveway and curb-cuts in good condition and repair (the “Driveway”). Developer and \_\_\_\_\_\_\_ shall have the right to assign and delegate this maintenance responsibility to any Owners or Tenants that may now or hereafter lease the Development Parcel. If the party performing the work bills the other party for its \_\_\_\_\_\_\_ percent share, such party will be responsible for paying its proportionate share of the cost of the work within fifteen (15) days of receiving the invoice and supporting documentation from the other party performing the work. If such invoice is not paid within fifteen (15) days, the amount owed shall thereafter accrue interest at the rate of \_\_\_\_\_\_\_\_ percent per annum. The party who has paid for its proportionate share of the maintenance work shall be entitled to legally enforce collection of the amount due from the nonpaying party, and shall be entitled to reasonable attorney fees and costs of collection in connection therewith.

In the event that Developer consider that it is reasonably necessary to perform maintenance or repair of the Driveway, Developer shall obtain a bid from a reputable contractor for the work in question and shall furnish copies of such bid to the other party for the repair of such Driveway. Developer shall reach an agreement on the work to be performed, and once approved, the work to be performed and the cost thereof shall be binding upon Developer and \_\_\_\_\_\_\_\_\_. Developer shall then authorize the contractor to perform the agreed maintenance or repair work, and Developer and \_\_\_\_\_\_\_\_\_ shall each pay the contractor its \_\_\_\_\_\_\_ share of the cost for such work as provided above.

## 11.04 Reservation of Rights. The access easement granted herein shall be nonexclusive, and Developer reserves the right to use the Access Easement Area for ingress and egress of vehicles and delivery trucks for the benefit of the Development Parcel and for the installation, connection, maintenance, repair and replacement of underground utility lines including, but not limited to, electric, water, gas and storm and sanitary sewer lines.

## 11.05 Use of Driveway. The parties hereto intend to make available to themselves, their customers, employees, invitees, licensees, and other parties lawfully entering the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, unobstructed access over the Driveway for ingress and egress purposes, the same as any other driveway would be used. Each party shall use the Driveway with due regard for the rights of the other party to use the same, and no person shall use or permit the use of the Driveway for parking purposes or in any manner which impairs or obstructs the rights of others to its use.

**ARTICLE XII**

GENERAL EASEMENTS AND RESTRICTIONS

[LANGUAGE WILL NEED TO BE SPECIFICALLY TAILORED AND SOME OF THE DEFINED TERMS/DEFINITIONS FIXED – THESE ARE GENERAL PROVISIONS]

12.01 **Ingress, Egress, and Parking**.

### (a) During the term of this Declaration, each party hereby grants and conveys to each other party for its use and for the use of its Permittees, in common with others entitled to use the same, a non exclusive easement for the passage and parking of vehicles over and across the parking and driveway areas of the grantor's Parcel, as the same may from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the parking, driveways and sidewalk areas of the grantor's Parcel, as the same may from time to time be constructed and maintained for such use. The easement herein established shall be appurtenant to and for the benefit of each grantee's Parcel, and shall be binding on, enforceable against and burden each grantor's Parcel. Such easement rights shall be subject to the following reservations as well as the other applicable provisions contained in this Declaration:

(i) Each Party reserves the right to close-off any portion of its Parcel for such reasonable period of time as may be legally necessary, in the opinion of such Party's counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing-off any portion of its Parcel, such Party shall give written notice to each other Party of its intention to do so, and shall attempt to coordinate such closing-off with each other Party so that no unreasonable interference with the passage of pedestrians or vehicles shall occur;

(ii) Each Party reserves the right at any time and from time to time to exclude and restrain any Person who is not a Permittee from using its Parcel;

(iii) Each Party reserves the right to temporarily erect or place barriers in and around areas on its Parcel which are being constructed and/or repaired in order to insure either safety of Persons or protection of property;

(iv) Vehicles making deliveries to or pickups from a Party's Parcel shall not park on another Party's Parcel; and

(v) As set forth in Section \_\_\_\_ hereof, and notwithstanding the grant of reciprocal parking easements set forth herein, the parking area on each separate Parcel (including each separate Outlot) shall contain sufficient ground level parking spaces, without reliance on parking spaces that may be available on other portions of the Project, to comply with the requirements set forth in Section \_\_\_\_\_.

