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ROGER REYNOLDS, CPA
BY K01-27-17 DEPT.
AUDITOR, BUTLER CO., OHIO

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**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS**

FOR

THE FIELDS AT LIBERTY WAY

A Commercial Owner's Association



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Fee Amt: \$524.00 Page 1 of 64
Workflow# 0000307644-0001
Butler County, Ohio
Dan Crank COUNTY RECORDER
File# 2017-00003714

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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS ("Declaration") is made as of this 29th day of December, 2016, by LIBERTY WAY INNKEEPERS, LLC, an Ohio limited liability company (the "Developer"), LIBERTY WAY OWNER'S ASSOCIATION, INC. (the "Association"), and HOTEL SIMPLIFIED, LLC, an Ohio limited liability company ("Hotel Simplified") under the following circumstances:

A. The Developer is the Owner of the following parcels of real estate in West Chester Township, Butler County, Ohio: (i) the "Holiday Inn Tract", as depicted on Exhibit A and Exhibit E attached hereto, and as more particularly described in Exhibit B attached hereto; and (ii) the "Remainder Tract", as depicted as such on Exhibit A and Exhibit E attached hereto, and as more particularly described in Exhibit C attached hereto. The Holiday Inn Tract and the Remainder Tract are collectively referred to herein as the "Development Parcels", and the combined Development Parcels are also outlined and depicted together as such on Exhibit E attached hereto.

B. Hotel Simplified is the owner of a certain parcel of land adjacent to the Development Parcels, which is depicted as such on Exhibit A and Exhibit E attached hereto, and as more particularly described in Exhibit D attached hereto (the "Hyatt House Parcel").

C. An initial site plan including both the Development Parcels and the Hyatt House Parcel (the "Initial Site Plan"), is attached hereto as Exhibit E.

D. The Developer desires to establish and create, and to subject the Development Parcels to certain covenants, conditions, restrictions and easements in order to benefit the development and value of the Development Parcels by: (i) providing for the common and non-exclusive use, enjoyment, preservation and maintenance of certain Common Facilities (as hereinafter defined); (ii) establishing standards and restrictions to promote the uniform and complimentary development of the Development Parcels, including in compliance with all requirements of the zoning of the Development Parcels and the Hyatt House Parcel together as C-PUD, and certain other agreements and restrictions affecting the Development Parcels and the Hyatt House 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.

E. Additionally, due to the size, location, and nature of the potential development intended for the Development Parcels and the adjoining Hyatt House Parcel, and for compliance with all requirements of the zoning of the Development Parcels and the Hyatt House Parcel as C-PUD, the Developer and Hotel Simplified 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 Parcels and the Hyatt House Parcel.



F. The Association joins in this Declaration for the purpose of consenting and/or agreeing to: (i) the agreements between the Developer and Hotel Simplified; (ii) the agreements among each of such parties and the Association; and (iii) the performance of the duties and obligations imposed upon the Association 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 Parcels shall be, and Hotel Simplified hereby declares that all of the Hyatt House Parcel shall be, held, transferred, sold, conveyed and occupied subject to the following covenants, agreements, 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 Parcels (as may be subdivided into additional Parcels) and the Hyatt House Parcel (which, for purposes of this Declaration, shall collectively be referred to as the "Liberty Way Project Parcels", and which are depicted together on the Initial Site Plan attached as Exhibit E hereto). This Declaration: (i) shall be covenants running with the land; (ii) shall be binding upon the Developer, Hotel Simplified, the Association, each "Owner" (as hereinafter defined), and all claiming by, through or under each such person; and (iii) shall inure to the benefit of and be enforceable by the Developer, the Association, and each Owner (including Hotel Simplified), and all claiming by, through or under each such person, but only during and/or with respect to such periods of time as such Owner (including Hotel Simplified) shall respectively own an interest in a Liberty Way Project Parcel or part thereof.

ARTICLE I

DEFINITIONS

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

1.01 "**Access Easements**" shall have the meaning set forth in Section 5.02 of this Declaration.

1.02 "**Access Easement Areas**" shall have the meaning set forth in Section 5.02 of this Declaration.

1.03 "**Actual Share Excess**" shall have the meaning set forth in Section 5.02(a)(ii) of this Declaration.

1.04 "**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 8.02 of this Declaration.

1.05 "**Articles of Incorporation**" shall mean the Articles of Incorporation of the Association to be filed with the Ohio Secretary of State on December 21, 2016, as may be

amended from time to time in accordance with this Declaration and/or the Bylaws of the Association.

1.06 **"Assessment"** shall mean an assessment levied to fund Common Expenses. It shall include Annual and Special Assessments.

1.07 **"Association"** shall mean **LIBERTY WAY OWNER'S ASSOCIATION, INC.**, an Ohio not for profit corporation formed for the purposes of administering, operating, and maintaining the Common Facilities, and shall include any successor organization thereto.

1.08 **"Beneficiaries"** shall mean the Owners, and their heirs, successors and assigns, their Tenants, and the respective subtenants, invitees, guests, licensees, employees, and agents of the foregoing, and their mortgagees of record.

1.09 **"Board of Trustees"** or **"Board"** shall mean the Trustees of the Association to be elected pursuant to Article III of this Declaration.

1.10 **"Bylaws"** shall mean the bylaws or code of regulations of the Association, as may be amended from time to time in accordance with this Declaration and/or such Bylaws. Copies of current Bylaws are available to any interested party free of charge by making a written request for the same from the Association.

1.11 **"Class A Member"** shall mean the Developer, and its successors and assigns.

1.12 **"Class A Trustee"** shall have the meaning set forth in Section 3.04(a) of this Declaration.

1.13 **"Class B Member"** shall mean all Members of the Association other than the Developer.

1.14 **"Common Expense"** shall mean all costs, fees, charges, and expenses of any nature for: (a) operating the Association as required by this Declaration; and (b) maintaining, repairing, replacing, and operating the Common Facilities, including reasonable reserves therefor.

1.15 **"Common Facilities"** means all real and personal property from time to time designated pursuant to this Declaration to be operated, maintained, repaired, and replaced by and at the expense of, the Association for the benefit of the Liberty Way Project Parcels, and their Owners and their respective Beneficiaries, and all easements, licenses, or other rights benefitting the Common Facilities or any part thereof, and all obligations with respect thereto. 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, driveways and roadways, including access roads and all facilities associated therewith, pedestrian sidewalks and facilities, hiker-biker trails, in common signage and graphics, outdoor lighting, outdoor furnishings, design amenities and theme improvements, facilities needed in connection with utility installations, including, but not limited



to, water supply or sewage disposal installations or steam, gas and electric lines or installations, and other common facilities.

1.16 **“Connector Roadway”** shall have the meaning set forth in Section 5.02(c)(i) of this Declaration.

1.17 **“Connector Roadway Easement”** shall have the meaning set forth in Section 5.02(c) of this Declaration.

1.18 **“Core Products”** shall have the meaning set forth in Section 10.05 of this Declaration.

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

1.20 **“Developer”** shall mean Liberty Way Innkeepers, LLC, an Ohio limited liability company, and its successors, successors-in-title, or assigns who are specifically designated as the successor Developer in a duly recorded instrument executed by the Developer.

1.21 **“Development Lot”** shall initially mean the Development Parcels consisting of the Holiday Inn Tract and the Remainder Tract, but shall also mean any further subdivided or other portion or tract of land which is or which becomes a separate tax parcel within the Development Parcels, but excluding the Hyatt House Parcel or any portion thereof.

1.22 **“Development Parcels”** shall mean that real property which is outlined and depicted on Exhibit A and Exhibit E attached hereto, and consisting of the Holiday Inn Tract and the Remainder Tract.

1.23 **“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 of Butler County, Ohio a notice that: (a) Developer no longer owns the Holiday Inn Tract; (b) specifically designates a successor Developer; or (c) Developer assigns control of the Association to the Members.

1.24 **“Disagreement Notice”** shall have the meaning set forth in Section 6.03 of this Declaration.

1.25 **“Drainage Easements”** shall have the meaning set forth in Section 5.03 of this Declaration.

1.26 **“Drainage Easement Areas”** shall have the meaning set forth in Section 5.03 of this Declaration.

1.27 **"Drainage Improvements"** shall have the meaning set forth in Section 5.03 of this Declaration.

1.28 **"Drainage Repairs"** shall have the meaning set forth in Section 6.03 of this Declaration.

1.29 **"Easement"** shall mean each easement created by this Declaration.

1.30 **"Easement Area"** shall mean any area designated as a portion of the Liberty Way Project Parcels over which an Easement has been created by this Declaration.

1.31 **"Easement Facility Improvement Repairs"** shall have the meaning set forth in Section 6.03 of this Declaration.

1.32 **"Facility Improvements"** shall mean the improvements constructed or to be constructed on the Liberty Way Project Parcels: (i) within the Easement Areas under the terms of the Easements created by this Declaration or otherwise created with respect to the Liberty Way Project Parcels; or (ii) otherwise as a part of the Common Facilities as provided in this Declaration, in each case not including any Parcel Improvements.

1.33 **"Facility Improvements Schedule"** shall have the meaning set forth in Section 5.02(a)(ii) of this Declaration.

1.34 **"HIX Utility Easement"** shall have the meaning set forth in Section 5.04 of this Declaration.

1.35 **"HIX Utility Easement Facility Improvements"** shall have the meaning set forth in Section 5.04 of this Declaration.

1.36 **"Holiday Inn Tract"** shall mean that real property which is a portion of the Development Parcels, as is depicted on Exhibit A and Exhibit E hereto, and is more particularly described in Exhibit B attached hereto and made a part hereof.

1.37 **"Hotel Simplified's Estimated Share"** shall have the meaning set forth in Section 5.02(a)(ii) of this Declaration.

1.38 **"Hotel Simplified's Share"** shall have the meaning set forth in Section 5.02(a)(ii) of this Declaration.

1.39 **"Hyatt House Consent Rights"** shall have the meaning set forth in Section 2.02 of this Declaration.

1.40 **"Hyatt House Parcel"** shall mean that real property which is depicted on Exhibit A and Exhibit E hereto, and is more particularly described in Exhibit D attached hereto and made a part hereof.



1.41 **“Hyatt-Proposed South Access Signage”** shall have the meaning set forth in Section 5.05 of this Declaration.

1.42 **“Indemnitees”** shall have the meaning set forth in Section 10.09 of this Declaration.

1.43 **“Indemnitor”** shall have the meaning set forth in Section 10.09 of this Declaration.

1.44 **“Initial Site Plan”** shall mean the site plan attached hereto as Exhibit E, and together with any amended, new, or additional site plans may be referred to herein collectively as the **“Site Plans”**.

1.45 **“Liberty Way Project Parcels”** shall mean collectively, the Development Parcels and the Hyatt House Parcel, as shown together on the Initial Site Plan attached hereto as Exhibit E.

1.46 **“Lien”** shall have the meaning set forth in Section 7.03 of this Declaration.

1.47 **“Limited Common Facilities”** shall mean those Common Facilities that may be designated pursuant to this Declaration to be “Limited Common Facilities” since such Facilities primarily benefit a particular Lot or Lots, or Parcel or Parcels, or parts thereof of the Liberty Way Project Parcels, and therefore, the maintenance, operating, and repair costs related to such Limited Common Facilities are shared among the Owners of the Lot or Lots, Parcel or Parcels receiving the primary benefit from such Limited Common Facilities, as provided in this Declaration.

1.48 **“Maintenance Standards”** shall mean those standards imposed by this Declaration related to maintaining, repairing, and replacing the Liberty Way Project Parcels and the Parcel Improvements located thereon, as such Maintenance Standards may be modified from time to time, as provided herein. Notwithstanding the foregoing, the minimum Maintenance Standards at all times shall be in keeping with that of a first-class development, and in compliance with all applicable laws, including all C-PUD zoning requirements.

1.49 **“Member”** shall mean any Owner of a Development Lot, and shall include the **“Class A Member”** and the **“Class B Members”**, provided that if an Owner is more than one individual or is an entity, such Member shall be represented on behalf of such Owner by an individual person designated in writing to the Association by such Owner. The parties hereto acknowledge and agree that Hotel Simplified is not a Member of the Association, but is participating and paying for certain portions of the Common Facilities and the Limited Common Facilities, and the Common Expenses in connection therewith, all as more fully set forth in this Declaration.

1.50 **“North Access Roadway”** shall have the meaning set forth in Section 5.02(a)(i) of this Declaration.

1.51 **“North Access Roadway Easement”** shall have the meaning set forth in Section 5.02(a) of this Declaration.

1.52 **“North Storm Retention Easement”** shall have the meaning set forth in Section 5.03(b) of this Declaration.

1.53 **“North Storm Retention Facilities”** shall have the meaning set forth in Section 5.03(b) of this Declaration.

1.54 **“North Storm Sewer Easement”** shall have the meaning set forth in Section 5.03(a) of this Declaration.

1.55 **“North Storm Sewer Facilities”** shall have the meaning set forth in Section 5.03(a)(i) of this Declaration.

1.56 **“Owner”** shall mean the record owner (whether one or more individuals or entities) of the fee simple title to: (a) any Parcel or Development Lot or any part thereof; or (b) the Hyatt House Parcel or any part thereof; provided, however, that **“Owner”** shall not mean any person or entity who is a mortgagee or otherwise holds an interest in a Parcel (including the Hyatt House Parcel) or Development Lot merely as security for the performance of an obligation, and shall not include the Association.

1.57 **“Owner’s Maintenance Share”** shall have the meaning set forth in Section 6.03 of this Declaration.

1.58 **“Parcel”** shall mean a portion or tract of land which is or which becomes a separate tax parcel within the Liberty Way Project Parcels, including the Holiday Inn Tract, the Hyatt House Parcel, or any Development Lot.

1.59 **“Parcel Improvements”** shall mean the improvements constructed or to be constructed on the Liberty Way Project Parcels on or within any separate Parcel, not including Facility Improvements.

1.60 **“Prohibited Occupant”** shall have the meaning set forth in Section 10.05 of this Declaration.

1.61 **“Remainder Tract”** shall mean that portion of the Development Parcels which is depicted on Exhibit A and Exhibit E hereto, and which is more particularly described in Exhibit C attached hereto and made a part hereof.

1.62 **“Repairs”** shall have the meaning set forth in Section 6.04 of this Declaration.

1.63 **“Repair Description”** shall have the meaning set forth in Section 6.03 of this Declaration.

1.64 **“Roadway Improvements”** shall have the meaning set forth in Section 5.02 of this Declaration.

1.65 **“Roadway Repairs”** shall have the meaning set forth in Section 6.03 of this Declaration.

1.66 **“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 of Trustees pursuant to this Declaration.

1.67 **“Secondary Fire Access Roadway”** shall have the meaning set forth in Section 5.02(b)(i) of this Declaration.

1.68 **“South Access Roadway”** shall have the meaning set forth in Section 5.02(b)(i) of this Declaration.

1.69 **“South Access Roadway Easement”** shall have the meaning set forth in Section 5.02(b) of this Declaration.

1.70 **“South Access Signage”** shall have the meaning set forth in Section 5.05 of this Declaration.

1.71 **“South Access Sign Easement”** shall have the meaning set forth in Section 5.05 of this Declaration.

1.72 **“Special Assessment”** shall mean an Assessment levied in accordance with Section 8.03 of this Declaration.

1.73 **“Tenant”** shall mean any person, including an individual or individuals, corporation, partnership or other entity occupying any Parcel or portion of a Parcel 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.

1.74 **“Utility and Signage Repairs”** shall have the meaning set forth in Section 6.03 of this Declaration.

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

depicted in the Initial Site Plan attached as **Exhibit E**, and as each Parcel is more particularly described in **Exhibits B, C, and D** attached hereto and made a part hereof.

2.02 **Additional Property.** During the Development Period, the Developer shall have the unilateral right, privilege, and option, from time to time at the sole discretion of the Developer, to subject to the provisions of this Declaration and the jurisdiction of the Association, any additional real property located adjacent to or near the Liberty Way Project Parcels by executing and recording a Declaration Supplement, which shall contain a description of such additional real property, and a declaration by Developer that such real property shall be subject to this Declaration. Any such Declaration Supplement shall not require the consent of any other Owner, except if and to the extent that the addition of such real property to this Declaration shall require that such additional real property be granted rights in and to any of the existing Easements located on or any portion of the Hyatt House Parcel or additional easements which would burden the Hyatt House Parcel, in which case such Declaration Supplement shall require the consent of the Owner of the Hyatt House Parcel within ten (10) business days after submittal of such information to the Owner (provided that if such Owner of the Hyatt House Parcel does not notify Developer within such period Hotel Simplified shall be deemed to have consented thereto) ("**Hyatt House Consent Rights**"). Such Declaration Supplement 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. Following the Development Period, or otherwise upon declaration and/or assignment by Developer to the Association, the Association shall have the unilateral right, privilege, and option to subject to the provisions of this Declaration and the jurisdiction of the Association, any additional real property located adjacent to or near the Liberty Way Project Parcels, subject to the Hyatt House Consent Rights.

ARTICLE III

THE ASSOCIATION

3.01 **Establishment of Association.** The Association has been formed by the Developer as an Ohio nonprofit corporation pursuant to the provisions of Chapter 1702 of the Ohio Revised Code, by the filing of its Articles of Incorporation with the Ohio Secretary of State, and by the adoption of Bylaws on such date of formation.

