

AMENDED AND RESTATED
EASEMENT AGREEMENT

THIS AMENDED AND RESTATED EASEMENT AGREEMENT is made this _____ day of July 2013, by and between **THE BOARD OF TRUSTEES OF THE CUYAHOGA COUNTY PUBLIC LIBRARY** (the “**Library**”), the **CITY OF NORTH ROYALTON**, an Ohio municipal corporation (the “**City**”), and **ROYALTON OFFICE CENTER CONDOMINIUMS UNIT OWNERS’ ASSOCIATION, INC.**, an Ohio non-profit corporation (the “**Association**”).

RECITALS:

A. By that certain Easement Agreement (Driveway), dated February 14, 2001 and recorded in the Official Records of Cuyahoga County, Ohio (“**Records**”) as AFN 200103210597 (the “**Original Easement**”), Wallings Road Properties, LLC, an Ohio limited liability company (“**Wallings**”), and ROC Holdings-I, Ltd, an Ohio limited liability company (“**ROC**”), entered into the Original Easement whereby Wallings granted a non-exclusive 45 foot wide driveway easement to ROC, its successors and assigns, over a portion of the property then owned by Wallings, said easement area being more particularly described on Exhibit A-1 attached hereto and made a part hereof, and depicted in Exhibit A-2 attached hereto and made a part hereof (as so described and depicted, the “**Easement Area**”).

B. By that Sheriff’s Deed, dated February 15, 2008, recorded in Records as AFN 20083210098, Citizens Bank obtained ownership of the property located at 11409 State Road, North Royalton, Ohio, known as Permanent Parcel Numbers 488-04-004; 488-08-012 and 488-08-014 and more particularly described on Exhibit B attached hereto and made a part hereof (the “**Grantor’s Property**”), including the Easement Area.

C. By that certain General Warranty Deed dated June 2, 2010, recorded in Records as AFN 201007020105, Citizens Bank conveyed the Grantor’s Property to the City, subject to

restrictions, reservations, easements, covenants, and conditions of record which included the rights and obligations of grantor under the Easement Agreement.

D. By that certain Limited Warranty Deed, dated September 1, 2011, recorded in Records as AFN 201109010395, the Library, obtained title to the real property known as Permanent Parcel Number 488-08-021, which is more particularly described on Exhibit C attached hereto and made part hereof (the “**Library Property**”).

E. By that certain Declaration of Condominium Ownership for Royalton Office Center Condominiums, dated November 2001, recorded in Records as AFN 200112200816, as amended by that certain First Amendment to Declaration of Condominium Ownership for Royalton Office Center Condominiums and By-Laws of the Royalton Office Center Condominiums Unit Owners’ Association, Inc., dated July 26, 2011, recorded in Records as AFN 201107260261, the Association obtained ownership and the responsibility of maintaining the common areas of the office condominium property located at 5169 Wallings Road, North Royalton, Ohio, known as Permanent Parcel Number 488-08-006 and more particularly described on Exhibit D attached hereto and made a part hereof (the “**Association Property;**” the City Property, Library Property and Association Property being hereinafter unspecifically referred to as a “**Property**” and collectively as the “**Properties**”).

F. The parties hereto desire by this instrument to extend use of the Easement Area to the Library as hereinafter provided and to modify various provisions of the Original Easement to reflect the increased number of parties using and benefitted by the Easement Area.

G. Accordingly, by their execution hereof, the parties intend to fully amend, restate and replace the Original Easement as hereinafter provided (the “**Restated Easement Agreement**”).