(b) In addition to the general easement specified in Section \_\_\_\_\_, the Parties hereby grant and convey to each other Party for its use and for the use of its Permittees, in common with others entitled to use the same, and subject to the reservations set forth in Section \_\_\_\_\_, a non-exclusive, perpetual easement for the passage and accommodation of pedestrians and vehicles (but not for parking purposes) upon, over and across those portions of each grantor's Parcel designated on the Site Plan as a Perpetual Drive; such Drives to be as wide (curb to curb) as shown on the Site Plan, and shall contain two (2) lanes, one in each direction. The easement herein established shall be appurtenant to and for the benefit of each Parcel that is adjacent thereto and/or traversed thereby, and shall be binding on, enforceable against and burden each Parcel traversed thereby. During the term of this Declaration, each portion of each Perpetual Drive shall be maintained in accordance with the provisions governing the maintenance of the parking and driveways on each grantor's Parcel, and each such Perpetual Drive shall not be relocated without the approval of the Approving Parties.

1. After the termination of this Declaration, that portion of the grantor's Tract on which the Perpetual Drives are located shall be maintained in a safe, clean and good state of repair and condition by the grantor, at its sole cost and expense. Each grantor shall have the right at its expense, to relocate any portion of a Perpetual Drive located on its Parcel so long as the relocated portion (i) continues to provide direct access, if any, to adjacent Parcels, and (ii) ties into/connects with the other portions of such Perpetual Drive at the common boundaries. Notice of such relocation shall be provided to each grantee at least thirty (30) days prior to relocation.
2. In the event a Party fails to perform its obligations under Section \_\_\_, any grantee shall have the right to claim a default pursuant to Section \_\_\_\_\_ and avail itself of all the provisions therein contained, including the right to lien a Defaulting Party's Parcel, and receive Interest on all sums expended to cure such default. This provision shall survive the termination of this Shopping Center Declaration.

## **Utilities**

### (a) Each Party hereby grants and conveys to each other Party non exclusive, perpetual easements in, to, over, under, along and across those portions of the grantor's Parcel (exclusive of any portion located within Building Areas) necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, replacement, relocation, and removal of Utility Lines serving the grantee's Parcel. The initial location of any Utility Line shall be subject to the prior written approval of the Party whose Parcel is to be burdened thereby. Such easement area shall be no wider than necessary to reasonably satisfy the requirements of a private or public utility company, or five (5) feet on each side of the centerline if the easement is granted to a Party. The grantee shall provide to the grantor a copy of an as built survey showing the location of such Utility Line. All Utility Lines shall be underground except:

(A) Ground mounted electrical transformers;

(B) Antennae and emergency generators;

(C) As may be necessary during periods of construction, reconstruction, repair or temporary service;

(D) As may be required by Governmental Authorities;

(E) As may be required by the provider of such utility service; and

(F) Fire hydrants.

At least thirty (30) days prior to utilizing the easement granted herein, the grantee shall provide the grantor with a written statement describing the need for such easement, shall identify the proposed location of the Utility Line, the nature of the service to be provided, the anticipated commencement and completion dates for the work. Prior to commencing any work on a grantor's Parcel, including any emergency work, the grantee shall provide to the grantor evidence of insurance coverage as required by Section \_\_\_\_\_.

### (b) Any Party electing to install a Separate Utility Line shall obtain all permits and approvals and shall pay all costs and expenses with respect to the initial construction and all subsequent maintenance, relocation or abandonment of the Separate Utility Line. The Separate Utility Line shall be maintained in a safe, clean and good state of repair and condition. The grantee shall perform such work in compliance with all Governmental Requirements, as quickly as possible and after normal business hours whenever possible, and shall back fill the disturbed area to prevent voids and restore the surface to a condition equal to or better than that existing before such work was commenced, including the replacement of any landscaping and ground cover. Except in the case of a maintenance emergency where such work may be initiated after reasonable notice, the grantee shall provide the grantor with at least fifteen (15) days prior notice before commencement of any work. The grantee of any Separate Utility Line agrees to defend, protect, indemnify and hold harmless the grantor from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from the exercise of the right to install, maintain and operate the Separate Utility Line; provided, however, the foregoing obligation shall not apply to claims or demands based on the negligence or the willful act or omission of the grantor.