3.02 **Purpose of Association.** The objectives and purposes of the Association shall include: (a) the maintenance, routine care, repair, replacement, and improvement of the Common Facilities; (b) assessment, collection, accounting, and management of Assessments; (c) the enforcement of the terms and provisions of this Declaration and any Rules and Regulations applicable to the Liberty Way Project Parcels or any one of them or to the Common Facilities, and the fulfillment of the obligations of the Association provided herein; and (d) such other responsibilities as may, from time to time, be accepted by affirmative vote of the Board of Trustees of the Association, all in accordance with the terms hereof and of the Bylaws. The Association shall be responsible for the foregoing objectives and purposes for its own benefit and for the benefit of all Owners. Additionally, the Association may acquire, hold, and dispose of



tangible and intangible personal property and real property, and shall accept any of the Liberty Way Project Parcels or any improvements or personal property located thereon conveyed to the Association by any Owner as Common Facilities.

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 control. 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 a vote of the Members is specifically required, in each case, by the Bylaws or this Declaration.

3.04 **Board of Trustees.**

(a) **Initial Board of Trustees.** Until duly changed in accordance with the provisions of this Declaration or the Bylaws, the Board of Trustees of the Association shall consist of three (3) Trustees who are not required to be Owners or Members. Until the termination of the Development Period, all three (3) Trustees shall be appointed by the Class A Member (each, a "Class A Trustee"). Each Class A Trustee shall serve until his or her death or resignation, until removal by the Class A Member, or until the next annual meeting of the Members following the expiration of the Development Period, as further provided in Section 3.04(b). The Class A Member shall have the sole and exclusive right to appoint any successor Class A Trustees until the next annual meeting of the Members following the termination of the Development Period, as further provided in Section 3.04(b).

(b) **Board of Trustees Following the Termination of the Development Period.** At the next annual meeting of the Members following the expiration of the Development Period, the Class B Members shall elect two (2) Trustees, and the Class A Member may appoint one (1) Trustee. Trustees elected or appointed pursuant to this Section 3.04(b) shall serve for one (1) year terms of office, until their respective successors are elected and qualified or appointed, as provided in this Section 3.04(b). 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. The Class A Member may, at any time, relinquish to the Class B Members the Class A Member's right to elect one or more Trustees. If, for any reason, there is no longer a Class A Member or the Class A Member has relinquished its rights in accordance with the foregoing provision, the Class B Members shall elect all three (3) Trustees.

3.05 **Rules and Regulations.** Subject to the terms hereof, the Board of Trustees of the Association may adopt and amend Rules and Regulations with respect to the Liberty Way Project Parcels; provided, however, if such Rules and Regulations or the amendments thereto impose an additional economic burden on the Hyatt House Parcel, the imposition and

application of such Rules and Regulations to the Hyatt House Parcel shall be subject to the consent of the Owner of the Hyatt House Parcel.

3.06 **Membership.** Every Owner of a Development Lot in the Development Parcels, 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 a Class A Member (the Developer), and Class B Members (being all Owners of a Lot in the Development Parcels except the Developer). After the Development Period expires, the Class A Membership class may terminate at such time as determined by Developer. Upon the termination of the Class A Membership, the Developer, if it is then an Owner, shall become a Class B Member and continue as such as long as it remains an Owner. All Members shall abide by this Declaration, the Association's Articles of Incorporation and Bylaws, and any and all Rules and Regulations, shall pay amounts required hereunder to be paid by such Member, including all Assessments charged hereunder when due, and shall comply with decisions of the Board of Trustees and the Developer, subject to the terms hereof. Upon a change of ownership of any Development Lot in the Development Parcels, 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.

(a) **Annual Meetings of Members.** The first annual meeting of the Members shall take place upon the first of the next month following the termination of the Development Period, and then upon such same date annually thereafter. Unless otherwise provided in the Bylaws, notice of an annual meeting of the Members shall be given by the Board of Trustees 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.

(b) **Special Meetings of Members.** The Board of Trustees or the Members may call special meetings of the Members in accordance with the Bylaws of the Association.

(c) **Voting.** Each Member shall be entitled to vote on any Association matter which is required by this Declaration to be submitted to a vote of the Members. Each Member shall have one (1) vote on any such matter, as further provided in the Bylaws of the Association. 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 such Member from its obligations under this Declaration.

(d) **Disqualification.** Members who have failed to: (i) abide by any provision of this Declaration, the Articles of Incorporation, or the Bylaws, and any and all Rules and Regulations of the Association; (ii) pay any and all Assessments and other amounts charged when due; or (iii) to comply with decisions of the Board of Trustees or the Developer, shall not be entitled to vote on any matter submitted to the Members in accordance with this Declaration until such payment or 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. In addition to the foregoing, in the event that a Member fails to perform any of its obligations under this Declaration for a period of thirty (30) days after the Developer or the Association has provided written notice thereof to such Member, then in such event, the Developer or the Association shall have the right and authority (but not the obligation) to perform such act on behalf of such Member, and shall have the right to assess and collect the cost of the same to such Member, and to have such costs secured by liens upon such Member's Parcel. 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.

ARTICLE IV
COMMON FACILITIES


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4.01 **Designation of Common Facilities.** The initial Common Facilities shall be only (i) the North Access Roadway; (ii) the South Access Roadway; (iii) the Connector Roadway; (iv) the North Storm Sewer Facilities; (v) the North Retention Basin Facilities; (vi) the Facility Improvements in the HIX Utility Easement; and (vii) the South Access Signage; and all Facility Improvements related thereto and set forth within the respective Easement Area therefor, as such terms are defined in, subject to the provisions of, and as further described in Article V hereof. In connection with the performance by the Association of its obligations provided herein with respect to the Common Facilities, the Developer and the Association is also hereby granted certain easements in favor of the Association from time to time over, on, across and under the Liberty Way Project Parcels, as further described in this Declaration.

4.02 **Additional Common Facilities.** Subject to the terms hereof, the Developer may from time to time and at any time during the Development Period designate additional property to be Common Facilities, and may create additional easements and restrictions related thereto, by executing and recording a Declaration Supplement describing the additional Common Facilities, any easements, and restrictions, 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 Parcels owned by the Developer, or other than the Developer and 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 Declaration Supplement, and the designation of such property as Common Facilities shall be effective as of the date such Declaration Supplement is recorded.

4.03 **Rights of Enjoyment in Common Facilities.** Each Owner and its Beneficiaries shall have those certain non-exclusive rights and easements for the use and enjoyment of the Common Facilities as provided in this Declaration, and such rights and easements shall be appurtenant to, and shall pass with the title to each of the Liberty Way Project Parcels. Such rights, easements, and privileges shall be subject to the following:



(a) the right of the Board of Trustees to adopt, enforce, and from time to time to amend, Rules and Regulations to be imposed upon Owners pertaining to the use of the Common Facilities, subject to the terms hereof;

(b) the right, upon approval of the Developer, or if after the Development Period, 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 Parcels to any public agency or utility provider;

(c) the right of Developer to create additional Development Lots on the Development Parcels, and to designate additional Common Facilities, or transfer, convey, or subject additional Common Facilities to the Association, in either case as provided herein; and

(d) all other easements, restrictions, and rights to which the Liberty Way Project Parcels are subject.

4.04 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 which are Limited Common Facilities, and may create additional easements and restrictions related thereto. The Developer shall designate any such Common Facilities as Limited Common Facilities by executing and recording a Declaration Supplement wherein the Developer shall describe the Limited Common Facilities, easements, and restrictions, and establish the same by declaring them to be subject to this Declaration, including a description of the Parcels 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 Parcels receiving the primary benefit from such Limited Common Facilities. No Members or Owners, other than the Developer, if and to the extent such additional Limited Common Facilities are located on any portion of the Development Parcels owned by the Developer, or other than the Developer and the Hyatt Owner, if and to the extent such additional Limited Common Facilities are located on any portion of the Hyatt House Parcel, shall be required to execute or consent to any such Declaration Supplement. Following the Development Period, or otherwise upon declaration and/or assignment by Developer to the Association, the Association shall have the unilateral right, privilege, and option to designate any Common Facilities as Limited Common Facilities in accordance with this Section 4.04.

ARTICLE V

GRANT OF EASEMENTS; CONSTRUCTION OF COMMON FACILITIES

5.01 Reservation of Easements to Developer. Subject to the terms hereof, until the longer of: (i) the completion of construction of all Parcel Improvements on the Holiday Inn Tract; (ii) the completion of construction of all Facility Improvements, including, but not limited to those described in this Article V; or (iii) for so long as any part of the Development Parcels remains to be developed, the Developer, its successors and assigns, and any contractor hired by the Developer (or its successors and assigns) shall have the right and easement to enter upon such portion of the Liberty Way Project Parcels as the Developer may deem necessary, and to

conduct such activities as, in the sole opinion of the Developer, may be required for the development and construction related to the Parcel Improvements on the Holiday Inn Tract, all Facility Improvements, and/or the Development Parcels. These reserved easements specifically include, but are 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 Liberty Way Project Parcels; (c) the right to perform construction activities, including the staging, piling of dirt (which may include moving such dirt, topsoil, and fill back to such property or to another Parcel) or materials, equipment storage and parking; and (d) the right to construct and operate signs, construction trailers, store materials, and conduct related activities. Additionally, the Developer may, from time to time and at any time during the Development Period, create additional easements and restrictions related to the Development Parcels, by executing and recording a Declaration Supplement describing the easements, and restrictions. No Members or Owners, other than the Developer, if and to the extent such additional easements and restrictions are located on any portion of the Development Parcels owned by the Developer, or other than the Developer and the Hyatt Owner, if and to the extent such additional easements and restrictions are located on any portion of the Hyatt House Parcel, shall be required to execute or consent to any such Declaration Supplement, and such Declaration Supplement shall be effective as of the date such Declaration Supplement is recorded.

5.02 **Access Easements.** All of the easements described in this Section 5.02 shall be collectively referred to herein as the "Access Easements", and the Facility Improvements constructed within the Access Easements shall be referred to herein as the "Roadway Improvements". The Easement Areas in which such Access Easements and Roadway Improvements are located are referred to as the "Access Easement Areas".

(a) **North Access Roadway.** Each of Hotel Simplified and the Developer grants to the other, for the benefit of each of the Hyatt House Parcel and each of the Development Parcels, respectively, and each of the Hyatt House Parcel and each of the Development Parcels are hereby subjected to, respectively, a non-exclusive, reciprocal, perpetual easement on, over, and across that portion of the Hyatt House Parcel and of the Development Parcels situated in the Easement Area more particularly described on **Exhibit E-1** and **Exhibit E-4** attached hereto, and depicted as the "North Access Roadway Easement" on the Site Plan attached hereto as **Exhibit E** to use the roadway located therein for ingress and egress by vehicular traffic and the sidewalks therein for ingress and egress by pedestrian traffic by the Owners and their respective Beneficiaries to and from each of the Hyatt House Parcel and each of the Development Parcels to Cox Road, a public roadway (the "North Access Roadway Easement"). The North Access Roadway Easement is created subject to, and there is hereby excepted therefrom: (i) all legal highways; (ii) all covenants, conditions, restrictions, and reservations of record; (iii) all easements and rights of way of record, including the non-exclusive easement granted herein to the other Parcels; and (iv) all real property taxes and assessments not yet due and payable, including, but not limited to, any recoupments of tax savings for any period prior to or after the date of this Declaration resulting from the removal of

the Property from the agricultural land list established pursuant to Chapter 5713 of the Ohio Revised Code.

(i) Construction of the North Access Roadway. The Developer (or its successors or assigns) will complete construction of the roadway, curb-cuts, and related Facility Improvements situated in the North Access Roadway Easement Area, as generally depicted on the Site Plan attached as Exhibit E and Exhibit E-4 (the “North Access Roadway”) during the course of constructing the Parcel Improvements on the Holiday Inn Tract. The Developer and Hotel Simplified acknowledge and agree that the Hyatt House Parcel shall be entitled to only the curb-cuts from the Hyatt House Parcel to the North Access Roadway as depicted on the Easement Drawing. The Developer is hereby granted a non-exclusive, temporary, construction easement for ingress and egress into the Easement Area and on, across, and over the Hyatt House Parcel for construction of the North Access Roadway and related Facility Improvements, including sidewalks, lighting, signage, and landscaping, and to conduct such activities as, in the sole opinion of the Developer, may be required for the development and construction related thereto, including, but 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; (c) the right to perform construction activities, including the staging, piling of dirt (which may include moving such dirt, topsoil, and fill back to such property or to another Parcel) or materials, equipment storage and parking; and (d) the right to construct and operate signs, construction trailers, store materials, and conduct related activities.

(ii) Costs of Construction of the North Access Roadway. All costs and expenses associated with the construction of the North Access Roadway and all related Facility Improvements in the North Access Roadway Easement Area, including, but not limited to, the design, engineering, permitting, approvals, and construction of the North Access Roadway and all related Facility Improvements, and further including the amount of and the cost and expenses related to any bond required with respect to the future conversion of the North Access Roadway to a right-in/right-out only access road, and any other costs incurred with respect to the conversion thereof, shall be shared fifty percent (50%) by the Developer, and fifty percent (50%) by Hotel Simplified (or the Owner of the Hyatt House Parcel; provided, however, that Hotel Simplified shall remain jointly and severally liable for such obligation) (“Hotel Simplified’s Share”). An estimate of such costs and expenses and each party’s estimated share, including an estimated amount of Hotel Simplified’s Share (“Hotel Simplified’s Estimated Share”) is shown on the “Facility Improvements Schedule” attached hereto as Exhibit F, provided however, that each party shall be responsible for its share (fifty percent (50%) each) of the actual costs and expenses to complete the North Access Roadway and the related Facility Improvements. Upon the execution of this Declaration, Hotel Simplified shall deposit into the escrow established by Developer the amount of Hotel Simplified’s Estimated Share as provided in Exhibit F, to be held in accordance with the provisions of this Section 5.02(a) and the escrow agreement to be executed by Hotel Simplified, Developer, and the escrow agent, and to be released to the Developer upon during and upon completion of construction of the North Access Roadway and the related Facility Improvements. Such escrow agreement shall provide (subject to the following provisions of this Section 5.02(a)(ii)) that: (A) in the event that Hotel Simplified’s

Share is greater than the amount of Hotel Simplified's Estimated Share, that Hotel Simplified shall immediately pay the amount of such shortfall to Developer; and (B) in the event that Hotel Simplified's Share is less than the amount of Hotel Simplified's Estimated Share, that Developer shall pay the amount of such excess to Hotel Simplified upon the final completion of such construction. Such escrow agreement shall further provide that, in the event that during construction Developer becomes aware that the actual amount of Hotel Simplified's Share will exceed the amount of Hotel Simplified's Estimated Share by more than ten percent (10%) (such excess amount over ten percent (10%) shall be referred to as the "Actual Share Excess"), Developer shall provide to Hotel Simplified a revised Facility Improvements Schedule which reflects the actual amount of Hotel Simplified's Share and the amount of the Actual Share Excess, along with information as to the nature of the Actual Share Excess. Hotel Simplified shall review and notify Developer within ten (10) days of Hotel Simplified's approval or disapproval of such Actual Share Excess, provided that if Hotel Simplified does not notify Developer within such period Hotel Simplified shall be deemed to have approved such Actual Share Excess. Upon Hotel Simplified's approval as to the amount of the Actual Share Excess, Hotel Simplified shall be responsible for the payment of the actual amount of Hotel Simplified's Share, including such Actual Share Excess approved by Hotel Simplified, and shall pay such amount to Developer. Hotel Simplified shall not be responsible to pay to Developer any Actual Share Excess amount which is not approved by Hotel Simplified in accordance herewith.

(b) South Access Roadway. The Developer grants, for the benefit of each of the Hyatt House Parcel and each of the Development Parcels, respectively, and the Remainder Tract is hereby subjected to, a non-exclusive, reciprocal, perpetual easement on, over, and across that portion of the Remainder Tract situated in the Easement Area depicted as the "South Access Roadway Easement" on the Site Plan attached hereto as Exhibit E (but which actual South Access Roadway Easement Area shall be determined upon the approval of the Developer, and if required, the applicable governmental authority and in accordance with the development plans therefor) to use the roadway located therein for ingress and egress by vehicular traffic and the sidewalks therein for ingress and egress by pedestrian traffic by the Owners and their respective Beneficiaries to and from each of the Hyatt House Parcel and each of the Development Parcels to Cox Road, a public roadway (the "South Access Roadway Easement"). The South Access Roadway Easement is created subject to, and there is hereby excepted therefrom: (i) all legal highways; (ii) all covenants, conditions, restrictions, and reservations of record; (iii) all easements and rights of way of record, including the non-exclusive easement granted herein to the other Parcels; and (iv) all real property taxes and assessments not yet due and payable, including, but not limited to, any recoupments of tax savings for any period prior to or after the date of this Declaration resulting from the removal of the Property from the agricultural land list established pursuant to Chapter 5713 of the Ohio Revised Code. Furthermore, the Developer hereby retains the right to grant a non-exclusive, perpetual easement on, over, and across the South Access Roadway Easement for ingress and egress by vehicular and pedestrian traffic by the owners and their beneficiaries of certain property located to the south of such South Access Roadway Easement Area as identified on Exhibit G attached hereto, on such terms and conditions approved by Developer, and as may be required by the applicable governmental authority and in accordance with the development plans therefor.