NOW, THEREFORE, in consideration of the mutual covenants and provisions herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, the Library and the Association agree as follows:

1. Grant of Easements. The City hereby grants to the Library, the Association, and their respective successors and assigns, for the benefit of the Library Property and Association Property, respectively, and reserves to itself, its successors and assigns, for the benefit of the City Property, non-exclusive easements on, over, under, and across the Easement Area, in accordance with the terms set forth in this Restated Easement Agreement, for:

1.1 Access. Vehicular and pedestrian ingress and egress to, from and between each Property and Wallings Road.

1.2 Utilities. Provision to each Property of water, electricity, gas, , storm sewer, sanitary sewer, telephone, internet, data, and such other utilities and similar services as hereafter may be common to business properties, and for the maintenance, repair and replacement thereof; the foregoing easement being limited, however, to such utilities as are now located within the Easement Area

and serving one or more of the Properties, and to such other utilities as are not available to the Property to be served (a) via any other easement for its benefit or (b) directly from adjacent public rights of way. Any use of the Easement Area for the installation of a new utility shall require the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

2. Maintenance of the Easement Area. The City shall or shall cause, (a) the roadway improvements now located within the Easement Area to be maintained in good condition and repair, including the replacement thereof when and as reasonably required, and (b) the Easement Area to be kept reasonably free from snow, ice, debris, trash, and rubbish (the “**Easement Area Maintenance**”). All costs incurred by the City to perform the Easement Area Maintenance during each calendar year shall constitute “**Common Expense**” and shall be reimbursed by the Library and the Association in proportionate shares equal to the percentage that their respective Property’s acreage represents of the combined acreage of all the Properties as set forth below:

<u>Property Owner</u>	<u>Property Acreage</u>	<u>Proportionate Share</u>
City	9.7355 acres	53.54%
Library	5.5493 acres	30.52%
Association	<u>2.8986 acres</u>	<u>15.94%</u>
Total	18.1834 acres	100%

Upon the signing of this Agreement, and thereafter at the time each Annual Statement (defined below) is issued by the City, the City shall provide to the Library and the Association an estimate of the Common Expense anticipated to be incurred by the City in performing the Easement Area Maintenance during the current calendar year. On or before June 1 of each year, the City shall provide the Library and the Association with a detailed statement of the actual Common Expense paid or incurred by the City during the preceding calendar year, and an invoice for each Property’s proportionate share thereof (each an “**Annual Statement**”). The Library and the Association shall pay their respective proportionate share of the annual Common Expense shown on each Annual Statement within thirty (30) days following its receipt.

If the Library or the Association determines that Easement Area Maintenance is not being performed in a proper or timely fashion, either may give the City thirty (30) days’ prior written notice thereof. If the City fails to cause the noticed Easement Area Maintenance to be performed within thirty (30) days following its receipt of the written notice, the Library or the Association may perform such maintenance or repair. In such case, the other parties shall reimburse the party so performing for their respective proportionate shares of the costs incurred within thirty (30) days following receipt of the performing party’s statement therefor.

The City shall keep accurate books of account with respect to the costs incurred in performing the Easement Area Maintenance and each party shall have the right to inspect the City’s records pertinent to each Annual Statement, during normal business hours, for a period of one (1) year following receipt thereof, after which the amount of such statement shall be deemed correct in all respects.

3. Use of Easements. Use of the Easement Area shall be nonexclusive and limited solely to the purposes set forth above, and exclusively for the benefit of the owners of each Property, their respective successors and assigns, their agents, customers, invitees, licensees, employees, servants, licensees, contractors, mortgagees, condominium owners, tenants, customers, guests and other invitees from time to time (all of which persons are hereinafter called "**Permittees**"). The City specifically reserves the right from time to time, to promulgate such reasonable rules and regulations of uniform applicability to the Properties and Permittees with respect to the Easement Area as are reasonably necessary to promote the health, safety, welfare and security of the Easement Area, the facilities therein, and the Properties. The City, at any time and from time to time, may remove, exclude and restrain any person from the use, occupancy or enjoyment of any easement hereby created or within the Easement Area for failure to observe such rules and regulations. If unauthorized use is being made of the Easement Area by the Library or the Association or their Permittees, such unauthorized use may be restrained or terminated by appropriate proceedings after written notice to the defaulting party and failure to abate such unauthorized use within a reasonable time thereafter. The City reserves the right to use the Easement Area for any purposes consistent with the rights granted by this Agreement.