### (c) Except as may otherwise be agreed, the Parties electing to install a Common Utility Line shall cause to be obtained all necessary permits and approvals and shall pay all costs and expenses with respect to the initial construction of such Common Utility Line. Once constructed, Operator shall maintain, replace and/or relocate the Common Utility Line in a safe, clean and good state of repair and condition, and in compliance with all Governmental Requirements, as quickly as possible and after normal business hours whenever possible. All costs and expenses incurred by Operator with respect to any Common Utility Line shall be considered part of Common Area Maintenance Costs (defined in Section \_\_\_\_\_) and shall be payable pursuant to Section \_\_\_\_\_\_\_. If no Operator is designated, or following the expiration of this Shopping Center Declaration, each Party benefiting from a particular Common Utility Line ("Cooperating Party") shall have the right to maintain, repair or replace such Common Utility Line, except as hereinafter provided. If a Cooperating Party, in performing maintenance, repair or replacement of a Common Utility Line, is likely to incur costs of more than \_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_) for such work (or series of related or repeated circumstances), such Cooperating Party shall first notify the other Cooperating Parties of such estimate, and the Cooperating Parties shall prepare a list of qualified bidders, shall seek competitive bids from the list of qualified bidders, and shall select the lowest, responsive qualified bidder to perform the work. If a list of bidders is not jointly prepared within fifteen (15) days of the request for bidders, the Cooperating Party desiring to have the work performed shall have the right to let a contract for such work to a contractor of its choosing. After any costs (regardless of amount) for maintaining, repairing or replacing a Common Utility Line has been incurred by an electing Cooperating Party, the Person incurring such costs, may send a statement of such costs, increased by an amount equal to five percent (5%), together with a copy of any invoice reflecting a charge exceeding $500.00, to each Cooperating Party benefiting from such Common Utility Line. Within thirty (30) days after receipt of the statement of costs incurred in accordance with the procedures set forth above, each Cooperating Party shall pay its allocable share of such costs, prorated based upon the Floor Area all Buildings located upon each Parcel benefited by such Common Utility Line. Except in the case of a maintenance emergency where such work may be initiated after reasonable notice, the grantor shall be provided with at least fifteen (15) days prior notice before commencement of any work.

### (d) Each Party hereby grants and conveys to each other Party owning an adjacent Parcel the perpetual right and easement to discharge surface storm water drainage and/or runoff from the grantee's Parcel over, upon and across the Common Area of the grantor's Parcel, upon the following conditions and terms:

(A) The surface elevations for the Project and the surface water drainage/retention system serving the Project shall be initially constructed in strict conformance with the plans and specifications approved by the Approving Parties; and

1. No Party shall alter or permit to be altered the surface of the Common Area or the drainage/retention system constructed on its Parcel if such alteration would: (i) materially increase the velocity, volume or flow of surface water onto an adjacent Parcel either in the aggregate or by directing the flow of surface water to a limited area; or (ii) otherwise adversely affect the Buildings and other improvements located on an adjacent parcel or the use of such Buildings or other improvements.

### (e) Each grantor shall have the right to relocate any Utility Line on its Parcel upon thirty (30) days prior written notice to the grantee(s), provided that such relocation:

(A) Shall not interfere with or diminish the utility service to the grantee during the grantee's business hours; and if an electrical line/computer line is being relocated, then the grantor and grantee shall coordinate such interruption to eliminate any detrimental effects;

(B) Shall not reduce or unreasonably impair the usefulness or function of such Utility Line;

(C) Shall be performed without cost or expense to the grantee;

(D) Shall be completed using materials and design standards which equal or exceed those originally used; and

(E) Shall have been approved by the provider of such utility service and the appropriate Governmental Authorities.

Documentation of the relocated easement area, including the furnishing of an "as-built" survey to all grantees, shall be at the grantor's expense and shall be accomplished as soon as possible following completion of such relocation.

### (f) In the event a Party fails to perform its obligations under Section \_\_\_\_, any affected Party shall have the right to claim a default pursuant to Section \_\_\_\_ and avail itself of all the provisions therein contained, including the right to lien a Defaulting Party's Parcel, and receive Interest on all sums expended to cure such default. This provision shall survive the termination of this Declaration.