(i) Construction of the South Access Roadway. The Owner of such Parcel or Parcels of the Remainder Tract upon which the South Access Roadway Easement Area is situated (or if situated over multiple Parcels, as determined by agreement of the Owners of such Parcels), will complete construction of the roadway, curb-cuts, and related Facility Improvements, including, but not limited to, sidewalks, lighting, utilities, signage, and landscaping, situated in the South Access Roadway Easement Area, as generally depicted on the Site Plan attached hereto as **Exhibit E**, and in accordance with the development plans therefor, and which shall include any secondary or temporary fire access drive ("Secondary Fire Access Roadway") required to be constructed by applicable governmental authorities (collectively, the "South Access Roadway"). The location, plans, and drawings for construction of the South Access Roadway and related Facility Improvements shall approved by Developer, and shall be completed at such time as determined by the Developer, determined by agreement of Developer and such Owner or Owners, or as may be required by applicable governmental authorities. The Developer hereby retains the right at the expense of such Owner or Owners to complete the construction of the South Access Roadway and related Facility Improvements in the event that such Owner or Owners fail to complete the construction as provided. The Developer or such Owner, as applicable, is hereby granted a non-exclusive, temporary, construction easement for ingress and egress into the Easement Area for construction therein, and on, across, and over the Remainder Tracts for construction of the South Access Roadway and related Facility Improvements, and to conduct such activities related thereto, including, but not limited to: (a) the right of access, ingress, and egress, and vehicular and pedestrian traffic, over and upon such property; (b) with the prior approval and on such conditions agreed to by Developer, the right to tie into or otherwise connect and use, replace, maintain, and repair any device which provides utility or similar services; (c) the right to perform construction activities, including the staging, piling of dirt (which may include moving such dirt, topsoil, and fill back to such property, or with the consent of Developer, to another Parcel) or materials, equipment storage and parking; and (d) the right to construct and operate signs, construction trailers, store materials, and conduct related activities.

(ii) Costs of Construction of the South Access Roadway. Except as otherwise set forth in this Section 5.02(b)(ii), all costs and expenses associated with the construction of the South Access Roadway and all related Facility Improvements in the South Access Roadway Easement Area, including, but not limited to, the design, engineering, permitting, approvals, and construction of the South Access Roadway, and all related Facility Improvements shall be borne one hundred percent (100%) by the Owner of the Parcel upon which the South Access Roadway Easement Area is situated (or if situated over multiple Parcels, as allocated by agreement of the Owners of such Parcels). To the extent that a Secondary Fire Access Roadway is required to be constructed by the development plans for the Liberty Way Project Parcels, and/or applicable governmental authorities, all costs and expenses associated with the construction of the Secondary Fire Access Roadway and all related Facility Improvements, including, but not limited to, the design, engineering, permitting, approvals, and construction of the Secondary Fire Access Roadway and all related Facility Improvements, shall be shared sixty-three percent (63%) by the Developer, and thirty-seven percent (37%) by Hotel Simplified (or the Owner of the Hyatt House Parcel; provided, however, that Hotel Simplified shall remain jointly and severally liable for such obligation), which shall be Hotel Simplified's Share, as provided on the Facility Improvements Schedule attached hereto as **Exhibit F**. An

estimate of such costs and expenses and each party's estimated share, including Hotel Simplified's Estimated Share, is shown on the Facility Improvements Schedule, provided, however, that each party shall be responsible for its share of the actual costs and expenses to complete the Secondary Fire Access Roadway and the related Facility Improvements. Upon the execution of this Declaration, Hotel Simplified shall deposit into the escrow established by Developer the amount of Hotel Simplified's Estimated Share as provided in Exhibit F, to be held in accordance with the provisions of this Section 5.02(b) and the escrow agreement to be executed by Hotel Simplified, Developer, and the escrow agent, and to be released to the Developer during and upon completion of construction of the Secondary Fire Access Roadway and the related Facility Improvements. Such escrow agreement shall provide (subject to the following provisions of this Section 5.02(b)(ii)) that: (A) in the event that Hotel Simplified's Share is greater than the amount of Hotel Simplified's Estimated Share, that Hotel Simplified shall immediately pay the amount of such shortfall to Developer; and (B) in the event that Hotel Simplified's Share is less than the amount of Hotel Simplified's Estimated Share, that Developer shall pay the amount of such excess to Hotel Simplified upon the final completion of such construction. Such escrow agreement shall further provide that, in the event that during construction Developer becomes aware that the actual amount of Hotel Simplified's Share will exceed the amount of Hotel Simplified's Estimated Share by more than ten percent (10%) (such excess amount over ten percent (10%) shall be referred to as the "Actual Share Excess"), Developer shall provide to Hotel Simplified a revised Facility Improvements Schedule which reflects the actual amount of Hotel Simplified's Share and the amount of the Actual Share Excess, along with information as to the nature of the Actual Share Excess. Hotel Simplified shall review and notify Developer within ten (10) days of Hotel Simplified's approval or disapproval of such Actual Share Excess, provided that if Hotel Simplified does not notify Developer within such period Hotel Simplified shall be deemed to have approved such Actual Share Excess. Upon Hotel Simplified's approval as to the amount of the Actual Share Excess, Hotel Simplified shall be responsible for the payment of the actual amount of Hotel Simplified's Share, including such Actual Share Excess approved by Hotel Simplified, and shall pay such amount to Developer. Hotel Simplified shall not be responsible to pay to Developer any Actual Share Excess amount which is not approved by Hotel Simplified in accordance herewith. Developer further agrees that, to the extent that a Secondary Fire Access Roadway is required to be constructed by the development plans for the Liberty Way Project Parcels, and/or applicable governmental authorities, but that the Secondary Fire Access Roadway is not constructed, Developer shall cause the release from escrow to Hotel Simplified of Hotel Simplified's Share with respect to the construction of the Secondary Fire Access Roadway.

(c) Connector Drive. The Developer grants, for the benefit of each of the Hyatt House Parcel and each of the Development Parcels, respectively, and the Remainder Tract is hereby subjected to, a non-exclusive, reciprocal, perpetual easement on, over, and across that portion of the Remainder Tract situated in the Easement Area depicted as the "Connector Roadway Easement" on the Site Plan attached hereto as Exhibit E (but which actual Connector Roadway Easement Area shall be determined upon the approval of the Developer and if required, the applicable governmental authority, and in accordance with the development plans therefor) to use the roadway located therein for ingress and egress by vehicular traffic and the sidewalks therein for ingress and egress by pedestrian traffic by the Owners and their respective Beneficiaries to and from each of the Hyatt House Parcel and each of the Development Parcels to the South Access Roadway (the "Connector Roadway Easement"). Upon the determination and

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approval of the actual location of the Connector Roadway Easement Area, the Developer shall execute and record a Declaration Supplement which shall contain a legal description and revised depiction of the Connector Roadway Easement. Any such Declaration Supplement shall not require the consent of any other Owner, and shall be effective upon the recording of the same. The Connector Roadway Easement is created subject to, and there is hereby excepted therefrom: (i) all legal highways; (ii) all covenants, conditions, restrictions, and reservations of record; (iii) all easements and rights of way of record, including the non-exclusive easement granted herein to the other Parcels; and (iv) all real property taxes and assessments not yet due and payable, including, but not limited to, any recoupments of tax savings for any period prior to or after the date of this Declaration resulting from the removal of the Property from the agricultural land list established pursuant to Chapter 5713 of the Ohio Revised Code.

(i) Construction of the Connector Roadway. The Owner of such Parcel or Parcels of the Remainder Tract upon which the Connector Roadway Easement Area is situated (or if situated over multiple Parcels, as determined by agreement of the Owners of such Parcels), will complete construction of the roadway, which shall be no less than twenty-four (24) feet wide, curb-cuts, and related Facility Improvements, including, but not limited to, sidewalks, lighting, utilities, signage, and landscaping, situated in the Connector Roadway Easement Area, as generally depicted on the Site Plan attached hereto as Exhibit E and in accordance with the development plans therefor (the "Connector Roadway"). Such Connector Roadway shall be a clearly delineated roadway, not merely a parking lot aisleway or pass-through, and the location, plans, and drawings for the construction of the Connector Roadway and related Facility Improvements shall be approved by Developer, and shall be completed at such time as determined by the Developer, determined by agreement of Developer and such Owner or Owners, or as may be required by applicable governmental authorities. The Developer hereby retains the right at the expense of such Owner or Owners to complete the construction of the Connector Roadway and related Facility Improvements in the event that such Owner or Owners fail to complete the construction as provided. The Developer or such Owner, as applicable, is hereby granted a non-exclusive, temporary, construction easement for ingress and egress into the Easement Area for construction therein, and on, across, and over the Remainder Tracts for construction of the Connector Roadway and related Facility Improvements, and to conduct such activities related thereto, including, but not limited to: (a) the right of access, ingress, and egress, and vehicular and pedestrian traffic, over and upon such property; (b) with the prior approval and on such conditions agreed to by Developer, the right to tie into or otherwise connect and use, replace, maintain, and repair any device which provides utility or similar services; (c) the right to perform construction activities, including the staging, piling of dirt (which may include moving such dirt, topsoil, and fill back to such property, or with the consent of Developer, to another Parcel) or materials, equipment storage and parking; and (d) the right to construct and operate signs, construction trailers, store materials, and conduct related activities.



(ii) Costs of Construction of the Connector Roadway. All costs and expenses associated with the construction of the Connector Roadway and all related Facility Improvements in the Connector Roadway Easement Area, including, but not limited to, the design, engineering, permitting, approvals, and construction of the Connector Roadway, and all related Facility Improvements shall be borne one hundred percent (100%) by the Owner of the Parcel upon which the Connector Roadway Easement Area is situated (or if situated over multiple Parcels, as allocated by agreement of the Owners of such Parcels).

(d) Additional Terms and Conditions of the Access Easements. No parking shall be permitted at any time within the Access Easement Areas. Furthermore, each of Hotel Simplified, the Developer, and the Owners for themselves and their respective Beneficiaries, covenant and agree that neither they nor their respective Beneficiaries shall obstruct the Access Easement Areas except for temporary obstructions which are reasonably necessary in connection with the maintenance, repair, construction, or replacement of Parcel Improvements on such Owner's Parcel in or around the Access Easement Area, as further provided in Section 5.06 hereof. Subject to the provisions of Section 5.06 hereof, Hotel Simplified shall ensure that, during any period of construction, maintenance, or repair on the Hyatt House Parcel, all Access Easement Areas across the Hyatt House Parcel shall remain open twenty-four (24) hours per day, seven (7) days per week, such that all Owners and their Beneficiaries at all times enjoy unobstructed vehicular access on, over, and across the Access Easement Areas located on the Hyatt House Parcel. Subject to the provisions of Section 5.06 hereof, the Developer shall ensure that, during any period of construction, maintenance, or repair on the Development Parcels, all Access Easement Areas across the Development Parcels shall remain open twenty-four (24) hours per day, seven (7) days per week, such that all Owners and their Beneficiaries at all times enjoy unobstructed vehicular access on, over, and across the Access Easement Areas located on the Development Parcels.

5.03 Retention and Storm Sewer Easements. All of the easements described in this Section 5.03 shall be collectively referred to herein as the "Drainage Easements", and the Facility Improvements constructed within the Drainage Easements shall be referred to herein as the "Drainage Improvements". The Easement Areas in which such Drainage Easements and Drainage Improvements are located are referred to as the "Drainage Easement Areas".

(a) North Storm Sewer Easement. Hotel Simplified grants, for the benefit of each of the Holiday Inn Parcel and the Hyatt House Parcel, and the Hyatt House Parcel is hereby subjected to, a non-exclusive, reciprocal, perpetual easement on, over, in, through, underneath, and across that portion of the Hyatt House Parcel situated in the Easement Area more particularly described on Exhibit E-2 and Exhibit E-4 attached hereto, and depicted as the "North Storm Sewer Easement" on the Site Plan attached hereto as Exhibit E to install, repair, maintain, replace, and use storm sewers, storm sewer swales, ditches, catch basins, drainage lines, manholes, and detention basins (the "North Storm Sewer Easement"). The North Storm Sewer Easement is created subject to, and there is hereby excepted therefrom: (i) all legal highways; (ii) all covenants, conditions, restrictions, and reservations of record; (iii) all easements and rights of way of record, including the non-exclusive easement granted herein to the other Parcels; and (iv) all real property taxes and assessments not yet due and payable, including, but not limited to, any recoupments of tax savings for any period prior to or after the



date of this Declaration resulting from the removal of the Property from the agricultural land list established pursuant to Chapter 5713 of the Ohio Revised Code.

(i) Construction of the North Storm Sewer. The Developer (or its successors or assigns) will complete construction of the Facility Improvements situated in the North Storm Sewer Easement Area, as generally depicted on the Site Plan attached hereto as **Exhibit E** and **Exhibit E-4** (the “North Storm Sewer Facilities”) during the course of constructing the improvements on the Holiday Inn Tract. The Developer is hereby granted a non-exclusive, temporary, construction easement for ingress and egress into the Easement Area and on, across, and over the Hyatt House Parcel for construction of the North Storm Sewer Facilities, and to conduct such activities as, in the sole opinion of the Developer, may be required for the development and construction related thereto, including, but 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; (c) the right to perform construction activities, including the staging, piling of dirt (which may include moving such dirt, topsoil, and fill back to such property or to another Parcel) or materials, equipment storage and parking; and (d) the right to construct and operate signs, construction trailers, store materials, and conduct related activities.

(ii) Costs of Construction of the North Storm Sewer Facilities. All costs and expenses associated with the construction of the North Storm Sewer Facilities in the North Storm Sewer Easement Area shall be borne one hundred percent (100%) by the Developer.

(b) North Retention Easement. Hotel Simplified grants, for the benefit of each of the Holiday Inn Parcel, the Hyatt House Parcel, and each of the Development Parcels, and the Hyatt House Parcel is hereby subjected to, a non-exclusive, reciprocal, perpetual easement on, over, in, through, underneath, and across that portion of the Hyatt House Parcel situated in the Site Plan more particularly described on **Exhibit E-3** and **Exhibit E-4** attached hereto, and depicted as the “North Storm Retention Easement” on the Site Plan attached hereto as **Exhibit E** to install, repair, maintain, replace, and use the sewers, swales, ditches, drainage lines, manholes, basins, and related detention facilities located on the Hyatt House Parcel (collectively, the “North Storm Retention Facilities”), and for the storm and surface water drainage from such Parcels to such detention facilities (collectively, the “North Storm Retention Easement”). The North Storm Retention Easement is created subject to, and there is hereby excepted therefrom: (i) all legal highways; (ii) all covenants, conditions, restrictions, and reservations of record; (iii) all easements and rights of way of record, including the non-exclusive easement granted herein to the other Parcels; and (iv) all real property taxes and assessments not yet due and payable, including, but not limited to, any recoupments of tax savings for any period prior to or after the date of this Declaration resulting from the removal of the Property from the agricultural land list established pursuant to Chapter 5713 of the Ohio Revised Code.

(i) Construction of the North Storm Retention Facilities. The Developer (or its successors or assigns) will complete construction of the North Storm Retention Facilities and related Facility Improvements situated in the North Storm Retention Easement

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Area, as depicted on the Site Plan attached hereto as Exhibit E and Exhibit E-4 during the course of constructing the improvements on the Holiday Inn Tract. The Developer is hereby granted a non-exclusive, temporary, construction easement for ingress and egress into the Easement Area and on, across, and over the Hyatt House Parcel for construction of the North Storm Retention Facilities, and to conduct such activities as, in the sole opinion of the Developer, may be required for the development and construction related thereto, including, but 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; (c) the right to perform construction activities, including the staging, piling of dirt (which may include moving such dirt, topsoil, and fill back to such property or to another Parcel) or materials, equipment storage and parking; and (d) the right to construct and operate signs, construction trailers, store materials, and conduct related activities.

(ii) Costs of Construction of the North Storm Retention Facilities. All costs and expenses associated with the construction of the North Storm Retention Facilities and all related Facility Improvements in the North Storm Retention Easement Area, including, but not limited to, the design, engineering, permitting, approvals, and construction of the North Storm Retention Facilities and all related Facility Improvements, shall be shared fifty percent (50%) by the Developer, and fifty percent (50%) by Hotel Simplified (or the Owner of the Hyatt House Parcel; provided, however, that Hotel Simplified shall remain jointly and severally liable for such obligation) which shall be Hotel Simplified's Share, as provided on the Facility Improvements Schedule attached hereto as Exhibit F. An estimate of such costs and expenses and each party's estimated share is shown on the Facility Improvements Schedule, provided, however, that each party shall be responsible for its share (fifty percent (50%) each) of the actual costs and expenses to complete the North Storm Retention Facilities and the related Facility Improvements. Upon the execution of this Declaration, Hotel Simplified shall deposit into the escrow established by Developer the amount of Hotel Simplified's Estimated Share as provided in Exhibit F, to be held in accordance with the provisions of this Section 5.03(b) and the escrow agreement to be executed by Hotel Simplified, Developer, and the escrow agent, and to be released to the Developer during and upon completion of construction of the North Storm Retention Facilities and the related Facility Improvements. Such escrow agreement shall provide (subject to the following provisions of this Section 5.03(b)(ii)) that: (A) in the event that Hotel Simplified's Share is greater than the amount of Hotel Simplified's Estimated Share, that Hotel Simplified shall immediately pay the amount of such shortfall to Developer; and (B) in the event that Hotel Simplified's Share is less than the amount of Hotel Simplified's Estimated Share, that Developer shall pay the amount of such excess to Hotel Simplified upon the final completion of such construction. Such escrow agreement shall further provide that, in the event that during construction Developer becomes aware that the actual amount of Hotel Simplified's Share will exceed the amount of Hotel Simplified's Estimated Share by more than ten percent (10%) (such excess amount over ten percent (10%) shall be referred to as the "Actual Share Excess"), Developer shall provide to Hotel Simplified a revised Facility Improvements Schedule which reflects the actual amount of Hotel Simplified's Share and the amount of the Actual Share Excess, along with information as to the nature of the Actual Share Excess. Hotel Simplified shall review and notify Developer within ten (10) days of Hotel Simplified's approval or disapproval of such Actual Share Excess, provided that if Hotel Simplified does not notify

Developer within such period Hotel Simplified shall be deemed to have approved such Actual Share Excess. Upon Hotel Simplified's approval as to the amount of the Actual Share Excess, Hotel Simplified shall be responsible for the payment of the actual amount of Hotel Simplified's Share, including such Actual Share Excess approved by Hotel Simplified, and shall pay such amount to Developer. Hotel Simplified shall not be responsible to pay to Developer any Actual Share Excess amount which is not approved by Hotel Simplified in accordance herewith.

