

**DEVELOPMENT AND TAX INCREMENT FINANCING  
DECLARATION OF COVENANTS RUNNING WITH THE LAND AND  
IMPOSITION OF CONTINUING PRIORITY LIEN**

This DEVELOPMENT AND TAX INCREMENT FINANCING DECLARATION OF COVENANTS RUNNING WITH THE LAND AND IMPOSITION OF CONTINUING PRIORITY LIEN (this "Declaration") is made by Lieben Group, LP, an Ohio limited partnership, having its address at 6834 County Road 672, Millersburg, Ohio 44654 (the "Declarant").

WITNESSETH:

WHEREAS, the Declarant has acquired certain parcels of real property located in the City of Galion, Ohio (the "City"), a description of which real property is attached hereto as Exhibit A (the "Parcel"), having acquired such fee simple title by deed recorded in Book 1012, Page 1277, and re-conveyance through a quitclaim deed recorded in Book 1012, Pages 1851-1853 of the record volumes recorded in the Office of the Recorder of Crawford County, Ohio (the "County Recorder"); and

WHEREAS, the City, by its Ordinance No. 2016-16 passed March 22, 2016 (the "Ordinance"), has declared that seventy-five percent (75%) of the increase in the assessed value of the Parcel subsequent to the effective date of the Ordinance (such increase hereinafter referred to as the "Improvement" as further defined in Ohio Revised Code Section 5709.40 and the Ordinance) is a public purpose and is exempt from taxation (such exemption referred to herein as the "TIF Exemption") for a period commencing with the first tax year that begins after the effective date of the Ordinance and in which an Improvement attributable to a new structure first appears on the tax list and duplicate of real and public utility property for the Parcel and ending on the earlier of (a) ten (10) years after such commencement or (b) the date on which the City can no longer require service payments in lieu of taxes, all in accordance with the requirements of Ohio Revised Code Sections 5709.40, 5709.42 and 5709.43 (collectively, the "TIF Statutes") and the Ordinance; and

WHEREAS, the Ordinance provides that the owner of the Parcel shall make service payments in lieu of taxes with respect to any Improvement to that Parcel (the "Service Payments"), all pursuant to and in accordance with the TIF Statutes and the Ordinance; and

WHEREAS, the Declarant and the City agree that the owner of the Parcel shall make minimum service payments with respect to that Parcel (the "Minimum Service Payments", as further described in Section 2 hereof); and

WHEREAS, this Declaration is being made and filed of record in consideration of the Public Improvements (as described in Exhibit B to the Ordinance) being constructed by the City, which Public Improvements the Declarant and the City acknowledge and agree directly benefit the Parcel; and

WHEREAS, this Declaration amends and restates in its entirety the previous Development and Tax Increment Financing Declaration of Covenants Running with the Land and Imposition of Continuing Priority Lien recorded as instrument number 201600189542, Book 1012, Pages 2081-2088 in the Crawford County Records (the "Prior Declaration"), and such Prior Declaration is of no further force and effect; and

NOW, THEREFORE, the Declarant, for itself and its successors and assigns to or of the Parcel, hereby declares that the foregoing recitals are incorporated into this Declaration by this reference and that the Parcel and any improvements thereon will be held, developed, encumbered, leased, occupied, improved, built upon, used and conveyed subject to the terms and provisions of this Declaration:

**Section 1. Private Improvements.** The Declarant agrees to develop the Parcel with the following improvements (collectively, the "Private Improvements") in a manner consistent with the objectives of the final development plan as approved by the City's planning commission, as the same may be amended from time to time, and associated zoning regulations (subject to any waivers, variances, or deviations from such objectives and/or regulations that may be approved by the City): a 62- room hotel with a total estimated tax value of \$4,340,000. Except as set forth above, the Declarant will not otherwise develop or permit the development of the Parcel without the approval of the City.