## **Sign Easements.** [TBD]

12.04 [OTHERS TBD]

## **Restriction**. No Party shall grant any easement for the benefit of any property not within the Project; provided, however, that the foregoing shall not prohibit the granting or dedicating of easements: (i) by a Party on its Parcel to Governmental Authorities or to public utility companies or (ii) include any other party not within the Project that will benefit from easement rights. If a Utility Line is dedicated and accepted for maintenance by a Governmental Authority or public utility, then the operation and maintenance of such Utility Line shall thereafter be the responsibility of the Person accepting the dedication.

12.05 **Prohibited Uses**. No portion of the Development Parcel and no real property owned or controlled by Developer or any affiliate of Developer located within one mile of the boundary of the Development Parcel shall be used for any of the following: [DISCUSS IF WE WANT TO PROVIDE THIS FOR BENEFIT OF HYATT PROPERTY OR NOT]

12.06 **Liberty Way Project Parcels Restrictions.** The following restrictions shall apply to the Liberty Way Project Parcels (including any buildings thereon) as shown on the Site Plan): automobile rental or repair or service operation; massage parlors; operation selling or displaying any nudity, pornographic or obscene material or drug paraphernalia; use which emits an obnoxious odor, noise or sound; assembling, industrial, manufacturing, distilling, refining, smelting, agricultural or mining operation; slaughterhouse; garbage or scrap dump or processing operation; junk yard; stock yard; dry-cleaning operation (however, this restriction shall not prohibit the operation of a "drop off only" dry-cleaning operation which performs the actual dry-cleaning function off-site); bowling alley; skating rink; mortuary or funeral home; flea market; dance hall; amusement or video arcade; gambling facility or operation; carnivals, fairs or auctions; and illegal use.

12.07 **Signage**. The following signage restrictions shall apply to the Liberty Way Project Parcels:

1. [TBD]

12.08 **Easements or Utilities.** To the extent that any easements or utilities (including drainage systems) described in this Declaration are located on the Holiday Inn Tract, the use thereof and the exercise of the rights associated therewith with respect to other Owners and/or the Association (as applicable) as provided in this Declaration are conditioned upon the satisfaction of the following requirements: (a) no such installation, maintenance, repair and replacement of utilities or another work performed in connection therewith or any other work described in this Declaration (collectively, “Work”) or for any other reason shall impair or diminish the use and enjoyment of the Holiday Inn Tract).

12.09 **Work Performed.** Except in cases of emergency, no Work may be performed on the Holiday Inn Tract without at least thirty (30) days prior written notice of such Work, including copies of all plans and specifications showing the same, including any changes thereto, for its approval. Such Work shall be performed in a manner and during time frames such that the same shall not interfere with, or adversely affect (except to an immaterial extent) the use and operation of the Holiday Inn Tract and in accordance with such approved plans.

12.10 **Use and Improvements.** Nothing contained in this Declaration shall restrict or prohibit the use of the Holiday Inn Tract or the improvements to be constructed on the Holiday Inn Tract so long as the same complies with applicable law.

12.11 **Liability.** In no event shall the Developer or the Owner of the Holiday Inn Tract have any liability as a result of the Association ceasing to function or failing to function properly, and in no event shall the Association or any other Owner have the right to enter any building(s) on the Holiday Inn Tract in connection with any exercise of any purported rights under this Declaration (or the Bylaws).

12.12 **No Material Adverse Effect.** The Association (or any committee thereof) shall exercise any discretionary right or privilege contained in this Declaration or the Bylaws (including, but not limited to, the promulgation of any rules and regulations) in any manner that will have a material adverse effect upon the Holiday Inn Tract or the Owner of the Holiday Inn Tract without first obtaining the prior written consent of the Owner of the Holiday Inn Tract.

12.13 **No Site Plan Changes.** Neither the record Plat of (or including) the Development Parcel nor the Site Plan shall be amended, including but not limited to the size or number of Lots or layout of Common Facilities, without the prior written consent of the Owner of the Holiday Inn Tract, subject, however, to Developer's express right as set forth in Section 5.01(c) above.