5.04 **Utility Easement.** The Developer grants, for the benefit of the Holiday Inn Tract, and the Remainder Tract is hereby subjected to, a non-exclusive, perpetual easement on, over, and across that portion of the Remainder Tract situated in the Easement Area depicted as the "Utility Easement" on the Site Plan attached hereto as **Exhibit E** and **Exhibit E-4** to construct, install, tie into, maintain, operate, repair, and replace any utilities, including but not limited to, water, sewer, gas, telephone, communications, electricity and security systems (the "**HIX Utility Easement**"). The HIX Utility Easement is created subject to, and there is hereby excepted therefrom: (i) all legal highways; (ii) all covenants, conditions, restrictions, and reservations of record; (iii) all easements and rights of way of record, including the other non-exclusive easements granted herein to the other Parcels; and (iv) all real property taxes and assessments not yet due and payable, including, but not limited to, any recoupments of tax savings for any period prior to or after the date of this Declaration resulting from the removal of the Property from the agricultural land list established pursuant to Chapter 5713 of the Ohio Revised Code. The Developer (or its successors or assigns) will complete construction of the Facility Improvements situated in the HIX Utility Easement (the "**HIX Utility Easement Facility Improvements**") during the course of constructing the improvements on the Holiday Inn Tract or as otherwise determined by Developer. The Developer is hereby granted a non-exclusive, construction easement for ingress and egress into the Easement Area and on, across, and over the Remainder Tract for construction of the HIX Utility Facilities, and to conduct such activities as, in the sole opinion of the Developer, may be required for the development and construction related thereto, including, but 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; (c) the right to perform construction activities, including the staging, piling of dirt (which may include moving such dirt, topsoil, and fill back to such property or to another Parcel) or materials, equipment storage and parking; and (d) the right to construct and operate signs, construction trailers, store materials, and conduct related activities. All costs and expenses associated with the construction of the HIX Utility Facility Improvements in the HIX Utility Easement Area shall be borne one hundred percent (100%) by the Developer. No other Owner shall access for its benefit or for the benefit of any third parties any of such utilities located in the HIX Utility Easement Area without the prior written consent of the Developer. If such consent is granted, the parties shall enter into a separate agreement governing access to such utilities, and the allocation of maintenance, repair, and replacement expenses among such Owners accessing such utilities.

5.05 **Sign Easement.** The Developer grants, for the benefit of each of the Holiday Inn Tract and the Hyatt House Parcel, and the Remainder Tract is hereby subjected to, a non-exclusive, perpetual easement on, over, and across that portion of the Remainder Tract situated in the Site Plan depicted as the "South Access Signage" on the Easement Drawing attached hereto as **Exhibit E** (but which actual South Access Sign Easement Area shall be determined upon the approval of

the Developer and if required, the applicable governmental authority, and in accordance with the development plans therefor) to install, erect, construct, provide electricity to, and use signage in a design to be determined and approved by Developer (provided that in the instance that the Owner of the Hyatt House Parcel is constructing and installing the sign, such approval shall not be unreasonably withheld), and if required, the applicable governmental authority (the "South Access Sign Easement"). Upon the determination and approval of the actual location of the South Access Easement Area, the Developer shall execute and record a Declaration Supplement which shall contain a legal description and revised depiction of the South Access Sign Easement. Any such Declaration Supplement shall not require the consent of any other Owner (provided, however, that in the instance that the Owner of the Hyatt House Parcel is constructing and installing the sign in accordance with this Section 5.05 as provided below, the Owner of the Hyatt House Parcel shall have consented thereto, and which consent shall not be unreasonably withheld), and shall be effective upon the recording of the same. The South Access Sign Easement is created subject to, and there is hereby excepted therefrom: (i) all legal highways; (ii) all covenants, conditions, restrictions, and reservations of record; (iii) all easements and rights of way of record, including the other non-exclusive easements granted herein to the other Parcels; and (iv) all real property taxes and assessments not yet due and payable, including, but not limited to, any recoupments of tax savings for any period prior to or after the date of this Declaration resulting from the removal of the Property from the agricultural land list established pursuant to Chapter 5713 of the Ohio Revised Code.

In the event that the Developer (or its successors or assigns) desires to construct and install a sign in the South Access Easement Area, the Developer (or its successors and assigns) will complete construction of the signage and related Facility Improvements situated in the South Access Sign Easement Area (the "South Access Signage") during the course of constructing the improvements on the Holiday Inn Tract or as otherwise determined by Developer. If no other signage upon which the Hyatt House Parcel was afforded an opportunity to place a sign is presently located within the South Access Sign Easement Area at such time, the Developer shall notify the Owner of the Hyatt House Parcel of the Developer's intention to construct and install such sign. Upon receipt of such notice, the Owner of the Hyatt House Parcel shall notify the Developer within ten (10) business days if it desires to participate in the construction and installation of such South Access Signage, at which time, the Developer and the Owner of the Hyatt House Parcel shall work together within thirty (30) days thereafter to develop plans and specifications for a mutually agreeable design for such South Access Signage, which may or may not be a multi-party sign, to be constructed as the South Access Signage. Such plans and specifications shall be commercially reasonable, in compliance with all governmental requirements, and subject to the final approval of the Developer. If the parties cannot agree to plans and specifications as to such South Access Signage in accordance with the foregoing within such thirty (30) day period, the Developer shall be entitled to continue with construction of the South Access Signage in accordance with the Developer's plans therefore. The Developer is hereby granted a non-exclusive construction easement for ingress and egress into the Easement Area and on, across, and over the Remainder Tract for construction, repair, and replacement of the South Access Signage and related Facility Improvements, and to conduct such activities as may be reasonably required for the development and construction related thereto, including, but 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; (c) the right to perform construction activities, including the staging, piling of dirt (which may include moving such dirt, topsoil, and fill back to such property or to another Parcel) or materials, equipment storage and parking; and (d) the right to construct and operate signs, construction trailers, store materials, and conduct related activities. If the Developer and the Owner of the Hyatt House Parcel cannot agree to the design and plans for the South Access Signage within such thirty (30) day period and the Developer proceeds with its own plans for such Signage, all costs and expenses associated with the construction of the South Access Signage and related Facility Improvements in the South Access Sign Easement Area shall be borne one hundred percent (100%) by the Developer. If the Developer and the Owner of the Hyatt House Parcel agree upon the South Access Signage to be constructed by Developer for the benefit of both the Developer and Hyatt House Parcel (or additionally for the benefit of other Parcels approved by Developer), then all costs and expenses associated with the construction of the South Access Signage and related Facility Improvements in the South Access Sign Easement Area shall be borne equally by each of the parties benefitted thereby. No other Owner shall use or access for its benefit or for the benefit of any third parties any of such South Access Signage and related Facility Improvements located in the South Access Sign Easement Area without the prior written consent of the Developer. At the discretion of the Developer, if such consent is granted, such parties may enter into a separate agreement governing use and access to South Access Signage and related Facility Improvements, and the allocation of maintenance, repair, and replacement expenses among such Owners accessing same.

If no other signage upon which the Hyatt House Parcel was afforded an opportunity to place a sign is presently located within the South Access Sign Easement Area at such time, in the event that the Owner of the Hyatt House Parcel (or its successors and assigns) desires to construct and install signage and related Facility Improvements in the South Access Easement Area, the Owner of the Hyatt House Parcel (or its successors and assigns) shall submit to the Developer its plans and specifications for such signage (the "Hyatt-Proposed South Access Signage"), and the Developer and the Owner of the Hyatt House Parcel shall jointly approve (which approval in each case shall not be unreasonably withheld) the design and specifications for the Hyatt-Proposed South Access Signage, including whether or not the signage will be a multi-party sign or some other signage configuration upon which the Developer may place signage, or shall be signage solely for the benefit of the Hyatt House Parcel, and which in all cases, shall be of commercially reasonable standards and must be in compliance with all applicable governmental requirements. If the Hyatt-Proposed South Access Signage is jointly approved to be a sign solely for the benefit of the Hyatt House Parcel, the Owner of the Hyatt House Parcel will complete construction of the Hyatt-Proposed South Access Signage, and all costs and expenses associated with the construction of the Hyatt-Proposed South Access Signage and related Facility Improvements in the South Access Sign Easement Area shall be borne one hundred percent (100%) solely by the Owner of the Hyatt House Parcel. If the Hyatt-Proposed South Access Signage is jointly approved to be a multi-party sign or some other signage configuration upon which the Developer (and additionally for the benefit of other Parcels jointly approved by the Owner of the Hyatt House Parcel and the Developer) may place signage, the Developer will complete construction of the Hyatt-Proposed South Access Signage, and all costs and expenses associated with the construction of the Hyatt-Proposed South Access Signage and

related Facility Improvements in the South Access Sign Easement Area shall be borne equally by the parties who have rights to use and access the sign. The party constructing and installing the South Access Signage in accordance with this paragraph of Section 5.05 is hereby granted a non-exclusive, temporary, construction easement for ingress and egress into the Easement Area and on, across, and over the Remainder Tract for construction of the South Access Signage and related Facility Improvements, and to conduct such activities as may be reasonably required for the development and construction related thereto.

Upon the construction and installation of South Access Signage or Hyatt-Proposed South Access Signage that is not a multi-party sign, the party who constructed and installed such Signage shall be solely responsible for the performance of and all costs and expenses in connection with the maintenance, repair, replacement, and alteration thereof. In the event that the South Access Signage or the Hyatt-Proposed South Access Signage is a multi-party sign or some other signage configuration upon which the Developer (and additionally for the benefit of other Parcels jointly approved by the Owner of the Hyatt House Parcel and the Developer) may place signage, each of the parties with access to the Signage shall share equally in all costs and expenses associated with the maintenance and repair of the overall Facility Improvement constituting the Signage, and such maintenance, repairs, replacements, and alterations shall be performed by the party who constructed and installed the Signage, if a multi-party sign, and each such party shall be solely responsible for the maintenance and repair of its own sign included thereon. In connection with the foregoing, each such party who has the responsibility to perform such maintenance, repair, and replacements is hereby granted a non-exclusive, construction easement for ingress and egress into the Remainder Tract for purposes of performing the foregoing.

5.06 No Closure or Obstruction. Subject to the provisions of this Declaration, the Owner of each Parcel shall have the right to use the portion of its Parcel lying within an Easement Area in a manner not inconsistent with the rights conveyed hereunder. Except as otherwise set forth in this Section 5.06, no Owner or its Beneficiaries may: (i) erect any permanent buildings or other structures within an Easement Area; (ii) install any trees or other deep-rooted plantings which could reasonably be expected to damage or interfere with access to, from, over, or within an Easement Area; or (iii) obstruct or close an Easement Area. Except with respect to temporary obstructions or structures created in accordance with this Section 5.06 (or pursuant to the temporary construction easements granted in this Article V), each Owner shall have the right to remove any obstructions in an Easement Area as such Owner deems reasonably necessary for the safe use of an Easement Area, and to avoid interference with the use thereof. Notwithstanding the foregoing, an Owner may: (A) cause a temporary (but not complete) obstruction in the Easement Area which is reasonably necessary in connection with the construction of any Facility Improvements in the Easement Area, as provided in this Article V, or the performance of any maintenance as provided in connection with Article VI; and (B) temporarily impede a portion of the Access Easement situated on its own Parcel (but not the Parcel of the other Owner(s)) for a reasonable period of time during any period of construction, maintenance, repairs, or replacements to Parcel Improvements being made to such Owner's Parcel (outside of the Easement Area). The rights set forth in each of (A) and (B) above are subject in each case to the following conditions: (I) the closure or impediment must be necessary as a result of the activities permitted under (A) and (B) above; (II) the Owner creating the

closure or impediment shall use all reasonable means and efforts necessary to minimize the effect of the closure or impediment on the Easement Area and the other Parcels; (III) the Owner shall promptly commence and complete all of such activities; and (IV) the closure or impediment shall not completely obstruct access to any Parcel.



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ARTICLE VI

MAINTENANCE OF COMMON FACILITIES

6.01 **Association's Responsibilities.** The Association shall maintain and keep in good, clean, working and sanitary condition, order, and repair all Common Facilities, including Limited Common Facilities, if any, consistent with the Maintenance Standards, and subject to the right to receive payment therefor from the Owners as provided herein and/or using funds as hereinafter provided. Maintenance shall include, but shall not be limited to, maintenance, upkeep, repair, and replacement of all Facility Improvements designated as Common Facilities and included within the Easement Areas therefor.

6.02 **Construction Easement.** The Association is hereby granted a non-exclusive, construction easement for ingress and egress into the Easement Areas and the Liberty Way Project Parcels for purposes of performing the maintenance obligations provided in this Article VI, and such related activities as, in the sole opinion of the Association, may be required for the performance of such maintenance activities, including, but 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; (c) the right to perform construction activities, including the staging, piling of dirt (which may include moving such dirt, topsoil, and fill back to such property or to another Parcel) or materials, equipment storage and parking; and (d) the right to construct and operate signs, construction trailers, store materials, and conduct related activities.

6.03 **Maintenance of Facility Improvements.** The Association shall determine in its sole discretion if and when any Facility Improvements within an Easement Area needs to be maintained, repaired, and/or replaced. After the initial construction of the Roadway Improvements and other related Facility Improvements within the Access Easement Areas, the Association shall be responsible for the repair and maintenance of the paved surfaces constituting such Roadway Improvements, including, but not limited to, snow and ice removal, resealing, restriping, curbing repair and replacement, and asphalt repair and replacement (collectively, the "Roadway Repairs"). After the initial construction of the Drainage Improvements and other related Facility Improvements within the Drainage Easement Areas, the Association shall be responsible for the repair and maintenance of the Drainage Improvements (collectively, the "Drainage Repairs"). After the initial construction of the HIX Utility Facility Improvements and other related Facility Improvements within the HIX Utility Easement Area, and of the South Access Signage and other related Facility Improvements in the South Access Sign Easement Area, the Association shall be responsible for the repair and maintenance of the HIX Utility Facility Improvements and the South Access Signage (collectively, the "Utility and

Signage Repairs"; the Roadway Repairs, the Drainage Repairs, and the Utility and Signage Repairs shall be collectively referred to herein as the "Easement Facility Improvement Repairs"). A percentage of all costs and expenses associated with all Easement Facility Improvement Repairs shall be allocated to each Parcel and paid by the Owner of each Parcel in accordance with the provisions of this Section 6.03, which percentage shall be calculated as a fraction with a numerator of 1, and a denominator equal to the number of Liberty Way Project Parcels (provided that: (a) the Hyatt House Parcel shall count as "1" Liberty Way Project Parcel; and (b) the Development Parcels together shall count as "1" Liberty Way Project Parcel until the Remainder Tract or any portion thereof is sold by the Developer, at which time, the Holiday Inn Tract shall count as "1" Liberty Way Project Parcel, and each Development Lot on the Remainder Tract (including the entire Remainder Tract if no separate Development Lots are created out of the Remainder Tract) shall count as "1" Liberty Way Project Parcel) (the share of each Owner as determined by the foregoing shall be referred to as the "Owner's Maintenance Share"). Each Owner shall pay to the Association upon receipt of a statement therefor each Owner's Maintenance Share with respect to all costs, fees, and expense incurred in connection with the performance of the Easement Facility Improvement Repairs, or the Association may levy an Assessment with respect to an Owner's Maintenance Share. Each Owner will be responsible for paying its Owner's Maintenance Share within fifteen (15) days of receiving such statement. If such invoice is not paid within fifteen (15) days after receipt, the amount owed shall thereafter accrue interest at the rate of 10% per annum. The Association shall be entitled to legally enforce collection of the amount due from a nonpaying Owner, and shall be entitled to attorney fees and costs of collection in connection therewith, and shall be entitled to file a lien on the Parcel of such Owner in the amount remaining unpaid, plus any professional fees and other costs incurred in collecting such amount. Upon the determination of the need for any Easement Facility Improvement Repairs, and/or prior to the commencement thereof, the Association shall provide to the Owner of the Hyatt House Parcel a description of such Easement Facility Improvement Repairs and the estimated costs thereof ("Repair Description"). Within ten (10) business days after the receipt of the Repair Description, the Owner of the Hyatt House Parcel shall notify the Association of its approval of the Repair Description, or if such Owner does not agree with the Repair Description or any portion thereof ("Disagreement Notice"). In the event that the Owner of the Hyatt House Parcel does not agree with the Repair Description or any portion thereof, such Owner shall meet with the Association within five (5) business days following providing a Disagreement Notice to the Association, and such Owner and the Association shall attempt to resolve any such disagreements. If, the Owner of the Hyatt House Parcel and the Association are unable to resolve such disagreements within five (5) business days following such meeting, and if such Owner is unable to provide a alternative proposal for the completion of such Easement Facility Improvement Repairs which is acceptable to the Association and which will resolve such disagreements, the Association shall be entitled to proceed with the Easement Facility Improvement Repairs as provided for in the original Repair Description (subject to modification for any disagreements resolved between such Owner and the Association), and the Owner of the Hyatt House Parcel shall pay its Owner's Maintenance Share thereof in accordance with this Section 6.03.