**Section 2. Service Payments.** The Declarant agrees to make Service Payments for the Parcel due during its period of ownership of the Parcel, all pursuant to and in accordance with the requirements of the TIF Statutes, the Ordinance, this Declaration and any subsequent amendments or supplements thereto.

Service Payments will be made semiannually to the Treasurer of Crawford County, Ohio (or to such county treasurer's designated agent for collection of the Service Payments), on or before the date on which real property taxes would otherwise be due and payable for the Parcel. Any late payments will bear penalties and interest at the then current rate established under Ohio Revised Code Sections 323.121 and 5703.47 or any successor provisions thereto, as the same may be amended from time to time.

Service Payments will be made in accordance with the requirements of the TIF Statutes and the Ordinance and will be in the same amount as the real property taxes that would have been charged and payable against the Improvement to that Parcel had the TIF Exemption not been granted, including any penalties and interest.

In addition to the obligation to make Service Payments, Declarant agrees to a minimum service payment obligation (the "Minimum Service Payment Obligation") for the Parcel, all pursuant to and in accordance with the requirements of the TIF Statutes, Ohio Revised Code Section 5709.91, the Ordinance, this Declaration and any subsequent amendments or supplements thereto. The Minimum Service Payment Obligation constitutes a minimum service payment obligation under Ohio Revised Code Section 5709.91. The total Minimum Service Payment Obligation for any calendar year is \$82,404 and is first due in the calendar year following the year in which the TIF Exemption is effective. The Minimum Service Payment Obligation continues until the end of the calendar year of the expiration of the TIF Exemption. If the Parcel is subdivided, each resultant parcel's share of the Minimum Service Payment Obligation in any calendar year is equal to that resultant parcel's assessed value divided by the assessed value of all resultant parcels, each as recorded on the tax list and duplicate of Crawford County for the preceding calendar year or as reasonably estimated by the City in the absence of such assessed values.

If the Service Payments payable to the City on the Parcel in any calendar year are less than the Minimum Service Payment Obligation, the City will prepare and send an invoice for the amount by which the Minimum Service Payment Obligation for the Parcel exceeds those Service Payments (such difference, the "Minimum Service Payments") to the owner of the Parcel at its registered address for tax bills. The City will invoice any Minimum Service Payments in two installments, and will use good faith efforts to send invoices at such times as to correspond with real property tax bills; provided, that any failure by the City to send such invoices does not excuse the Declarant from its obligations to make Minimum Service Payments. The owner must pay the Minimum Service Payments invoiced to the City pursuant to payment instructions set forth in the invoice in immediately available funds within thirty (30) days of its delivery. The City may assess a 10% administrative fee and interest accruing at an annual rate of 10% on any Minimum Service Payments not paid within thirty-five (35) days of the delivery of the invoice. The City may certify delinquent Minimum Service Payments, fees and interest to the Crawford County Auditor for collection on real property tax bills. Any late payments of the amount so certified will bear penalties and interest at the then current rate established under Ohio Revised Code Sections 323.121 and 5703.47 or any successor provisions thereto, as the same may be amended from time to time.

**Section 3.      Exemption Applications.** The Declarant further agrees to cooperate in the preparation, execution and filing of all necessary applications to obtain from time to time the TIF Exemption and to enable the City to collect Service Payments. The Declarant authorizes the City to file any applications necessary to obtain from time to time the TIF Exemption for the Parcel.

**Section 4. Provision of Information.** The Declarant further agrees to cooperate in all reasonable ways with, and provide necessary and reasonable information to the City to enable the City to submit the status report required by Ohio Revised Code Section 5709.40(I) to the Director of the Ohio Development Services Agency on or before March 31 of each year.

**Section 5. Prohibition of Conversion.** Unless otherwise agreed by the City in writing, the Declarant shall not take any action that will cause the Parcel to be classified as a “parcel that is used or to be used for residential purposes” as described in Ohio Revised Code Section 5709.41(B).