4. Duration. This Agreement and the easement created hereunder shall continue in perpetuity following the date of this Agreement so long as used for any permitted purpose by the Library, the Association or their respective successors and/or assigns. This Agreement shall terminate in the event of nonuse of the Easement Area for any of its permitted purposes by either the Library or Association for a continuous period of twelve (12) consecutive months, unless simultaneously with the commencement of a period of nonuse, notice is given by the affected Property owner of an intention to resume use of such easement within twenty-four (24) months following the date on which nonuse commences and such resumption occurs within such period.

5. Legal Effect. The easement and rights created by this Agreement are appurtenant to the City Property, the Library Property and the Association Property and may not be transferred, assigned or encumbered except as an appurtenance to all or part of such Property. Each covenant contained in this Agreement: (a) is made for the direct mutual and reciprocal benefit of the City Property, the Library Property and the Association Property; (b) creates mutual equitable servitudes on the City Property, the Library Property and the Association Property; (c) constitutes a covenant running with the land; (d) binds every party now having or hereinafter acquiring an interest in the City Property, the Library Property and the Association Property; and (e) will inure to the benefit of the City, the Library and the Association and their respective successors, assigns and mortgagees. Each party agrees that on conveyance of all or part of its respective Property, the grantee, by accepting such conveyance will thereby become a new party to and be bound by the terms and conditions and covenants contained in this Agreement. In the event any conveyance results in the division of a Property, the proportionate share of the parties to this Agreement shall be recalculated to reflect the division, effective as of the date of conveyance

6. Amendment. This Restated Easement Agreement and the provisions contained herein may be terminated, extended, modified or amended only with the express written consent

of the City with respect to the City Property, and the Library with respect to the Library Property, and the Association with respect to the Association Property, or their respective successors and assigns, as applicable.

7. Condemnation. In the event the whole or any part of the Easement Area is taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof, the City, the Library, and the Association shall share in the award, compensation or other payment therefor in the same proportion as their respective proportionate shares set forth in Section 2. Any award, compensation or other payment made by reason of the taking of any other part of the City Property shall belong solely to the City. The City acknowledges that the Easement Area is the only means of access to and from any public right of way that is available to the Association Property and Library Property and that any condemnation thereof would result in substantial consequential damage to the Association Property and Library Property.

8. Default; Remedies. Each party to this Agreement agrees that the provisions of this Agreement will be enforced as follows:

8.1 Force Majeure. If performance of any action by any party under this Agreement is prevented or delayed by any act of God, war, labor disputes or other cause beyond the reasonable control of such party, the time for the performance of such action will be extended for the period that such action is delayed or prevented by such cause.

8.2 Notice of Default. None of the parties under this Agreement shall be considered in default unless the defaulting party has received written notice specifying the nature of such default and has failed to cure or commence appropriate action to cure such default within thirty (30) days from the receipt of such notice.

8.3 No Termination. No breach of this Agreement shall entitle any non-defaulting party to cancel, rescind or otherwise terminate this Agreement. The foregoing limitation will not affect, in any manner, any other right or remedy to which the non-defaulting party might be entitled by reason of such breach of this Agreement.

9. Miscellaneous. The City, the Library and the Association further agree as follows:

9.1 Approvals. When approval by the City, the Library or the Association is required hereunder, such approval shall not be unreasonably withheld, conditioned, or delayed. Unless provision is made for a specific period of time, the period of time in which approval shall be granted shall be sixty (60) days following receipt of a written request therefor in sufficient detail and supported by all information reasonably necessary to a determination of the request, and if a party fails to approve or disapprove a proposed action within that period, that party shall be deemed to have given its approval. If a party disapproves of any action proposed

by the other, such disapproval shall not be effective unless the reasons for such disapproval are stated in writing.