6.04 **Maintenance of Facility Improvements by an Owner.**

(a) **Determination of Obligation.** If any Owner reasonably believes that any maintenance, repair, or replacement is required to maintain any Facility Improvements in an Easement Area in a reasonably clean, safe, functional, and orderly condition (each, a "Repair"), such Owner shall provide written notice to the Association, which notice shall include a description of the Repair(s) and the estimated cost thereof. No action shall be taken by such Owner unless the Repair(s) are approved as set forth below, provided, however, that if any Owner believes that the Repair is an emergency such that it threatens the health or safety of an Owner, then such Owner may cause such Repair(s) to be made immediately at such Owner's costs and expense (and such Owner shall be entitled to submit the costs thereof to the Association for approval for reimbursement in accordance with the provisions set forth below).

(b) **Approval of Obligation.** Any Repair shall be subject to approval of the Association. If approved as provided herein, the Association shall determine who shall complete the Repair, and such parties shall cause the Repair to be completed in accordance with all requirements of the Association, applicable laws, and the provisions of Section 5.06 hereof. The costs of such Repairs shall be reimbursed by the Association to an Owner that has made such Repairs as approved in accordance with this Section 6.04, or if the Association does not have the funds to reimburse such Owner, by the Association following the collection of Assessments levied by the Association in accordance with the provisions of Article VIII hereof for the purpose of such reimbursement.

ARTICLE VII

MAINTENANCE OF PARCELS AND PARCEL IMPROVEMENTS

7.01 **Owner's Responsibility.** Each Owner shall maintain its Parcel and all buildings, structures, and other Parcel Improvements thereon in a commercially reasonable manner, consistent with developments of a similar nature, and in a manner consistent with the Maintenance Standards referenced herein, and shall discharge all obligations set forth herein with respect to such Owner's Parcel. If any Owner fails to properly perform its maintenance responsibility, the Association may perform such maintenance and assess all costs incurred by the Association against the Parcel and the Owner in accordance with Section 8.05 of this Declaration; provided, however, except when entry is required due to an emergency situation, the Association shall afford the Owner 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 Parcel.

7.02 **Performance of Work.** Each Owner (and any and all contractors of such Owner) shall perform any and all construction, maintenance, repairs, and replacements on its Parcel (including if required within an Easement Area located on such Owner's Parcel), in a good and workmanlike manner, consistent with a commercial development of a similar nature, in accordance with all applicable laws and regulations and this Declaration, and in a manner that reasonably minimizes the interference with the use of and access to any Common Facilities, any

Easement Area, or any of the other Liberty Way Project Parcels. Each Owner shall be responsible for obtaining all applicable governmental licenses, permits, and approvals for such work prior to the commencement of the work, and after the work is complete, shall return all affected areas as nearly as possible to their original condition, repair all damage to any paved areas, curbing or landscaping, and remove any debris, waste, and equipment located thereon.

7.03 **No Liens.** No Owner shall suffer or permit any mechanics', materialmen's' or other liens or encumbrances of any kind to be filed against any portion of the Parcel of any other Owner or against any Easement Area whether or not on such Owner's Parcel for any work, labor, services, materials, or equipment supplied or claimed to have been supplied in connection with such Owner's activities on any portion of the Owner's Parcel (collectively, "Liens"). If any such Liens are filed, the Owner whose activities gave rise to such Lien shall promptly, but in any event within thirty (30) days after notice of filing, either: (i) cause the same to be discharged of record by deposit in court or bonding; or (ii) furnish the other Owners with affirmative title insurance coverage or other security against loss or damage arising from such Lien, in substance and form reasonably satisfactory to such other Owners.

7.04 **Insurance.** Each Owner (and any ground lessee of all or a portion of such Owner's Parcel) shall maintain commercial general liability insurance against claims for personal injury, death, and property damage occurring in, on or about such Owner's Parcel and the Easement Areas within such Owner's Parcel in connection with the use, installation, construction, operation, maintenance, repair, or replacement thereof. Such insurance shall have minimum limits as determined by the Association, and shall be issued by insurance companies licensed to do business in the State of Ohio. Each Owner will (and will cause any ground lessee to) provide to the Association a certificate of such coverage as specified herein within ten (10) business days of any request.

7.05 **Maintenance Standards.** The Maintenance Standards shall require that each Owner maintain its Parcel and all Parcel Improvements thereon in a manner consistent with a first-class development, including, but not limited to the following:

(a) maintenance of pavement on such Owner's Parcel in a level and smooth condition, free of potholes, with the type of material as originally used or an equivalent substitute;

(b) removal of all trash and debris;

(c) removal of snow and ice from paved surfaces and sidewalks on such Owner's Parcel as soon as reasonably practicable, and trimming, mowing and landscaping of open areas and of the grass and plants located thereon in order to keep such areas in an attractive condition;

(d) placement and maintenance of appropriate parking area entrance, exit and directional markers, and other traffic control signs or other signs as are reasonably required, and as are permitted by the governmental authority having jurisdiction;

(e) cleaning of lighting fixtures and re-damping as needed;

(f) re-striping of driveways and repairing areas as required to keep such items clearly visible;

(g) maintenance of all storm water facilities as necessary in order to keep such facilities in good working condition;

(h) keeping the exterior appearance of all structures and improvements in a good and attractive condition; and

(i) 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.

7.06 **Amendment and Supplements.** During the Development Period, Maintenance Standards may only be amended or supplemented with the prior written consent and approval of the Developer as to the Development Parcels, and the Developer and the Owner of the Hyatt House Parcel as to the Hyatt House Parcel. Following the Development Period, the Association 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 7.05 pertaining to the maintenance, repair, and appearance of all Parcels and the Parcel Improvements thereon. If any 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 Parcel than a comparable provision of the Maintenance Standards, such more stringent provision shall be deemed incorporated in the Maintenance Standards.

7.07 **Drainage Swales.** Each open storm water drainage way on any Parcel or any portion thereof, shall be maintained by the Owner of such Parcel 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.

7.08 **Right of Entry.** The Association, through its authorized officers, employees, and agents, shall have an easement and right to enter upon any Parcel 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 Parcel.



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ARTICLE VIII

COVENANT FOR ASSESSMENTS

8.01 Assessments and Charges.

(a) Subject to the provisions hereof, each Owner of a Development Lot covenants and agrees to pay to the Association, Assessments including:

(1) Annual Assessments necessary to cover maintenance, repair, and operation for any Common Facilities to the extent not paid in accordance with Article VI, or to cover other expenses incurred by the Association in the performance of its obligations hereunder;

(2) Special Assessments necessary to supplement Annual Assessments or for capital improvements to Common Facilities;

(3) interest on late payment of Assessments at the interest rate described in Section 8.06;

(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 Maintenance Standards, and the Rules and Regulations.

(b) The payment of Assessments and such other charges, together with any interest thereon at the interest rate described in Section 8.06 and costs of collection thereof as hereinafter provided, shall be secured by a continuing lien, until paid in full, upon the Parcel 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 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 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 Development Lot shall share 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) in accordance with each Owner's Maintenance Share. Each Parcel added by an amendment to this Declaration shall specify how assessments will be allocated to that real property brought into the Association.

(c) The Annual Assessment shall be set by the Board of Trustees in accordance with the Association's estimated budget for current and future maintenance costs. Any Annual Assessment not replaced by a succeeding Annual Assessment shall be automatically extended on the same basis until replaced by another Annual Assessment.

(d) Subject to the terms hereof, each Owner shall pay to the Association in monthly installments, in advance, on or before the first day of the month, one-twelfth (1/12) of the Annual Assessment against the Owner's Parcel. No Owner may waive or otherwise avoid liability for any Assessment by non-use of the Common Facilities or by abandonment of its Parcel or by any other means or manner.

8.03 **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 a majority vote of the Members, 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 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.

8.04 **Charge for Default.** In the event of a breach by an Owner of any provision of the Declaration, Bylaws, Rules and Regulations, or Maintenance Standards (including the costs of an action to enforce any provision hereof and attorneys' fees), which shall include, but not be limited to, such a breach by the Owner of the Hyatt House Parcel and/or the failure of the Owner of the Hyatt House Parcel to pay its Owner's Maintenance Share of Easement Facility Improvements in accordance with Article VI hereof, 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 Owner's Parcel and the Parcel Improvements located thereon, as well as against the defaulting Owner, which charge shall constitute a lien against such Owner's Parcel and its Parcel Improvements. Such charge shall be payable in full twenty (20) days from the date Owner is notified of the levy of such charge.

8.05 **Assessments Ledger and Certificates.** The Board of Trustees shall prepare and maintain a ledger of all Parcels 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 Parcel. Such certificate shall be conclusive evidence of the status of payment of all assessments and charges with respect to such Parcel.

8.06 **Effect of Non-Payment.** In the event that any Assessment or charge due hereunder, including, but not limited to as described in Section 8.04 hereof, is not paid on the date when due, then the Assessment or such other charge 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 prime rate announced by the Wall Street Journal, or its successor, plus five

percent (5%), or at the highest annual interest rate allowed by law, whichever is less. 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 Parcel. 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 of the Association in default of payment or other default hereunder 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

APPROVAL OF PARCEL IMPROVEMENTS

9.01 **Submissions of Plans and Specifications**, During the Development Period, no structure, improvement, building, or landscaping or any other Parcel Improvement on any Development 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. Subject to the terms hereof, the Developer is hereby authorized and shall have exclusive jurisdiction during the Development Period to approve or disapprove of all original construction upon and development of the Development Parcels and any Common Facilities or Limited Common Facilities, and subsequent modifications, additions or alterations thereto. 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:

- (a) a site plan showing the location of all proposed and existing structures and buildings and other Parcel Improvements on the Parcel, and the approximate size in square footage of the first or ground floor of any building and the square footage of the entire Parcel;
- (b) contours reflecting existing topography and a grading plan showing finished contours and environmental features;
- (c) any proposed retaining walls or fencing;
- (d) 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; and
- (e) all landscaping and exterior lighting plans, all signage, and a plot plan showing the location of all buildings and other structures, including a parking layout with number of parking spaces, all in relation to the Parcel lines.

9.02 **Violations.** If any building, structure, or other Parcel Improvement situated upon any Parcel 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 of Trustees shall notify the Owner of the Parcel of the violation and the Board may, pursuant to Section 8.04 herein, levy a charge against the Owner and Parcel in the event such violation is not corrected in a timely fashion. This provision shall be enforced as provided for in Section 8.06 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 Parcel at all reasonable times for the purpose of ascertaining whether such Parcel or the construction, erection, placement, remodeling, or alteration of any building or other structure thereon is in compliance with the provisions of this Article IX.

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 Parcels; and of the conformity of the plans and specifications to the purpose and general intent of the Liberty Way Development.

9.06 **No Liability.** 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 Developer 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 IX, 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.



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BK 8995 PG 891

ARTICLE X

GENERAL EASEMENTS AND RESTRICTIONS

10.01 Ingress, Egress, and Parking.

(a) During the term of this Declaration, each Owner hereby grants and conveys to each other Owner for its use and for the use of its Beneficiaries, in common with others entitled to use the same, a non-exclusive, reciprocal easement for the passage and parking of vehicles over and across the parking and driveway areas of the Parcel of the granting Owner, 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 Parcel of the granting Owner, as the same may from time to time be constructed and maintained for such use. The easements herein established shall be appurtenant to and for the benefit of each Parcel of each grantee Owner, and shall be binding on, enforceable against and burden each Parcel of each granting Owner. Such easement rights shall be subject to the following reservations as well as the other applicable provisions contained in this Declaration: (i) each Owner 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; and (ii) vehicles making deliveries to or pickups from a Party's Parcel shall not park on another Party's Parcel.

(b) During the term of this Declaration, each Owner hereby grants and conveys to each other Owner for its use and for the use of its Beneficiaries, in common with others entitled to use the same, a non-exclusive, reciprocal easement for the passage and accommodation of pedestrians and vehicles (but not for parking purposes) upon, over and across those portions of the Parcel of each Owner delineated or marked as driveways or aisleways. The easements herein established shall be appurtenant to and for the benefit of each Parcel of each grantee Owner, and shall be binding on, enforceable against and burden each Parcel of each granting Owner.

10.02 Utilities

(a) Each Party hereby grants and conveys to each other Owner, non exclusive, perpetual easements in, to, over, under, along and across those portions of the Parcel of the grantor Owner (exclusive of any portion located within any Parcel Improvements or Easement Areas (unless otherwise agreed to by the Developer) on the Parcel of such grantor Owner) necessary for the installation, operation, passage, use, maintenance, repair, replacement, relocation, and removal of utility lines serving the Parcel of the grantee Owner. Except as provided elsewhere in this Declaration, the initial location, any re-location, any connection or tap-in, and other specifications with respect to any such utility line shall be subject to the prior written approval of the Owner of the Parcel which is to be burdened thereby, which approval shall not be unreasonably withheld; provided however that such approval shall not be required with respect to the Development Parcels if such utility line and easement area is a part of the development plans which have been approved by the Developer for such Development Parcels. 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

BK 8995 PG 893

granted to an Owner. The grantee shall provide to the grantor a copy of an as built survey showing the location of such utility line. 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. The Owner electing to install any such 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 such utility line. Such 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 such 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 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.

(b) Each Owner hereby grants and conveys to each other Owner the perpetual right and easement to discharge surface storm water drainage and/or runoff from the grantee's Parcel over, upon and across the open areas of the grantor's Parcel, upon the following conditions and terms: no party shall alter or permit to be altered the surface of the Easement 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 any other Parcel either in the aggregate or by directing the flow of surface water to a limited area; or (ii) otherwise adversely affect the Parcel Improvements located on any other Parcel or the use of such Parcel Improvements.

(c) Upon the approval of the Owner of any other Parcel if such relocation would be on any portion of such other Owner's Parcel, 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: (i) shall not interfere with or diminish the utility service to the grantee; and if an electrical line/computer line is being relocated, then the grantor and grantee shall coordinate such interruption to eliminate any detrimental effects; (ii) shall not reduce or unreasonably impair the usefulness or function of such utility line; (iii) shall be performed without cost or expense to the grantee; (iv) shall be completed using materials and design standards which equal or exceed those originally used; and (v) shall have been approved by the provider of such utility service and the appropriate governmental authorities; provided however that such approval of such other Owner(s) shall not be required with respect to the Development Parcels if such utility line and easement area is a part of the development plans which have been approved by the Developer for such Development Parcels. 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.

10.04 **Restriction.** Except as otherwise specifically provided herein, no Owner shall grant any easement for the benefit of any property not within the Liberty Way Project Parcels; provided, however, that the foregoing shall not prohibit the granting or dedicating of easements by an Owner on its Parcel to governmental authorities, public utility companies, or as required by governmental authorities.

10.05 **Liberty Way Project Parcels Restrictions.** The following restrictions shall apply to the Liberty Way Project Parcels (including any buildings thereon): no 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; flea market; gambling facility or operation; carnivals, fairs or auctions; or any illegal use. Furthermore, the Liberty Way Project Parcels are subject to the following restrictions: no portion of the Liberty Way Project Parcels may be used for the operation of a retail store selling or displaying any of the following: taxidermy products, boating products, fishing products including fly fishing products, camping products, hunting products and services, firearms, ammunition, knives, hunting related optics and archery products (the "**Core Products**"), or as a store operated by or under any of the following trade names (or any affiliate or variation thereof) or any trade name which predominantly features one of the following trade names (or any affiliate or variation thereof): Academy Sports & Outdoors, Bass Pro Shop, Blaine's Farm and Fleet, Scheels, Dick's, Dick's Field and Stream, Gander Mountain, Overton's Field and Stream, West Marine, Sierra Trading Post, Orvis, Boater's World, Mills Fleet Farm, Fisherman's Marine and Outdoor, REI, Sportsman's Warehouse or Wholesale Sports, The Sports Authority, or MCSports (each, a "**Prohibited Occupant**"); provided, however, that the foregoing restriction shall not prohibit any retail occupant (other than a Prohibited Occupant) from using the lesser of: (a) up to 10% of the total sales floor area of its store(s); or (b) up to 5,000 square feet of the total sales floor area of the store, for the sale, display, leasing, or operation of any of the Core Products.

10.06 **Use and Improvements.** Except as set forth in Section 10.05 hereof, nothing contained in this Declaration shall restrict or prohibit the use of the Holiday Inn Tract or the Hyatt House Parcel as a hotel, or the Parcel Improvements to be constructed on the Holiday Inn Tract or the Hyatt House Parcel so long as the same complies with applicable law.

10.07 **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 any of the Liberty Way Project Parcels in connection with any exercise of any purported rights under this Declaration (or the Bylaws).

10.08 **No Site Plan Changes.** Neither the record Plat of (or including) the Liberty Way Project Parcels nor any Site Plan shall be amended, including but not limited to the size or

number of Development Lots or layout of Common Facilities, without the prior written consent of the Developer.