**Section 6. Nondiscriminatory Hiring Policy.** The Declarant agrees to comply with the City’s policies adopted pursuant to Ohio Revised Code Section 5709.832 to ensure that recipients of tax exemptions practice nondiscriminatory hiring in its operations. In furtherance of that policy, each Declarant agrees that it will not deny any individual employment solely on the basis of race, religion, sex, disability, color, national origin or ancestry.

**Section 7. Covenants to Run With the Land.** The Declarant’s obligations under this Declaration, including without limitation its obligation to make Service Payments and Minimum Service Payments, are absolute and unconditional covenants running with the land and are binding and enforceable by the City, and the Declarant shall make all Service Payments and Minimum Service Payments without abatement, diminution or deduction, regardless of any cause or circumstances whatsoever, including, without limitation, any defense, set-off, recoupment or counterclaim which the Declarant may have or assert against the City or anyone acting by or on behalf of the City, or damage to, destruction of or condemnation of the Parcel or any improvements thereto. This Declaration shall survive any foreclosures, bankruptcy, or lien enforcement proceedings.

The Declarant agrees that each of its covenants contained in this Declaration are covenants running with the land and that they will, in any event and without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the City against the Parcel, as applicable, any improvements thereon and the owner of the Parcel, without regard to whether the City has at any time been, remains or is an owner of any land or interest therein to, or in favor of, which these covenants relate. During the term of this Declaration, the Declarant shall cause all instruments of conveyance of interests in all or any portion of the Parcel to subsequent mortgagees, successors, lessees, assigns or other transferees to be made expressly subject to this Declaration. The City has the right in the event of any breach of any covenant herein contained to exercise all of the rights and remedies and to maintain all actions or suits at law or in equity or in other proper proceedings to which it may be entitled to cure that breach, including, without limitation, temporary or permanent injunction or specific performance without the necessity of proof of actual damage or inadequacy of any legal remedy.

The Declarant further agrees that all covenants herein, whether or not these covenants are included by any owner of the Parcel in any deed to that owner's successors and assigns, are binding upon each subsequent owner and are enforceable by the City, and that any future owner of the Parcel, or any successors or assigns of the Declarant, will be treated as the Declarant for all purposes of this Declaration.

The Declarant further agrees that its covenants herein will remain in effect so long as the Service Payments can be collected pursuant to the TIF Statutes and the Ordinance unless otherwise modified or released in writing by the City in a written instrument filed in the Official Records of the County Recorder.

The Declarant further agrees that the covenants herein have priority over any other lien or encumbrance on the Parcel and any improvements thereon, except for such title exceptions as are approved in writing by the City, and the Declarant will cause any and all holders of mortgages or other liens existing on the Parcel as of the time of recording of this Declaration to subordinate such mortgage or lien to this Declaration. The Declarant acknowledges that the provisions of Ohio Revised Code Section 5709.91, which specify that the Service Payments and the Minimum Service Payments will be treated in the same manner as taxes for all purposes of the lien described in Ohio Revised Code Section 323.11 including, but not limited to, the priority of the lien and the collection of Service Payments and Minimum Service Payments, applies to the Parcel and any improvements thereon. It is the further intention and agreement of the Declarant, as owner of fee title to the Parcel and on behalf of all future owners, that this Declaration constitutes and be deemed to be a lien encumbering and running with the Parcel to secure the obligations of the Declarant to make Service Payments and Minimum Service Payments (and, if applicable, pay interest and penalties) and perform other obligations under this Declaration, and is intended to have the same lien rights as real estate taxes and the same priority, and the Declarant shall not contest those lien rights or priority. In furtherance of the foregoing, the City may, upon the Declarant's default of its obligations, and without limiting any other right or remedy otherwise available to the City, foreclose upon that lien pursuant to the procedures and requirements of Ohio law relating to either mortgages, liens or delinquent real estate taxes, and the Declarant will not contest the validity of any such lien or procedures, or any claim by the City that the Minimum Service Payments constitute "minimum service payment obligations" for purposes of Ohio Revised Code Section 5709.91

At the City's option and at its request, the Declarant hereby agrees to provide such title evidence with respect to the Parcel, at no cost to the City, as is necessary to demonstrate to the City's satisfaction that this Declaration is prior and superior to any other liens, encumbrances or other title exceptions, except for those that are approved in writing by the City. The Declarant agrees for itself and its successors, assigns and transferees, to execute any further agreements, documents or instruments as may be reasonably necessary to fully effectuate the purpose and intent of this Declaration to the extent permitted by this Declaration and in compliance with all laws and ordinances controlling this Declaration.