- 9.2 Notices. All notices, statements, demands, approvals, and other communications given pursuant to this Agreement shall be in writing and shall be delivered in person or by certified or registered mail, postage prepaid to the parties as set forth below:

To the Library: Cuyahoga County Public Library
Attn: Executive Director
2111 Snow Road
Parma, Ohio 44134

To the City: City of North Royalton, Ohio
Attn: Community Development Director
13834 Ridge Road
North Royalton, Ohio 44133

To the Association: Royalton Office Center Condominiums Unit Owners' Association, Inc.
Attn: President
Addressed to the mailing address on file with the Cuyahoga County Auditor for the mailing of real estate tax statements with respect to the Association Property

- 9.3 Waiver of Default. No waiver of any default by any party hereunder shall be implied from the failure by the other parties to take any action with respect to such default. No express waiver of any default shall affect any default or extend any period of time for performance other than specified in such express waiver. One or more waivers of any default shall not be deemed a waiver of any subsequent default in the performance of the same provision or any other provision. The consent to or approval of any act or request by any party hereunder shall not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar act or request. The rights and remedies provided by this Agreement are cumulative, and no right or remedy will be exclusive of any other, or of any other right or remedy at law or in equity which any party hereunder might otherwise have by virtue of a default under this Agreement, and the exercise of any right or remedy by any party shall not impair such party's standing to exercise any other right or remedy.

- 9.4 No Partnership. Nothing contained in this Agreement and no action by any of the parties shall be deemed or construed by the parties hereunder or by any third person to create the relationship of principal and agent, or a partnership, or a joint venture, or any association between or among the parties.

- 9.5 Severability. If any provision of this Agreement is, to any extent, declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement (or the application of such provision to persons or circumstances other than those in respect of which the determination of invalidity or unenforceability was made) shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 9.6 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Ohio.
- 9.7 Captions. The captions of the paragraphs of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained.
- 9.8 Time. Subject to the provisions of Section 8.1 above, time is of the essence of this Agreement.
- 9.9 Release. If either the Library, the City, or the Association shall sell, transfer or assign its entire interest in and to its respective Property, or any portion thereof, it shall be released from its unaccrued obligations hereunder from and after the date of such sale, transfer or assignment to the extent of the portion sold, transferred or assigned. The successor or assignee, by acceptance of said transfer whether with or without reference to this Restated Easement Agreement therein, shall be bound by this Agreement and shall perform all obligations hereunder in accordance with the provisions hereof as applicable to the portion so acquired.
- 9.10 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original agreement, and all of which shall constitute one agreement.
- 9.11 Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of the City, the Library, the Association, their respective successors, assigns, and mortgagees.

[The balance of this page intentionally blank. Signature pages immediately follow.]

IN WITNESS WHEREOF, this Agreement has been executed effective as of the date first written above.

THE CITY OF NORTH ROYALTON

By: _____
Mayor Robert A. Stefanik

Approved As To Legal Form
By Director of Law

Print Name: _____

Date: _____

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said county and state, personally appeared Robert A. Stefanik, Mayor, City of North Royalton, Ohio, who acknowledged that he did execute the foregoing instrument as Mayor of the **CITY OF NORTH ROYALTON, OHIO**, and that he did sign the foregoing instrument for and on behalf of said municipal corporation and that the same is the free act and deed of said municipal corporation and his free act and deed individually and as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at _____, _____, this _____ day of July, 2013.

Notary Public

THE BOARD OF TRUSTEES OF THE CUYAHOGA COUNTY PUBLIC LIBRARY

By: _____
Robert W. Varley, President

By: _____
Edward H. Blakemore, Vice President

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said county and state, personally appeared Robert W. Varley, President of the Board of Trustees of the Cuyahoga County Public Library, who acknowledged that he did execute the foregoing instrument on behalf of **THE BOARD OF TRUSTEES OF THE CUYAHOGA COUNTY PUBLIC LIBRARY** and that he did sign the foregoing instrument for and on behalf of said Board of Trustees and that the same is the free act and deed of said Board of Trustees and his free act and deed individually and as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at _____, _____, this _____ day of July, 2013.