10.09 **Protection.** In addition to any other rights available to the Developer and/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 XI

GENERAL PROVISIONS

11.01 **Application.** This Declaration, and the easements, covenants, and agreements set forth herein, shall run with the land and shall be binding on and inure to the benefit of each of the Parcels, their respective Owners, and their Owner's respective successors and assigns, and shall be enforceable by the Developer, the Association, or by the Owner of any Parcel or Development Lot, and their respective legal representatives, heirs, successors, and assigns, but only during and/or with respect to such periods of time as such Owner shall respectively own an interest in a Liberty Way Project Parcel or part thereof.

11.02 **Duration.** 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.

11.03 **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 address (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):

4404 Buckeye Lane, Suite 220
Beavercreek, OH. 45440

11.04 **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, which may include seeking a restraint of such violation, recovery of damages, or the enforcement of 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.

11.05 **Amendment.** Except for those Declaration Supplements that the Developer may, pursuant and subject to the terms hereof, execute and record, and except as otherwise provided in this Section 11.05, this Declaration may be amended only by the affirmative vote of at least seventy-five percent (75%) of the Owners of the Liberty Way Project Parcels, which affirmative 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 11.05. Notwithstanding the foregoing, the Developer shall have the right and power, and each Owner by acceptance of a deed to a Parcel is deemed to and does hereby give and grant to the Developer, a power of attorney, which right and power is coupled with an interest and runs with title to a Parcel and is irrevocable during the Development Period to amend this Declaration (and to execute and record a Declaration Supplement) and any plat, and to execute any and all documents deemed necessary or desirable by Developer to conform this Declaration or any plat to the development plans for the Development Parcels, including to modify, reduce, expand, or eliminate any existing easements, or to establish additional easements; provided that no such amendments modify any easements or establish additional easements which would benefit or burden the Hyatt House Parcel (in which event, the written consent of the Owner of the Hyatt House Parcel would be required).

11.06 **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.

11.07 **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 thirty (30) days after submission thereof in writing (or such other period of time specified within this Declaration), then such matters shall be deemed approved as submitted and no further action by the Developer or the Association shall be required and such actions shall be deemed binding. 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.

11.08 **Default.** Except as otherwise expressly stated in this Declaration, if an Owner breaches any of its obligations provided in this Declaration and such breach continues for a period of thirty (30) days after its receipt of written notice of such default, the Developer and/or the Association shall be entitled to cure such breach in addition to all remedies at law or in equity. If such breach creates an emergency, the Developer and/or the Association shall be entitled to cure such breach immediately in addition to all remedies at law or in equity. The defaulting Owner shall reimburse all reasonable expenses incurred to cure such uncured breach

pursuant to the preceding notice within thirty (30) days after receipt of written evidence confirming the payment of such expenses. Any sums remaining unpaid under this Declaration, together with interest at three percent (3%) above the prime rate as announced by the Wall Street Journal, or any successor thereto, or at the highest annual interest rate allowed by law, whichever is less, shall be secured by a lien on the parcel of the Owner in default and may be perfected in accordance with the laws of the State of Ohio. In the event of litigation by reason of this Declaration, the prevailing party in such litigation shall recover its reasonable attorneys' fees in addition to all other expenses incurred by such litigation.

ARTICLE XII

COMPLIANCE WITH LOCAL ORDINANCES

The covenants, restrictions and easements of this Declaration are 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, and 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 XIII

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.]



Image ID: 000009699759 Type: OFF
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File# 2017-00003714

BK 8995 PG 897

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



Image ID: 000009699760 Type: OFF

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File# 2017-00003714

BK 8995 PG 898

DEVELOPER:

LIBERTY WAY INNKEEPERS, LLC,
an Ohio limited liability company

By: Har S. Bhatnagar

Har S. Bhatnagar, Managing Member

THE ASSOCIATION:

LIBERTY WAY OWNER'S ASSOCIATION, INC.,
an Ohio nonprofit corporation

By: Har S. Bhatnagar

Har S. Bhatnagar, President

HOTEL SIMPLIFIED, LLC,
an Ohio limited liability company

By: _____

Title: _____

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

DEVELOPER:

LIBERTY WAY INNKEEPERS, LLC,
an Ohio limited liability company

By: _____
Har S. Bhatnagar, Managing Member

THE ASSOCIATION:

LIBERTY WAY OWNER'S ASSOCIATION, INC.,
an Ohio nonprofit corporation

By: _____
Har S. Bhatnagar, President

HOTEL SIMPLIFIED, LLC,
an Ohio limited liability company

By: Tahira Saffee
Title: President



Image ID: 000009699761 Type: OFF

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File# 2017-00003714

BK 8995 PG 899



STATE OF OHIO)
)
 COUNTY OF MONTGOMERY)
)
 SS:

The foregoing instrument was acknowledged, subscribed, and sworn to before me this 21st day of December, 2016, by Har S. Bhatnagar, the Managing Member of Liberty Way Wine Coopers, LLC, an Ohio limited liability company, on behalf of such company.



KRISTIN A. FINCH, Attorney at Law
 Notary Public, State of Ohio
 My Commission has no expiration date
 Section 147.03 O. R. C.

Kristin A. Finch
 Notary Public

STATE OF OHIO)
)
 COUNTY OF MONTGOMERY)
)
 SS:

The foregoing instrument was acknowledged, subscribed, and sworn to before me this 21st day of December, 2016, by Har S. Bhatnagar, the President of Liberty Way Owner's Association, Inc., an Ohio corporation, on behalf of such corporation.



KRISTIN A. FINCH, Attorney at Law
 Notary Public, State of Ohio
 My Commission has no expiration date
 Section 147.03 O. R. C.

Kristin A. Finch
 Notary Public

STATE OF _____)
)
 COUNTY OF _____)
)
 SS:

The foregoing instrument was acknowledged, subscribed, and sworn to before me this _____ day of _____, 2016, by _____, the _____ of Hotel Simplified, LLC, an Ohio limited liability company, on behalf of such company.

 Notary Public

This instrument prepared by:

Kristin A. Finch, Esq.
 Coolidge Wall Co., L.P.A.
 33 W. First Street, Suite 600
 Dayton, OH 45402



Image ID: 000009699763 Type: OFF

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File# 2017-00003714

BK 8995 PG 901

STATE OF _____)
) SS:
 COUNTY OF _____)

The foregoing instrument was acknowledged, subscribed, and sworn to before me this _____ day of _____, 2016, by Har S. Bhatnagar, the Managing Member of Liberty Way Innkeepers, LLC, an Ohio limited liability company, on behalf of such company.

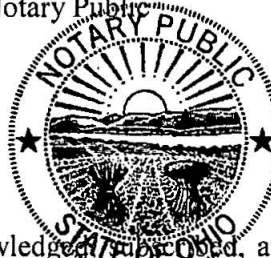
 Notary Public

STATE OF _____)
) SS:
 COUNTY OF _____)

The foregoing instrument was acknowledged, subscribed, and sworn to before me this _____ day of December, 2016, by Har S. Bhatnagar, the President of Liberty Way Owner's Association, Inc., an Ohio corporation, on behalf of such corporation.

 Notary Public

STATE OF Ohio)
) SS:
 COUNTY OF Montgomery)



JESSICA L. MAHLE, Notary Public
 In and for the State of Ohio
 My Commission Expires Sept. 28, 2021

The foregoing instrument was acknowledged, subscribed, and sworn to before me this 29 day of December, 2016, by Tanera Jaffer, the President of Hotel Simplified, LLC, an Ohio limited liability company, on behalf of such company.

Jessica L. Mahle
 Notary Public

This instrument prepared by:

Kristin A. Finch, Esq.
 Coolidge Wall Co., L.P.A.
 33 W. First Street, Suite 600
 Dayton, OH 45402



Image ID: 000009699764 Type: OFF

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File# 2017-00003714

BK 8995 PG 902

CONSENT AND SUBORDINATION OF MORTGAGEE

Heritage Bank, Inc., a Kentucky corporation ("Bank") is the holder of a certain Mortgage, dated September 15, 2016, in the original principal amount of \$4,012,000.00, granted with respect to the Development Parcels, and recorded in Official Record 8943, Page 771 in the Records of the Office of the County Recorder of Butler County, Ohio, and a certain Open-End Mortgage of Real Property, Security Agreement of Personal Property Fixture Filing and Assignment of Rents and Profits, dated December 29, 2016, in the original principal amount of \$11,700,000.00, granted with respect to the Holiday Inn Tract, and recorded in Official Record 8986, Page 1883, (collectively, the "Mortgages"), and which Mortgages secured Loans of even dates therewith from the Bank to Developer in such amount.

Bank hereby consents to the execution and delivery of the foregoing Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for The Fields at Liberty Way, including all Exhibits thereto (the "Declaration"), and to the filing thereof, in the Records of the Office of the County Recorder of Butler County, Ohio, and further subjects and subordinates the above-described Mortgage to the provisions of the foregoing Declaration.

IN WITNESS WHEREOF, Heritage Bank, Inc., by its authorized officer, has caused the execution of this Consent and Subordination of Mortgagee to be executed as of this 13th day of January, 2017.

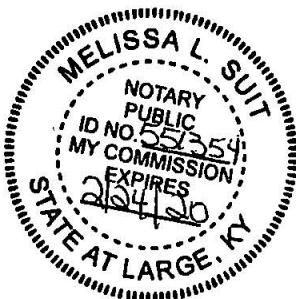
HERITAGE BANK, INC.,
a Kentucky corporation

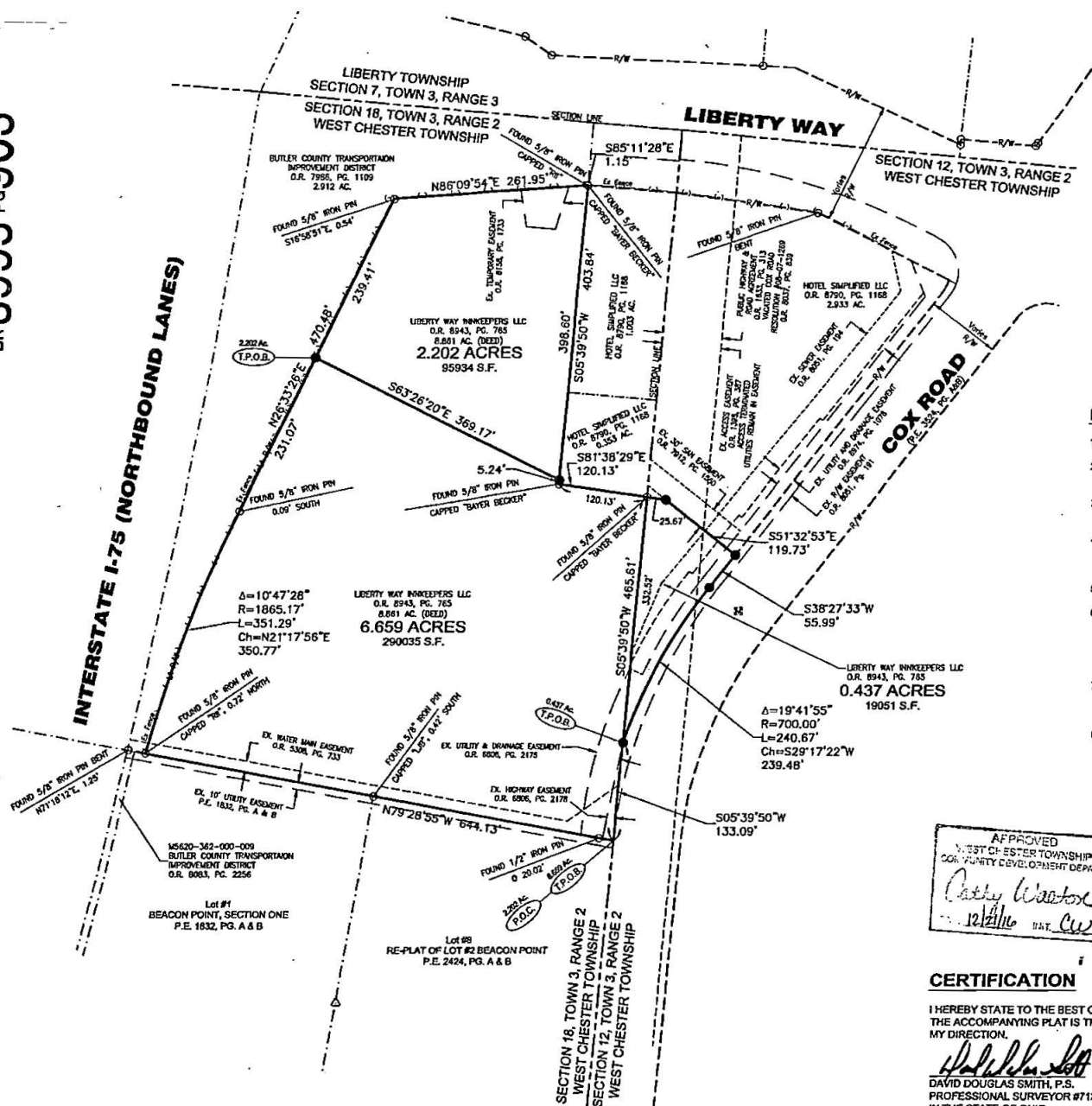
By: [Signature]
Title: VP of Compliance

STATE OF Kentucky)
COUNTY OF Boone)
SS:

13th The foregoing instrument was acknowledged, subscribed, and sworn to before me this day of January, 2017, by Matthew R. [Signature], the Vice President of Heritage Bank, Inc., a Kentucky corporation, on behalf of such corporation.

[Signature]
Notary Public





LEGEND

- Found 5/8" Iron Pin
- ☒ Found Mon. Box
- R/W-Ex Right of Way
- LA R/W-Ex Limited Access Right of Way
- Set 5/8" Diameter x 30" Long Iron Pin Capped Bayer Beaker

NOTES

1. BASIS OF BEARINGS: SURVEY VOLUME 58, PAGE 88.
2. PRIOR DEED REFERENCE: OFFICIAL RECORD 8943, PAGE 765.
3. ALL MONUMENTATION IS IN GOOD CONDITION UNLESS OTHERWISE SHOWN.
4. LINES OF OCCUPATION, WHEREVER THEY EXIST, GENERALLY AGREE WITH THE BOUNDARY LINES EXCEPT AS NOTED.
5. ALL DOCUMENTS USED AS SHOWN.
6. A CURRENT TITLE EXAMINATION/REPORT IS NECESSARY TO DETERMINE ANY ADDITIONAL EASEMENTS, RESTRICTIONS, COVENANTS, CONDITIONS OR ENCUMBRANCES WHICH MAY AFFECT THE LANDS HEREIN PLATTED.
7. VEHICLE ACCESS TO COX ROAD FROM 2.202 ACRE TRACT SHALL BE THROUGH ACCESS & UTILITY EASEMENT BY SEPARATE DOCUMENT.
8. REFERENCES: PLAT ENVELOPE 3524, PAGES A-B
PLAT ENVELOPE 1832, PAGES A-B
PLAT ENVELOPE 2424, PAGES A-B
PLAT ENVELOPE 3526, PAGES A-B
SURVEY VOLUME 48, PAGE 95
SURVEY VOLUME 46, PAGE 96
SURVEY VOLUME 49, PAGE 36
SURVEY VOLUME 49, PAGE 37
SURVEY VOLUME 51, PAGE 137
SURVEY VOLUME 51, PAGE 138
SURVEY VOLUME 52, PAGE 5
SURVEY VOLUME 52, PAGE 31
SURVEY VOLUME 58, PAGE 66

APPROVED
WEST CHESTER TOWNSHIP
COMMUNITY DEVELOPMENT DEPT.
Cathy Watson
12/21/16 DAT. CW

CERTIFICATION

I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF THAT THE ACCOMPANYING PLAT IS THE CORRECT RETURN OF A FIELD SURVEY MADE UNDER MY DIRECTION.