Any provision of this Declaration that is prohibited or unenforceable is ineffective only to the extent of the prohibition or unenforceability, without invalidating the remaining provisions.

IN WITNESS WHEREOF, each Declarant has caused this Declaration to be executed and effective as of May 6, 2016.

✓ **LIEBEN GROUP, LP**, an Ohio limited partnership



Name: *Patrick McCaffrey*  
Title: *Authorized Agent*

Accepted:

  
\_\_\_\_\_  
Mayor

STATE OF OHIO )  
 ) ss  
COUNTY OF CRAWFORD )

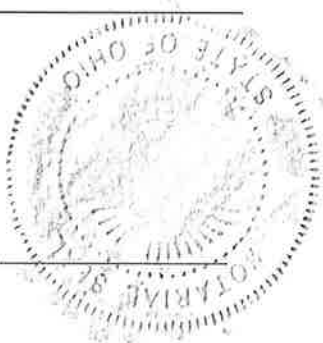
The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that Patrick McCaffery, the Authorized Agent of Lieben Group, LP, an Ohio limited partnership, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 6th day of May, 2016.

Michael W. ...  
Notary Public

My Commission Expires:

10/3/17



This instrument is prepared by:  
Allison Binkley  
Squire Patton Boggs (US) LLP  
2000 Huntington Center  
41 South High Street  
Columbus, Ohio 43215



ENGINEERS •  
SURVEYORS

1810 E. Mansfield St.  
P.O. Box 325  
Bucyrus, Ohio 44820  
(419) 562-7757  
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**LEGAL DESCRIPTION FOR THE CITY OF GALION  
3.000 ACRES  
CITY OF GALION, CRAWFORD COUNTY, OHIO**

SITUATED IN THE STATE OF OHIO, COUNTY OF CRAWFORD, CITY OF GALION, BEING ALL OF OUT LOT 919 OF THE CONSECUTIVELY NUMBERED LOTS OF SAID CITY, FORMERLY DESCRIBED AS FOLLOWS;

SITUATED IN THE STATE OF OHIO, COUNTY OF CRAWFORD, CITY OF GALION, BEING PART OF OUT LOT 896 OF THE CONSECUTIVELY NUMBERED LOTS OF SAID CITY, A 3.000 ACRE TRACT OUT OF AN ORIGINAL TRACT CONVEYED TO DOYLE W. KELLER OF RECORD IN OFFICIAL RECORD 987, PAGE 05, RECORDS REFER TO THE COUNTY RECORDER'S OFFICE, CRAWFORD COUNTY, OHIO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT AN IRON PIN SET AT THE NORTHWEST RIGHT-OF-WAY INTERSECTIONS OF BRANDT ROAD (60 FEET IN WIDTH) AND STATE ROUTE 598 (WIDTH VARIES), THE SOUTHEAST CORNER OF SAID OUT LOT 896, AND THE SOUTHEAST CORNER OF SAID KELLER TRACT;

THENCE NORTH 89°12'10" WEST, A DISTANCE OF 170.61 FEET WITH THE NORTH RIGHT-OF-WAY LINE OF SAID BRANDT ROAD, THE SOUTH LINE OF SAID OUT LOT 896, AND THE SOUTH LINE OF SAID KELLER TRACT, TO AN IRON PIN SET;