Notary Public

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said county and state, personally appeared Edward H. Blakemore, Vice President of the Board of Trustees of the Cuyahoga County Public Library, who acknowledged that he did execute the foregoing instrument on behalf of **THE BOARD OF TRUSTEES OF THE CUYAHOGA COUNTY PUBLIC LIBRARY** and that he did sign the foregoing instrument for and on behalf of said Board of Trustees and that the same is the free act and deed of said Board of Trustees and his free act and deed individually and as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at _____, _____, this _____ day of _____, 2012.

Notary Public

**ROYALTON OFFICE CENTER CONDOMINIUMS
UNIT OWNERS' ASSOCIATION, INC.,** an Ohio non-profit corporation

By: _____
William J. Harr, Jr., President

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said county and state, personally appeared William J. Harr, Jr. the President of **ROYALTON OFFICE CENTER CONDOMINIUMS UNIT OWNERS' ASSOCIATION, INC.**, an Ohio non-profit corporation, who acknowledged that he did execute the foregoing instrument on behalf of the corporation and that the same is the free act and deed of said corporation and his free act and deed individually and as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal this _____ day of July, 2013.

Notary Public

This Instrument Prepared By:
Calfee, Halter & Griswold LLP
The Calfee Building
1405 East Sixth Street
Cleveland, Ohio 44114-1607

EXHIBIT A-1

Legal description of the Easement Area

Situated in the City of North Royalton, County of Cuyahoga and State of Ohio and known as being part of Original Royalton Township Section No. 19 and is further bounded and described as follows:

Beginning in the centerline of Wallings Road, 60 feet wide, at the Northeasterly corner of a parcel of land conveyed to Wallings Road Properties, LLC by deed recorded in AFN 199901291313 of Cuyahoga County Records;