DAVID DOUGLAS SMITH, P.S.
PROFESSIONAL SURVEYOR #7121
IN THE STATE OF OHIO



VOLUME 58

PLAT NO. 154

**BUTLER COUNTY
ENGINEERS**

RECORD OF LAND SURVEYS

Line	Item	Revision	Description	Date	Drawn	Chk
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6.659 ACRES & 2.202 ACRES

& 0.437 ACRES
SECTION 18, TOWN 3, RANGE 2 &
SECTION 12, TOWN 3, RANGE 2
BETWEEN THE MIAMIS
WEST CHESTER TOWNSHIP
BUTLER COUNTY, OHIO

PLAYAT OF SURVEY



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Drawing: 15M040-000 SP2 HY

Drawn by: **BJR**

Checked By: BRJ

12-09-16

1/1

EXHIBIT B

Date: December 9, 2016
Description: 2.202 Acre Tract
Liberty Way Innkeepers LLC
Location: West Chester Township
Butler County, Ohio



Situated in the State of Ohio, Between the Miamis, Section 18, Town 3, Range 2, West Chester Township, Butler County and being part of the lands of Liberty Way Innkeepers, LLC, as recorded in Official Record 8943, Page 765 of the Butler County, Ohio, Recorder's Office and being further described as follows:

Commencing at the northeast corner of Lot #8 of the Re-Plat of Lot #2 of Beacon Point as recorded in Plat Envelope 2424, Page A & B of the Butler County, Ohio, Recorder's Office, being on the east line of said Section 18 and being on the westerly right of way of Cox Road; thence, leaving the easterly line of said Section 18 and the westerly right of way of said Cox Road and with the northerly boundary of said Re-Plat of Lot #2 of Beacon Point extended, North 79° 28' 55" West, (passing a found 1/2" iron pin at 20.02 feet), 644.13 feet on the northerly line of Lot #1 of Beacon Point, Section One as recorded in Plat Envelope 1832, Page A & B of the Butler County, Ohio, Recorder's Office and being on the southeast corner of the lands of Butler County Transportation Improvement District as recorded in Official Record 7986, Page 1109 of the Butler County, Ohio, Recorder's Office and being witnessed by a found 5/8" iron pin (capped "RII"), 0.72 feet north; thence, leaving the northerly line of Lot #1 of said Beacon Point, Section One and with the easterly boundary of said lands of Butler County Transportation Improvement District and with a curve to the right, having a central angle of 10° 47' 28", a radius of 1865.17 feet, an arc length of 351.29 feet and a chord bearing and distance of North 21° 17' 56" East, 350.77 feet and being witness by a found 5/8" iron pin 0.09 feet south; thence, continuing with the easterly boundary of said lands of Butler County Transportation Improvement District, North 26° 33' 26" East, 231.07 feet to a set 5/8" iron pin and being the **True Point of Beginning**;

thence, continuing with the easterly boundary of said lands of Butler County Transportation Improvement District, North 26° 33' 26" East, 239.41 feet to the southerly right of way of Liberty Way and being witnessed by a found 5/8" iron pin, South 16° 58' 51" East, 0.54 feet;

thence, with the southerly right of way of Liberty Way, and with the southerly boundary of said lands of Butler County Transportation Improvement District, North 86° 09' 54" East, 261.95 feet to a found 5/8" iron pin (capped "RII");

thence, continuing with the southerly right of way of Liberty Way and said southerly boundary of Butler County Transportation Improvement District, South 85° 11' 28" East, 1.15 feet to a found 5/8" iron pin (capped "Bayer Becker") on the westerly boundary of the lands of Hotel Simplified, LLC as recorded in Official Record 8790, Page 1168 of the Butler County, Ohio, Recorder's Office;

thence, leaving the southerly right of way of said Liberty Way and said southerly boundary of said lands of Butler County Transportation Improvement District and with the westerly boundary of said lands of Hotel Simplified, LLC, South 05° 39' 50" West, 398.60 feet to a set 5/8" iron pin;

thence, leaving the westerly line of said lands of Hotel Simplified, LLC, and with a new division line through said lands of Liberty Way Innkeepers, LLC, North 63° 26' 20" West, 369.17 feet to the **True Point of Beginning** containing 95,934 square feet or 2.202 acres of land more or less, and being subject to all legal highways, easements, restrictions and agreements of record.

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Image ID: 000009699767 Type: OFF

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File# 2017-00003714

BK **8995** PG **905**

The above description was prepared from a field survey prepared by Bayer Becker, Brian R. Johnson, Professional Land Surveyor #8484 in the State of Ohio, December 9, 2016. The plat of which is recorded in Volume 58 Page 154 of the Butler County Engineers record of Land Surveys.

Prior References: Official Record 8943, Page 765.

Basis of Bearings: Survey Volume 58, Page 86.

All iron pins set are 5/8" diameter rebar 30" long with a plastic cap stamped "Bayer Becker".

EXHIBIT C

Date: December 9, 2016
Description: 7.096 Acres Tract
Liberty Way Innkeepers LLC
Location: West Chester Township
Butler County, Ohio



Situated in the State of Ohio, Between the Miamis, Section 18, Town 3, Range 2, West Chester Township, Butler County and being part of the lands of Liberty Way Innkeepers, LLC, as recorded in Official Record 8943, Page 765 of the Butler County, Ohio, Recorder's Office and being further described as follows:

Beginning at the northeast corner of Lot #8 of the Re-Plat of Lot #2 of Beacon Point as recorded in Plat Envelope 2424, Page A & B of the Butler County, Ohio, Recorder's Office and being on the east line of said Section 18 and being on the westerly right of way of Cox Road and being the **True Point of Beginning**;

thence, leaving the easterly line of said Section 18 and the westerly right of way of said Cox Road and with the northerly boundary of said Re-Plat of Lot #2 of Beacon Point extended, North 79° 28' 55" West, (passing a found 1/2" iron pin at 20.02 feet), 644.13 feet on the northerly line of Lot #1 of Beacon Point, Section One as recorded in Plat Envelope 1832, Page A & B and being on the southeast corner of the lands of Butler County Transportation Improvement District as recorded in Official Record 7986, Page 1109 of the Butler County, Ohio, Recorder's Office and being witnessed by a found 5/8" iron pin (capped "RII"), 0.72 feet north;

thence, leaving the northerly line of Lot #1 of said Beacon Point, Section One and with the easterly boundary of said lands of Butler County Transportation Improvement District and with a curve to the right, having a central angle of 10° 47' 28", a radius of 1865.17 feet, an arc length of 351.29 feet and a chord bearing and distance of North 21° 17' 56" East, 350.77 feet and being witnessed by a found 5/8" iron pin 0.09 feet south boundary;

thence, continuing with the easterly boundary of said lands of Butler County Transportation Improvement District, North 26° 33' 26" East, 231.07 feet to a set 5/8" iron pin;

thence, leaving the easterly boundary of said lands of Butler County Transportation Improvement District and with a new division line through said lands of Liberty Way Innkeepers LLC, South 63° 26' 20" East, 369.17 feet to the westerly boundary of the lands of Hotel Simplified LLC, as recorded in Official Record 8790, Page 1168 of the Butler County, Ohio, Recorder's Office;

thence, continuing with the westerly boundary of said lands of Hotel Simplified LLC, South 05° 39' 50" West, 5.24 feet to a found 5/8" iron pin (capped "Bayer Becker") and being the southwest corner of said lands of Hotel Simplified LLC;

thence, with the southerly boundary of said lands of Hotel Simplified, LLC, South 81° 38' 29" East, (passing a found 5/8" iron pin at 120.13 feet on the easterly line of said section 18) 145.80 feet to a set 5/8" iron pin on the southerly boundary line of said Hotel Simplified, LLC;

thence, with the southerly boundary of said lands of Hotel Simplified, LLC, South 51° 32' 53" East, 119.73 feet to a set 5/8" iron pin on the westerly right of way of Cox Road;

thence, leaving the southerly line of said lands of Hotel Simplified, LLC, with the westerly right of way of said Cox Road, and with a curve to the left, having a central angle of 19° 41' 55", a radius of 700.00

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feet, an arc length of 240.67 feet and a chord bearing and distance of South 29° 17' 22" West, 239.48 feet to a set 5/8" iron pin on the easterly line of said Section 18;

thence, with the easterly line of said Section 18 and continuing with said westerly right of way of said Cox Road, South 05° 39' 50" West, 133.09 feet to the **True Point of Beginning** containing 309,086 square feet or 7.096 acres of land more or less, of which 6.659 acres of land are located within Section 18 and 0.437 acres of land are located within Section 12 and being subject to all legal highway, easements, restrictions and agreements of record.

The above description was prepared from a field survey prepared by Bayer Becker, Brian R. Johnson, Professional Land Surveyor #8484 in the State of Ohio, December 9, 2016. The plat of which is recorded in Volume 58 Page 154 of the Butler County Engineers record of Land Surveys.

Prior References: Official Record 8943, Page 765.

Basis of Bearings: Survey Volume 58, Page 86.

All iron pins set are 5/8" diameter rebar 30" long with a plastic cap stamped "Bayer Becker".



EXHIBIT D



Image ID: 000009699770 Type: OFF

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File# 2017-00003714

BK 8995 PG 908

PARCEL I:

Situated in the County of Butler in the State of Ohio and in the Township of West Chester, in the northeast quarter of Section 18, Town 3, Range 2, MRS and being part of a 92.42 acre tract as recorded in Deed Book 308, Page 122 of the deed records of said County, being more particularly bounded and described as follows:

Beginning at an iron pin in the northeast corner of said Section 18, and in the centerline of the Hamilton-Mason Road, said pin also is the northeast corner of the above described 92.42 acre tract; thence with the east line of Section 18, South 4 deg. 34' West for a distance of 364.00 feet to an iron pin; thence North 86 deg. 00' West for a distance of 120.00 feet to an iron pin; thence North 4 deg. 34' East for a distance of 364.00 feet to an iron pin in the north line of Section 18 and in the centerline of the Hamilton-Mason Road; thence with the north line of Section 18, South 86 deg. 00' East for a distance of 120.00 feet to the place of beginning, containing 1.003 acres of land, more or less, subject to all legal highways.

Subject to conditions, easements and restrictions of record.

Parcel No. M5610-020.000-001.

PARCEL II:

Situated in Section 18, Town 3, Range 2, West Chester Township, Butler County, Ohio and being part of an original 12.152 acre parcel as conveyed to Tyler's Place Associates, LLC, as recorded in Official Record 7367, Page 2323, of the Butler County Recorder's Office, containing 0.353 acres further described as follows:

Begin at a point found by measuring from the northeast corner of said Section 18, said corner also on the centerline of Hamilton-Mason Road; thence, departing said centerline, with said section line, South 02 deg. 41' 24" West, passing the southerly right of way of said Hamilton-Mason Road at 85.37 feet for a total distance of 365.04 feet to an existing 5/8" iron pin on the southeast corner of a 1.003 acre parcel, as conveyed to Butler County Transportation Improvement District, as recorded in Official Record 7874, Page 548, and a point on the westerly line of a 3.370 acre parcel, as conveyed to Butler County Transportation Improvement District, as recorded in Official Record 7739, Page 1123, said pin being the true point of beginning;

Thence from the true point of beginning thus found, departing said 1.003 acre parcel, continuing with said 3.370 acre parcel, and said section line, South 02 deg. 41' 24" West, 131.54 feet to a set 5/8" iron pin;



Image ID: 000009699771 Type: OFF

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File# 2017-00003714

BK 8995 PG 909

Thence departing said section line, and said 3.370 acre parcel, with a new division line, the following two courses: North 84 deg. 36' 56" West, 120.13 feet to a set 5/8" iron pin;

Thence North 02 deg. 41' 24" East, 124.71 feet to an existing 5/8" iron pin on the southwest corner of said 1.003 acre parcel;

Thence departing said new division line, with said 1.003 acre parcel, South 87 deg. 52' 36" East, 120.00 feet to the true point of beginning containing 0.353 acres of land subject to all easements and right of way of record.

The above description was prepared from a survey prepared by Bayer Becker, Jeffrey O. Lambert, Registered Surveyor #7568 in the State of Ohio, March 12, 2008.

The Plat of which is recorded in Volume 52, Page 31, of the Butler County Engineer's Records.

Parcel No. M5610-020.000-147.

PARCEL III:

Situated in the State of Ohio, County of Butler, Township of West Chester and located in Section 12, Township 3, Range 2, Between the Miamis, and being part of that tract of land conveyed to MetroParks of Butler County by deed of record in Volume 6448, Page 3132, all references are to records of the Butler County, Ohio Recorder's Office, said 3.370 acres being more particularly bounded and described as follows:

Beginning for reference at a railroad spike set at the northwesterly corner of said Section 12, also being the northeasterly corner of Section 18 and in the southerly line of Section 7;

thence South 5 deg. 38' 56" West, with the westerly line of said Section 12, and the easterly line of Section 18, a distance of 82.61 feet to an iron pin set in the southerly right of way line of Hamilton-Mason Road at the northeasterly corner of a tract of land conveyed to Mark Sennet and Rebecca A. Sennet by deed of record in Official Record 6838, Page 191, said iron pin being the TRUE POINT OF BEGINNING for the tract described herein;

thence with the said right of way line the following courses:

South 82 deg. 11' 21" East, a distance of 193.93 feet to an iron pin set; and

South 63 deg. 13' 34" East, a distance of 210.35 feet to an iron pin set in the westerly right of way line of Cox Road;

thence with the said westerly right of way line of Cox Road and crossing the said MetroParks of Butler County tract the following courses:

South 28 deg. 08' 02" West, a distance of 18.13 feet to an iron pin set;



Image ID: 000009699772 Type: OFF
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File# 2017-00003714

BK 8995 PG 910

South 38 deg. 27' 45" West, a distance of 506.89 feet to an iron pin set at the point of curvature of a curve to the left;

Southwestwardly with the arc of said curve, (Delta = 30 deg. 53' 44", Radius = 681.62 feet, Arc Length = 367.55 feet) a chord bearing and distance of South 23 deg. 00' 52" West, a distance of 363.11 feet to an iron pin set in the westerly line of the said MetroParks of Butler County tract, the westerly line of said Section 12, and in the easterly line of said Section 18, the same also being the southeasterly corner of a tract of land conveyed to Edward J. Keefe by deed of record in Deed Book 1361, Page 223;

thence North 5 deg. 38' 56" East, with the westerly line of the said MetroParks of Butler County tract, the westerly line of said Section 12, the easterly line of said Section 18, the same also being the easterly line of the said Edward J. Keefe tract and the easterly line of the said Mark Sennet and Rebecca A. Sennet tract, a distance of 872.45 feet to the TRUE POINT OF BEGINNING, containing 3.370 acres of land, more or less.

The bearing cited in the description are based on the Ohio State Plane Coordinate System, South Zone as per NAD 83.

The above description is based on a field survey performed under the direction of Mark S. Ward P.S. in September of 2005.

All iron pins set are 3/4 inch inside diameter iron pipes with a yellow plastic plug inscribed RII placed in the top end.

SAVE AND EXCEPTING THEREFROM the following described property conveyed to Tyler's Place Associates, LLC by General Warranty Deed recorded in Volume 8111, Page 1807 of the Butler County, Ohio Official Records:

Situated in Section 12, Town 3, Range 2, West Chester Township, Butler County, Ohio and being part of an original 3.370 acre parcel as conveyed to Butler County Transportation Improvement District, as recorded in Official Record 7739, Page 1123, of the Butler County Recorder's Office, containing 0.437 acres further described as follows:

Begin at a point found by measuring from the northwest corner of said Section 12, said corner also on the centerline of Hamilton-Mason Road; thence, departing said centerline, with said section line, South 02 deg. 41' 24" West, passing the southerly right of way of said Hamilton-Mason Road at 85.37 feet for a total distance of 496.59 feet to a set 5/8" iron pin on a northeasterly corner of a 12.152 acre parcel as conveyed to Tyler's Place Associates, LLC, as recorded in Official Record 7367, Page 2323, said pin being the true point of beginning;

thence from the true point of beginning thus found, departing said Tyler's Place Associates, with a new division line, the following two courses: South 84 deg. 36' 56" East, 25.67 feet to a set 5/8" iron pin;



Image ID: 000009699773 Type: OFF

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BK 8995 PG 911

thence South 54 deg. 31' 20" East, 119.73 feet to a set 5/8" iron pin on the westerly dedicated right of way of Cox Road;

thence departing said new division line, with said dedicated right of way, the following two courses: South 35 deg. 29' 16" West, 55.99 feet;

thence with a curve to the left, having a radius of 700.00 feet, an arc length of 240.67 feet, (Chord = South 26 deg. 18' 55" West, 239.48 feet), to a set 5/8" iron pin at a point on the easterly line of said Tyler's Place Associates and said section line;

thence departing said right of way, with Tyler's Place Associates, and said section line, North 02 deg. 41' 24" East, 332.52 feet to the true point of beginning containing 0.437 acres of land of which 0.084 acres is Cox Road right of way easement for a net of 0.353 acres of land subject to all easements and right of way of record.

The above description was prepared from a survey prepared by Bayer Becker, Jeffrey O. Lambert, Registered Surveyor #7568 in the State of Ohio, March 12, 2008.

The Plat of which is recorded in Volume 52 Page 31, of the Butler County Engineer's Records.

Parcel No. M5610-015.000-022.

