

**DECLARATION AND AGREEMENT OF COVENANTS,  
AND EASEMENT**

This Declaration and Agreement of Covenants and Easement (“Agreement”/ “Instrument”) is made this \_\_\_ day of \_\_\_\_\_ 2012 by and between **LIBERTY CROSSING LLC**, an Ohio Limited Liability Company (“Liberty Crossing”) and the **CITY OF COLUMBUS, OHIO**, an Ohio municipal corporation (the “City”).

**RECITALS**

A. The City is the owner of certain real property located in Franklin County, City of Columbus, State of Ohio as described in Exhibit “A” attached hereto (the “City Property”). Currently existing on the property are storm water detention basins (the “Storm Water Basins”).

B. Liberty Crossing is the owner of real property adjacent to the City Property located in Franklin County, City of Columbus, State of Ohio as described in Exhibit “B” attached hereto (the “Liberty Property”). Liberty Crossing intends to develop the Liberty Property for commercial and multi-family uses.

C. The Liberty Property is or will be subject to an Ohio EPA General Permit which will require post construction, operation and maintenance plans for storm water facilities and practices and will require that implementation of the plan(s) be ensured through the recording of a legally binding instrument(s).

D. This instrument is intended to fulfill that requirement in order for the development on the Liberty Property to utilize the Storm Water Basins located on the City Property.

For consideration given and the promises made in this Agreement, the City and Liberty Crossing hereby covenant, agree, and convey as follows.

1. Liberty Crossing has submitted or will submit and the City, through its Department of Public Utilities, Division of Sewerage and Drainage, has approved or will approve post construction, operation and maintenance schedule and storm sewer construction plans, collectively (the “Plans”), required for the development on the Liberty Property or parts thereof. A copy of the Plans is attached hereto and marked Exhibit “C” and identified as City of Columbus Contract

Drawing CC-16072. Liberty Crossing, its successors and assigns, covenants and agrees that it shall be the sole designated entity for the storm water inspection and maintenance responsibilities as set forth in the Plans and further, within the Easement Area conveyed below herein, keeping all inlets and outlets free and clear of debris, repairing any damaged structures, maintaining sediment accumulation in the bottom of the Storm Water Basin, repairing undercut or eroded areas, maintaining any hardscape surfaces, lawncare maintenance, and repairing any damaged landscape areas. Liberty Crossing, its successor and assigns, accordingly commits to undertake any routine or non-routine inspection and maintenance tasks set forth in the City's Stormwater Drainage Manual. Liberty Crossing, its successors and assigns, shall be responsible for causing execution and compliance with the approved Plans.

2. Liberty Crossing, its successors and assigns, acknowledges and agrees that neither the City nor the Ohio Environmental Protection Agency shall be responsible for the inspection and maintenance tasks set forth in maintenance plans approved for the Liberty Property. Liberty Crossing, its successors and assigns, shall forever indemnify and hold harmless the City and all of its agents, employees and representatives from and against all claims, damages, losses, suits, and actions, including attorney's fees, arising or resulting, in any manner, from Liberty Crossing's, its successors and assigns, actions or inactions associated with any covenants, promises, obligations or terms of this Agreement. **All costs incurred by the City in enforcing the terms of this Agreement against Liberty Crossing, its successors and assigns, including, without limitations, costs and expenses of suit and attorney's fees, and any costs of restoration necessitated by Liberty Crossing, its successors and assigns, violation of the terms of this Agreement shall be borne by Liberty Crossing, and/or its successor and assigns.**

3. In consideration of the promises made herein, the City does hereby quitclaim, for so long as it is used for the purposes herein stated, and subject to the conditions, restrictions and limitations contained herein, unto Liberty Crossing, its successors and assigns, an appurtenant, nonexclusive access easement onto that portion of the City's Property described in Exhibit "D" attached hereto, (the "Easement Area") for the sole purpose of the installation, modification, repair and maintenance of storm sewer lines, Storm Water Basins, flood routing swales, and appurtenant structures and improvements in, over, under, across and through the Easement Area such that the Liberty Property may only use the Storm Water Basins on the City Property pursuant to the Plans approved by the City's Department of Public Utilities, for the benefit of the Liberty Property. The City expressly reserves unto itself a reversionary interest in the herein described Easement Area. Without the City's written consent by the Directors of the Department of Recreation and Parks and Department of Public Utilities, Liberty Crossing shall not share, lease, assign, sell, convey, or transfer all or any part of the easement or rights granted herein. In the event Liberty Crossing should abandon, disuse, share, lease, sell, assign, convey or transfer all or any part of the easement or rights granted herein, such easement and all rights connected therewith may be terminated by the City and revert to the City and the City may file an Affidavit On Facts Relating To Title for the purpose of giving public notice of any such reversion. Upon termination and reversion as stated, Liberty Crossing, its successors and assigns, shall remove all improvements from the Easement Area and shall execute and deliver a recordable instrument of conveyance returning the herein described easement to the City releasing any and all rights which may have been conveyed hereby. The rights granted herein are nonexclusive and shall not be construed to interfere with or restrict the City's paramount right to use the described Easement Area for any

and all public purposes or construct and maintain property improvements in, over, under, across and through said real property.