THENCE NORTH 42°20'44" WEST, A DISTANCE OF 65.78 FEET OVER AND ACROSS SAID OUT LOT 896 AND SAID KELLER TRACT, WITH A NEW LINE, TO AN IRON PIN SET;

THENCE NORTH 00°47'50" EAST, A DISTANCE OF 452.79 FEET OVER AND ACROSS SAID OUT LOT 896 AND SAID KELLER TRACT, WITH A NEW LINE, TO AN IRON PIN SET AT NORTH LINE OF SAID OUT LOT 896, A NORTH LINE OF SAID KELLER TRACT, AND THE SOUTH LINE OF OUT LOT 897 CONVEYED TO DANIEL C AND BRENDA S. NISS OF RECORD IN OFFICIAL RECORD 965, PAGE 2210;

THENCE SOUTH 89°13'45" EAST, A DISTANCE OF 298.51 FEET WITH THE NORTH LINE OF SAID OUT LOT 896, THE NORTH LINE OF SAID KELLER TRACT, THE SOUTH LINE OF SAID OUT LOT 897, AND THE SOUTH LINE OF SAID NISS TRACT,



TO AN IRON PIN FOUND ON THE WEST RIGHT-OF-WAY LINE OF SAID STATE ROUTE 598, THE NORTHEAST CORNER OF SAID OUT LOT 896, THE NORTHEAST CORNER OF SAID KELLER TRACT, THE SOUTHEAST CORNER OF SAID OUT LOT 897, THE SOUTHEAST CORNER OF SAID NISS TRACT, THE SOUTHWEST CORNER OF A TRACT CONVEYED TO THE STATE OF OHIO OF RECORD IN DEED BOOK 480, PAGE 837, AND THE NORTHWEST CORNER OF A TRACT CONVEYED TO THE STATE OF OHIO OF RECORD IN DEED BOOK 490, PAGE 254;

THENCE SOUTH 07°47'58" WEST, A DISTANCE OF 284.06 FEET WITH THE WEST RIGHT-OF-WAY LINE OF SAID STATE ROUTE 598, AN EAST LINE OF SAID OUT LOT 896, AN EAST LINE OF SAID KELLER TRACT, AND THE WEST LINE OF SAID STATE OF OHIO TRACT ACQUIRED IN DEED BOOK 490, PAGE 254, TO A POINT BEING REFERENCED BY AN IRON PIN FOUND SOUTH 70°09'24" EAST, A DISTANCE OF 0.69 FEET;


THENCE SOUTH 13°13'58" WEST, A DISTANCE OF 224.24 FEET WITH THE WEST RIGHT-OF-WAY LINE OF SAID STATE ROUTE 598, AN EAST LINE OF SAID OUT LOT 896, AND AN EAST LINE OF SAID KELLER TRACT, TO THE IRON PIN SET AT THE POINT OF BEGINNING, CONTAINING 3.000 ACRES OF LAND, MORE OR LESS.

THE ABOVE DESCRIPTION WAS BASED ON A SURVEY PREPARED BY MAKEEVER AND ASSOCIATES, INC. UNDER THE DIRECT SUPERVISION OF ISAAC L. KING, P.S. PROFESSIONAL SURVEYOR NUMBER 8318, DATED JANUARY, 2016, AND IS SUBJECT TO ALL HIGHWAYS, EASEMENTS, AND RESTRICTIONS OF RECORD.

ALL BEARINGS SHOWN HEREIN ARE BASED ON THE OHIO STATE PLANE COORDINATE SYSTEM, NORTH ZONE, (NAD83).

ALL IRON PINS SET ARE 5/8" O.D. X 30" LONG REINFORCING RODS WITH YELLOW PLASTIC CAPS STAMPED "MAKEEVER AND ASSOC." UNLESS OTHERWISE NOTED.

PRIOR DEED REFERENCE: OFFICIAL RECORD 987, PAGE 05.

  
ISAAC L. KING, P.S.  
PROFESSIONAL SURVEYOR NO. 8318  
DATE: 1-28-2016