12.14 **Protection.** In addition to any other rights available to theDeveloper or the Association (collectively, “Indemnitees”) under this Declaration or at law or in equity, if any Owner (“Indemnitor”) violates the terms of this Declaration, then such Indemnitor, as applicable, shall indemnify, defend and hold harmless the Indemnitees from and against any and all costs, expenses, damages, liens and/or claims incurred or suffered by the Indemnitees as a result thereof.

**ARTICLE XIII**

GENERAL PROVISIONS

13.01 **Duration.** This Declaration shall run with the land and inure to the benefit of and be enforceable by the Developer, the Association or by the Owner of any Lot and their respective legal representatives, heirs, successors, and assigns. Unless changed or amended as herein provided, the Declaration shall be effective for a term of fifty (50) years from the date that this Declaration is recorded, after which time it shall be automatically extended for consecutive periods of ten (10) years each until and unless terminated pursuant to this Declaration.

13.02 **Notices.** Any notice required to be sent to a Member or an Owner under the provisions of this Declaration shall be deemed to have been properly sent at the time when mailed (or sent by reputable courier (e.g., Federal Express), postage pre-paid with delivery confirmation, to the last known address of the person which appears as the Member or the Owner on the records of the Association at the time of such mailing, or if not available from the Association, such Owner's address on record with the local tax assessor's office. Notwithstanding the foregoing, any notice to the Association or the Developer shall be mailed, postage pre-paid (or sent by reputable courier (e.g., Federal Express), postage pre-paid with delivery confirmation, to the following addresses (unless and until a notice of change of address with reference to this Declaration is recorded in the Public Records and notice of such change is given by such party to each of the other parties, as applicable:

13.03 **Enforcement.** Enforcement of any provisions of this Declaration shall be by any proceeding at law or in equity against any persons or entities violating or attempting to violate any provision hereof, either to restrain violation or to recover damages, or to enforce any lien created by this Declaration. The failure by the Association, the Developer, or any Owner to enforce any provisions hereof shall in no event be deemed to be a waiver of the right to do so thereafter or to enforce any other provision hereof.

13.04 **Amendment.** Except for those Supplements to the Declaration that the Developer may, pursuant and subject to the terms hereof, execute and record, this Declaration may be amended only by the affirmative vote of at least seventy-five percent (75%) of those Owners directly affected by such amendment, which vote, in any event, must include the Developer for so long as the Development Period has not expired, as evidenced by an instrument signed by at least seventy-five percent (75%) of such Owners, and, if the Development Period has not expired, the Developer. This Declaration may be terminated only by the vote of all the Owners. It shall not be necessary to obtain the consent of any mortgagee of any Lot to any amendment adopted by this Section 13.04 except for an amendment that affects the value of a mortgagee's security interest.

13.05 **Severability.** The invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

13.06 **Approval/Consent of Owner of Hyatt House Parcel.** With respect to any provision contained in this Declaration pursuant to which the Owner of the Hyatt House Parcel has an express consent or approval right, if the Owner of the Hyatt House Parcel fails to act upon any such matter submitted to it for consent or approval, as required by this Declaration within ten (10) days after submission thereof in writing, then such matters shall be deemed approved as submitted and no further action by the Developer of the Association shall be required. If the Owner of the Hyatt House Parcel does not approve any such request the reasons for failing to approve or consent shall be stated in writing. This Section 13.06 shall not apply, however, to any request for an amendment to this Declaration or a proposal to enter into any other separate agreement.

**ARTICLE XIV**

COMPLIANCE WITH LOCAL ORDINANCES

The covenants, restrictions and easements of this Declaration are nevertheless subject to all applicable regulations, ordinances and resolutions promulgated by West Chester Township and Butler County, Ohio and all other applicable governments pertaining to private and public streets, storm drainage facilities, sewer and utility facilities. In the event of any conflict between this Declaration and such governmental control, the more restrictive shall apply and be enforceable.

**ARTICLE XV**

ASSOCIATION CONSENT

The Association joins in this Declaration for the purpose of consenting to and agreeing to perform the duties and obligations imposed upon the Association by this Declaration,

*[Rest of this page intentionally left blank; signatures on next page.]*

IN WITNESS WHEREOF, the Developer and the Association have caused this Declaration to be executed as of the day and year first above written.