4. Consistent with the purposes stated herein, Liberty Crossing shall have the right, with prior written notice to and written approval from the City's Department of Public Utilities and Department of Recreation and Parks to enter the Easement Area and to construct, install, modify, and repair such appurtenants necessary for the use of the Storm Water Basins in the Easement Area. All costs and expenses associated with such construction, installation, replacement, repair and maintenance of such improvements and appurtenants shall be borne by Liberty Crossing, its successors and assigns. After any entry onto the Easement Area, Liberty Crossing, its successors and assigns, shall restore the Easement Area to its former condition including, without limitation, grading of earth, repair or replacement of concrete or asphalt and planting of grass or plants.

5. The easement rights created by this Agreement shall not be extinguished by merger of estates even if the same person or entity owns both the Liberty Property and the Easement Area unless and until such then owners record an instrument with the County Recorder specifically declaring and acknowledging the merger and extinguishment of such easement and rights.

6. The covenants, restrictions, and easements set forth in this Agreement shall be perpetual and shall run with both the Liberty Property and the City Property for the benefit of the parties hereto and their successors and assigns, together with the City and shall be enforceable by all such beneficiaries. This Agreement shall not be amended, released or extinguished without the prior written consent of the City's Directors of the Department of Recreation and Parks and Department of Public Utilities.

7. If Liberty Crossing, its successors or assigns, as owner of the Liberty Property, should fail to observe or fulfill any promise, covenant or restriction set forth herein, the City shall have the right to enforce, by proceedings at law or in equity, all promises, restrictions, conditions and covenants set forth herein. Failure by the City to proceed with such enforcement shall in no event be deemed a waiver of the right to enforce at a later date the original violation or a subsequent violation.

8. Each provision of this Agreement and the application thereof are hereby declared to be independent of and severable from the remainder of this Agreement. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement.

9. The terms, conditions and provisions of this Agreement shall be binding upon and inure to the respective heirs, successors and assigns of the parties hereto. The rights, powers, privileges, duties and obligations of Liberty Crossing shall transfer and pass to the successor owners of the Liberty Property and such successors shall be deemed as a party to this Agreement for purposes of this instrument.

10. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept such delivery.

Each party may change from time to time their respective address for notice to the other party. The notice addresses of the parties are as follows:

Liberty Crossing: Liberty Crossing LLC  
470 Olde Worthington Road  
Westerville, Ohio 43082

The City of Columbus: City of Columbus  
Director of Department of Public Utilities  
910 Dublin Road  
Columbus, Ohio 43215

And

City of Columbus  
Director of Department of  
Recreation and Parks  
1111 E. Broad Street  
Columbus, Ohio 43205

With Copy to: City of Columbus  
City Attorney's Office  
Real Estate Division  
109 N. Front Street, 4<sup>th</sup> Flr.  
Columbus, Ohio 43215

11. This Agreement shall be governed by, and construed in accordance with the law of the State of Ohio.

12. This agreement and any rights granted herein are subject to the conditions, obligations, restrictions and limitations contained herein, and Liberty Crossing, for itself and its successors and assigns, shall be deemed to have agreed to and accepted all such conditions, obligations, restrictions and limitations upon execution and Liberty Crossing's use of the easement and/or recordation thereof.

IN WITNESS WHEREOF, the parties have caused this Instrument to be executed this \_\_\_\_ day of \_\_\_\_\_, 2012.

*(Signature Pages to Follow)*

**LIBERTY CROSSING LLC**

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF OHIO

SS:

COUNTY OF FRANKLIN

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012 by \_\_\_\_\_ of Liberty Crossing LLC on its behalf.

\_\_\_\_\_  
Notary Public

**CITY OF COLUMBUS, OHIO**

a municipal corporation

\_\_\_\_\_  
Greg Davies, Director  
Department of Public Utilities

**CITY OF COLUMBUS, OHIO**

a municipal corporation

\_\_\_\_\_  
Alan D. McKnight, Director  
Department of Recreation and Parks

STATE OF OHIO

COUNTY OF FRANKLIN, SS:

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_ 2012 the foregoing instrument was acknowledged before me by Greg Davies, Director, Department of Public Utilities, on behalf of the City of Columbus, Ohio, a municipal corporation.

(seal)

\_\_\_\_\_

Notary Public

STATE OF OHIO

COUNTY OF FRANKLIN, SS:

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_ 2012 the foregoing instrument was acknowledged before me by Alan D. McKnight, Director, Department of Recreation and Parks, on behalf of the City of Columbus, Ohio, a municipal corporation.

(seal)

\_\_\_\_\_

Notary Public

**This instrument prepared by:**  
**CITY OF COLUMBUS, DEPARTMENT OF LAW**  
By: David E. Peterson (1-17-12)  
Real Estate Attorney REV. (1.24.12)  
Real Estate Division  
For: Division of Sewerage and Drainage - Storm  
Re: Jason Sanson and R&P's Maureen Lorenz