EXHIBIT E

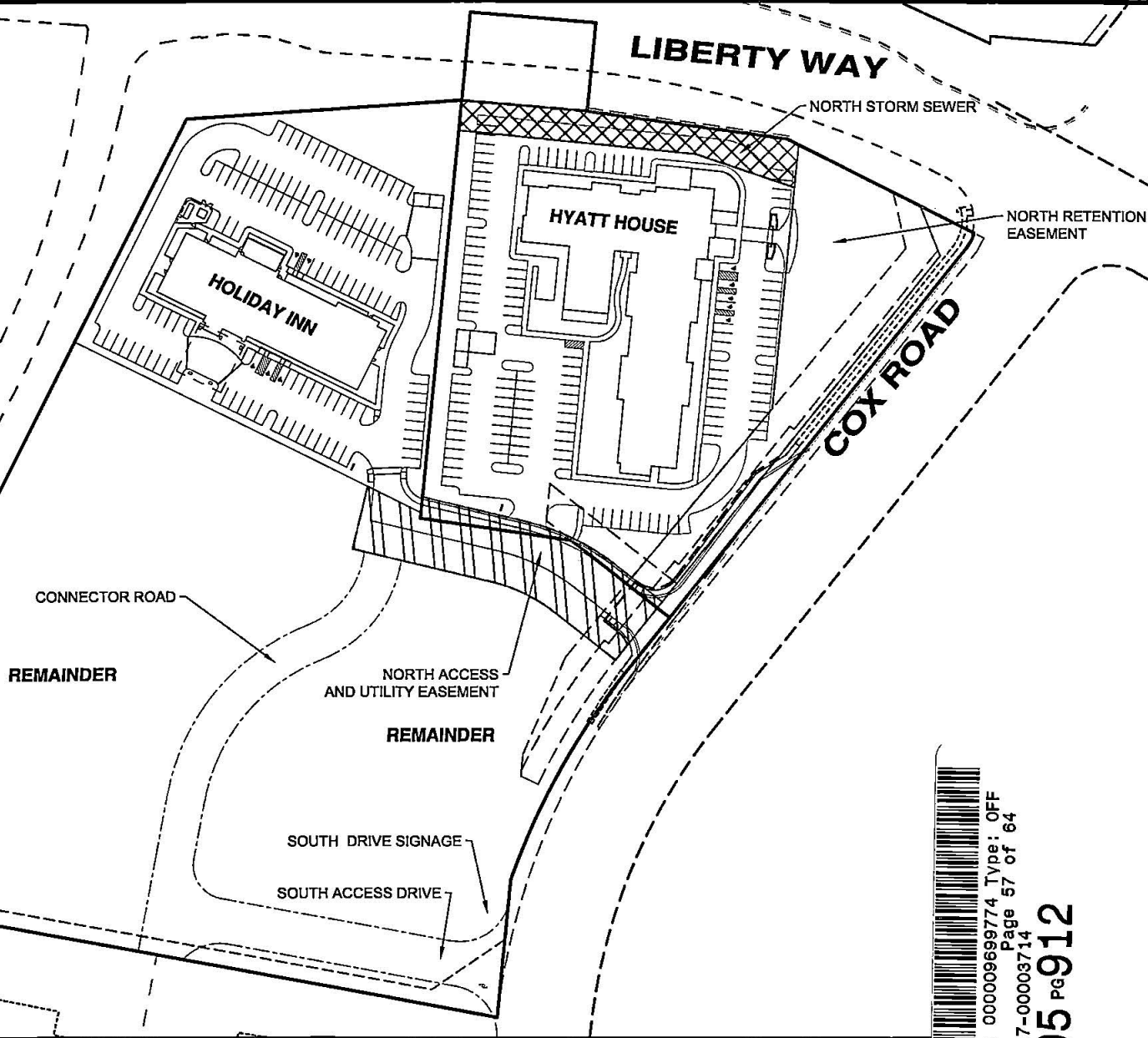


Image ID: 000009699774 Type: OFF
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BK 8995 Pg 912



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THE FIELDS AT LIBERTY WAY

COX ROAD AND LIBERTY WAY
WEST CHESTER TOWNSHIP, BUTLER COUNTY OHIO
SECTION 12, 18, TOWN 3, RANGE 2

EXHIBIT "E"

Drawing:	15M040-000 CD HIX
Scale:	1"=100'
Drawn by:	MJL
Checked By:	MJL
Issue Date:	12-9-16

Date: December 13, 2016
Description: Access & Utility Easement
Location: West Chester Township
Butler County, Ohio



Situated in the State of Ohio, Between the Miamis, Section 18, Town 3, Range 2, and Section 12, Town 3, Range 2, West Chester Township, Butler County and being an Access & Utility Easement in part of the lands of Liberty Way Innkeepers, LLC, as recorded in Official Record 8943, Page 765 of the Butler County, Ohio, Recorder's Office, and being part of the lands of Hotel Simplified, LLC, as recorded in Official Record 8790, Page 1168 of the Butler County, Ohio, Recorder's Office and being further described as follows:

Commencing at the northeast corner of Lot #8 of the Re-Plat of Lot #2 of Beacon Point as recorded in Plat Envelope 2424, Page A & B of the Butler County, Ohio, Recorder's Office, being the southeast corner of said lands of Liberty Way Innkeepers, LLC, being on the east line of said Section 18 and being on the westerly right of way of Cox Road, thence, leaving the northeast corner of said Lot #8 and the easterly line of said Section 18 and with westerly right of way of said Cox Road, North 05° 39' 50" East, 133.09 feet; thence, with a curve to the right, having a central angle of 19° 41' 55", a radius of 700.00 feet, an arc length of 240.67 feet and a chord bearing and distance of North 29° 17' 22" East, 239.48; thence, North 38° 27' 33" East, 55.99 feet; thence, leaving the westerly right of way of said Cox Road, North 51° 32' 53" West, 14.99 feet; thence, North 38° 24' 25" East, 7.61 feet to the **True Point of Beginning**;

thence, South 38° 24' 25" West, 72.00 feet;

thence, North 51° 32' 10" West, 73.87 feet;

thence, with a curve to the left, having a central angle of 25° 00' 00", a radius of 156.50 feet, an arc length of 68.29 feet and a chord bearing and distance of North 64° 02' 10" West, 67.75 feet;

thence, North 76° 32' 10" West, 136.06 feet;

thence, North 13° 27' 50" East, 61.86 feet;

thence, South 63° 26' 20" East, 56.90 feet;

thence, North 05° 42' 51" East, 15.17 feet;

thence, South 76° 32' 10" East, 101.62 feet;

thence, with a curve to the right, having a central angle of 12° 30' 00", a radius of 220.50 feet, an arc length of 48.11 feet and a chord bearing and distance of South 70° 17' 11" East, 48.01 feet;

thence, South 51° 32' 10" East, 37.26 feet to the **True Point of Beginning** containing 19,150 square feet or 0.440 acres of land.

The above description was prepared from an Exhibit prepared by Bayer Becker, Brian R. Johnson, Professional Land Surveyor #8484 in the State of Ohio, December 13, 2016.

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Date: December 13, 2016
Description: Storm Easement
Location: West Chester Township
Butler County, Ohio



Situated in the State of Ohio, Between the Miamis, Section 18, Town 3, Range 2, and Section 12, Town 3 Range 2, West Chester Township, Butler County and being a Storm Easement in part of the lands of Hotel Simplified, LLC, as recorded in Official Record 8790, Page 1168 of the Butler County, Ohio, Recorder's Office and being further described as follows:

Commencing at the northeast corner of Lot #8 of the Re-Plat of Lot #2 of Beacon Point as recorded in Plat Envelope 2424, Page A & B of the Butler County, Ohio, Recorder's Office, being the southeast corner of the lands of Liberty Way Innkeepers, LLC as recorded in Official Record 8943, Page 765 of the Butler County, Ohio, Recorder's Office, being on the east line of said Section 18 and being on the westerly right of way of Cox Road, thence, leaving the northeast corner of said Lot #8 and the easterly line of said Section 18 and with westerly right of way of said Cox Road, North 05° 39' 50" East, 133.09 feet; thence, with a curve to the right, having a central angle of 19° 41' 55", a radius of 700.00 feet, an arc length of 240.67 feet and a chord bearing and distance of North 29° 17' 22" East, 239.48; thence, North 38° 27' 33" East, 55.99 feet; thence, leaving the westerly right of way of said Cox Road, North 51° 32' 53" West, 14.99 feet; thence, North 38° 24' 25" East, 7.61 feet; thence, North 38° 27' 59" East 426.30 feet, thence, North 21° 31' 53" West, 51.51 feet to the southerly right of way of Liberty Way; thence, with the southerly right of way of said Liberty Way, North 63° 13' 21" West, 129.92 feet to the **True Point of Beginning**;

thence, South 05° 40' 07" West, 41.31 feet;

thence, North 71° 13' 52" West, 98.77 feet;

thence, North 84° 19' 53" West, 227.80 feet;

thence, North 05° 41' 42" East, 28.94 feet;

thence, South 85° 09' 27" East, 120.00 feet;

thence, South 82° 10' 52" East, 192.27 feet;

thence, South 63° 24' 55" East, 12.70 feet to the **True Point of Beginning** containing 10,103 square feet or 0.232 acres of land.

The above description was prepared from an Exhibit prepared by Bayer Becker, Brian R. Johnson, Professional Land Surveyor #8484 in the State of Ohio, December 13, 2016.



Image ID: 000009699776 Type: OFF

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File# 2017-00003714

BK 8995 PG 914

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859-261-1113

<http://www.bayerbecker.com>

Date: December 13, 2016
Description: Retention Easement
Location: West Chester Township
Butler County, Ohio



Situated in the State of Ohio, Between the Miamis, Section 12, Town 3, Range 2, West Chester Township, Butler County and being a Retention Easement in part of the lands of Hotel Simplified, LLC, as recorded in Official Record 8790, Page 1168 of the Butler County, Ohio, Recorder's Office and being further described as follows:

Commencing at the northeast corner of Lot #8 of the Re-Plat of Lot #2 of Beacon Point as recorded in Plat Envelope 2424, Page A & B of the Butler County, Ohio, Recorder's Office, being the southeast corner of the lands of Liberty Way Innkeepers, LLC as recorded in Official Record 8943, Page 765 of the Butler County, Ohio, Recorder's Office, being on the east line of said Section 18 and being on the westerly right of way of Cox Road, thence, leaving the northeast corner of said Lot #8 and the easterly line of said Section 18 and with westerly right of way of said Cox Road, North 05° 39' 50" East, 133.09 feet; thence, with a curve to the right, having a central angle of 19° 41' 55", a radius of 700.00 feet, an arc length of 240.67 feet and a chord bearing and distance of North 29° 17' 22" East, 239.48; thence, North 38° 27' 33" East, 55.99 feet; thence, leaving the westerly right of way of said Cox Road, North 51° 32' 53" West, 14.99 feet; thence, North 38° 24' 25" East, 7.61 feet to the **True Point of Beginning**;

thence, North 51° 32' 10" West, 37.26 feet;

thence, North 39° 28' 38" East, 211.14 feet;

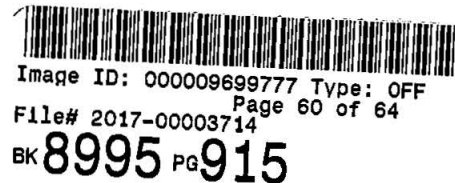
thence, North 05° 40' 07" East, 255.34 feet to the southerly right of way of Liberty Way;

thence, with the southerly right of way of said Liberty Way, South 63° 13' 21" East, 129.92 feet;

thence, South 21° 31' 53" East, 51.51 feet to the westerly right of way of said Cox Road;

thence, leaving said southerly right of way of Liberty Way and with the westerly right of way of said Cox Road, South 38° 27' 59" West, 426.30 feet to the **True Point of Beginning** containing 31,786 square feet or 0.730 acres of land.

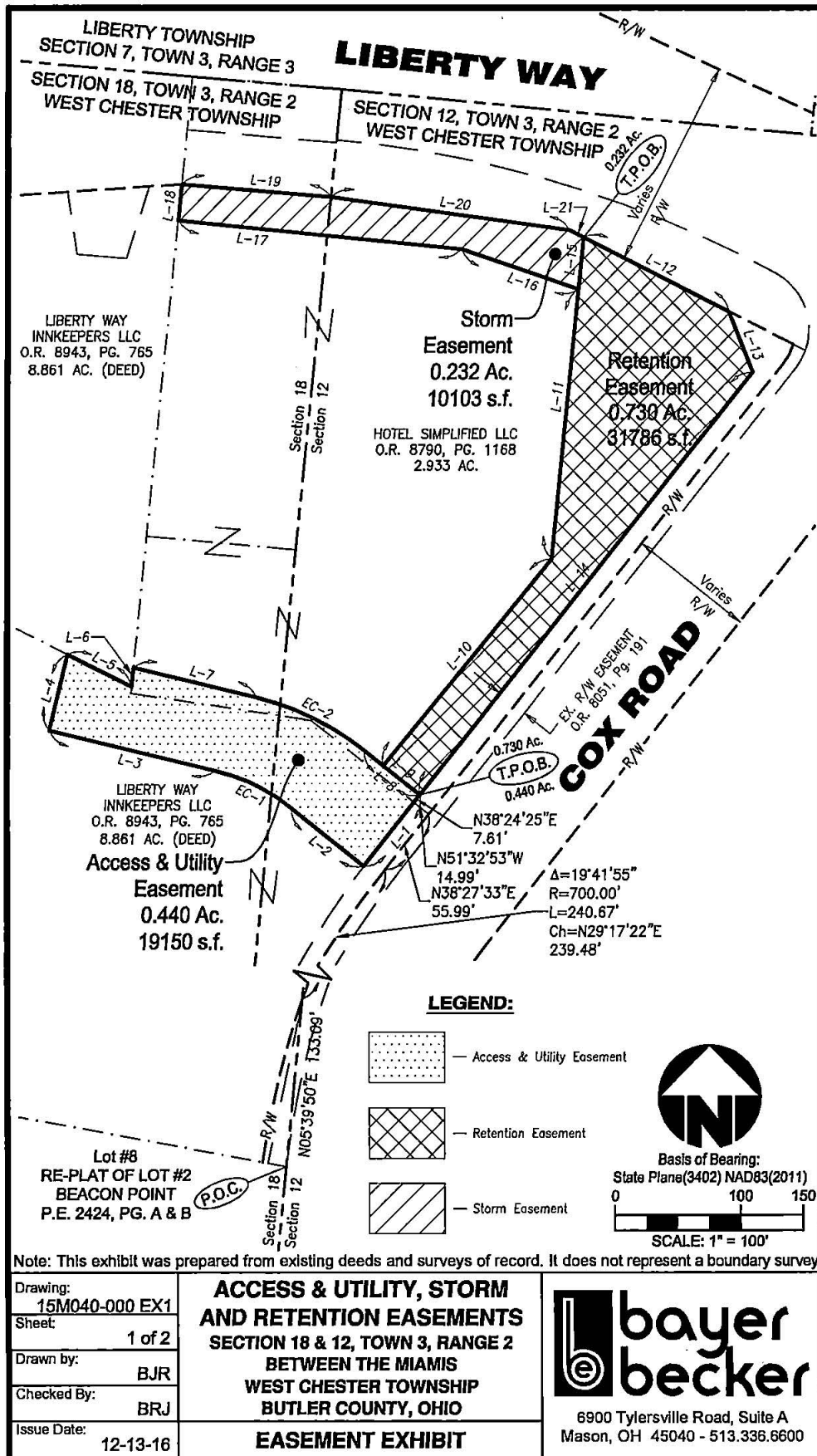
The above description was prepared from an Exhibit prepared by Bayer Becker, Brian R. Johnson, Professional Land Surveyor #8484 in the State of Ohio, December 13, 2016.



6900 Tylersville Road, Suite A 110 South College Ave, Suite 101 1404 Race Street, Suite 204
Mason, OH 45040 Oxford, OH 45056 Cincinnati, OH 45202
513-336-6600 513-523-4270 513-834-6151

209 Grandview Drive
Fort Mitchell, KY 41017
859-261-1113

<http://www.bayerbecker.com>



EASEMENT LINE TABLE		
Line	Direction	Distance
L-1	S38°24'25"W	72.00'
L-2	N51°32'10"W	73.87'
L-3	N76°32'10"W	136.06'
L-4	N13°27'50"E	61.86'
L-5	S63°26'20"E	56.90'
L-6	N05°42'51"E	15.17'
L-7	S76°32'10"E	101.62'
L-8	S51°32'10"E	37.26'
L-9	N51°32'10"W	37.26'
L-10	N39°28'38"E	211.14'
L-11	N05°40'07"E	214.03'

EASEMENT LINE TABLE		
Line	Direction	Distance
L-12	S63°13'21"E	129.92'
L-13	S21°31'53"E	51.51'
L-14	S38°27'59"W	426.30'
L-15	S05°40'07"W	41.31'
L-16	N71°13'52"W	98.77'
L-17	N84°19'53"W	227.80'
L-18	N05°41'42"E	28.94'
L-19	S85°09'27"E	120.00'
L-20	S82°10'52"E	192.27'
L-21	S63°24'55"E	12.70'

EASEMENT CURVE TABLE				
Curve	Delta	Radius	Length	Chord
EC-1	25°00'00"	156.50'	68.29'	N64°02'10"W 67.75'
EC-2	12°30'00"	220.50'	48.11'	S70°17'11"E 48.01'


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 File# 2017-00003714 Page 62 of 64
 BK 8995 PG 917

Note: This exhibit was prepared from existing deeds and surveys of record. It does not represent a boundary survey.

Drawing:
 15M040-000 EX1
 Sheet:
 1 of 2
 Drawn by:
 BJR
 Checked By:
 BRJ
 Issue Date:
 12-13-16

**ACCESS & UTILITY, STORM
 AND RETENTION EASEMENTS**
SECTION 18 & 12, TOWN 3, RANGE 2
BETWEEN THE MIAMIS
WEST CHESTER TOWNSHIP
BUTLER COUNTY, OHIO
EASEMENT EXHIBIT


 6900 Tylersville Road, Suite A
 Mason, OH 45040 - 513.336.6600

EXHIBIT F

Fields at Liberty Way- Site Development Costs

	Est. Value	Hyatt House	HIX (Developer)	Comments:
North Access Roadway Easement	\$ 240,699.00	50%	50%	Based on 8/31/16 Engineer's Estimate.
Cost Share:		\$ 120,349.50	\$ 120,349.50	
North Storm Sewer Easement	\$ 25,680.00	0%	100%	Based on 8/8/16 Engineer's Estimate.
Cost Share:		\$	\$ 25,680.00	
Adjusted Land Value for Roadway	\$ 30,000.00	100%	0%	HIX land value minus Hyatt House land used for shared roadway.
Cost Share:		\$ 30,000.00	\$	
Secondary Fire Access Drive & Easement	\$ 56,665.00	37%	63%	Based on 8/31/16 Engineer's Estimate.
Cost Share:		\$ 20,966.05	\$ 35,698.95	
North Retention Easement (Wet Basin)	\$ 25,880.00	50%	50%	Based on 8/8/16 Engineer's Estimate.
Cost Share:		\$ 12,940.00	\$ 12,940.00	
ESTIMATED TOTALS:	\$ 378,924.00	\$ 184,255.55	\$ 194,668.45	

Note: All costs above (excluding Land Costs), are subject to adjustment based on the completion of engineering drawings and generation of final contract price based on subcontractor bidding plus HiFive costs and fee.

Lots of land situated Below Tyler's Place Associates LLC property.