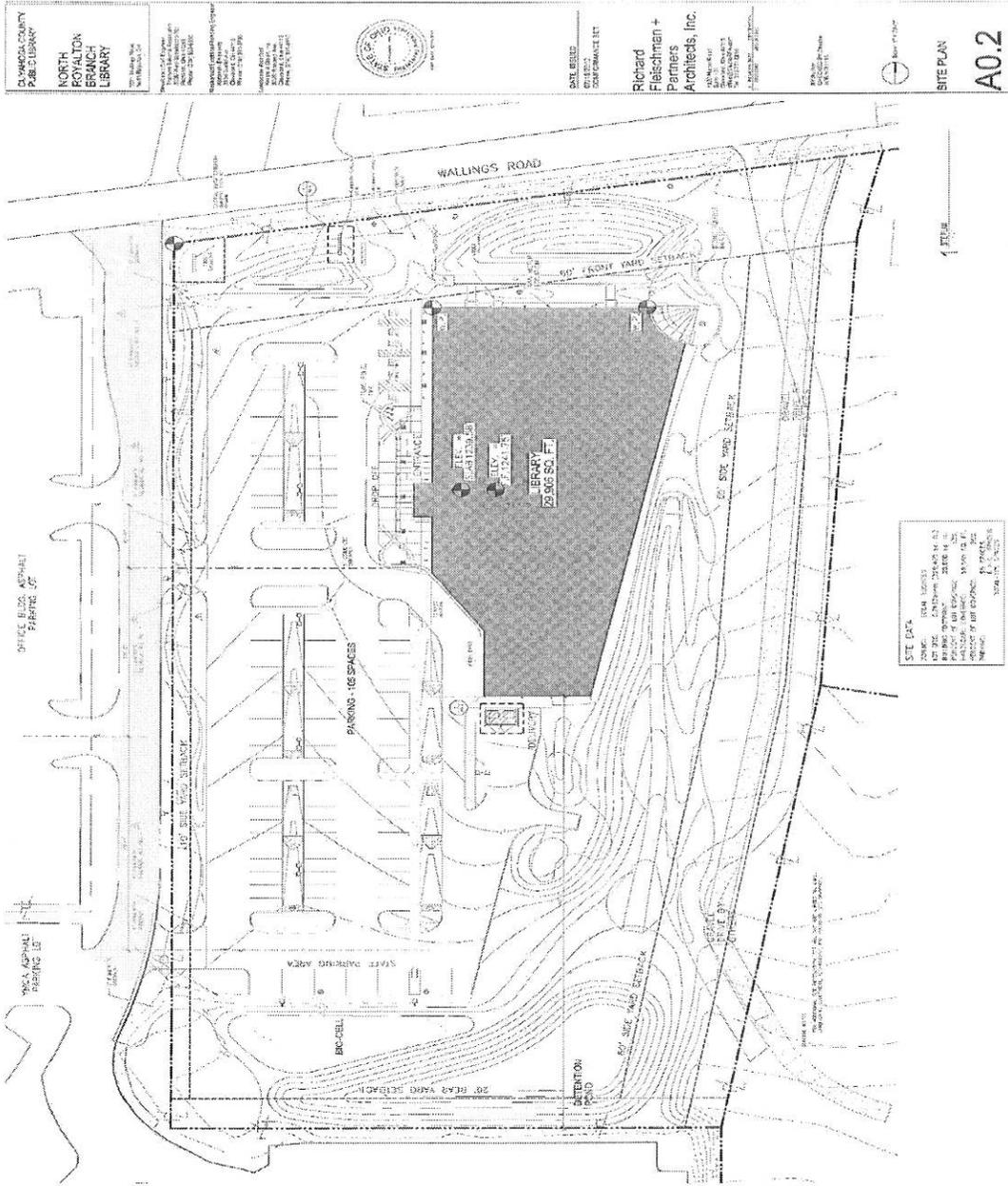
Thence South 10°-20'-00" East, along the Easterly line of land conveyed to said Wallings Road Properties, LLC, a distance of 495.04 feet;

Thence South 79°-40'-00" West, a distance of 45.00 feet; Thence North 10°-20'-00" West, a distance of 487.90 feet to the center line of Wallings Road, as aforesaid;

Thence North 70°-39' 02" East, along said center line of Wallings Road, a distance of 45.56 feet to the place of beginning and containing 0.5077 Acres of land., be the same more or less but subject to all legal highways

EXHIBIT A-2

Depiction of the Easement Area



CLAYBANK COUNTY
PUBLIC LIBRARY

**NORTH
PROCTOR
BRANCH
LIBRARY**

Project No. 21-01-001
1225 Wallings Road
North Proctor, MO 64570

Prepared by: Richard Fleischman + Partners Architects, Inc.
1225 Wallings Road
North Proctor, MO 64570
Phone: 573-421-1111



**Richard
Fleischman +
Partners
Architects, Inc.**



**SITE PLAN
A0.2**

SITE DATA

AREA: 1.27 AC
PERMITS: 2024-001-001
DATE: 10/15/2024
SCALE: AS SHOWN

EXHIBIT B

Legal Description of the City Property

EXHIBIT C

Legal description of Library Property

Situated in the City of North Royalton, County of Cuyahoga and State of Ohio and known as being Consolidated Parcel "B2C" in the Map of Lot Split & Consolidation made for and at the instance of 138 DTS Properties LLC and Andrew & Donna J. Taranowski of part of Original Royalton Township Section No. 19 as shown by recorded plat in Volume 351 of Maps, Page 34 of Cuyahoga County Map Records and more fully described as follows:

Beginning at a point in the centerline of West Wallings Road (60 feet wide) at the most Westerly corner of said Parcel "B2C";

Thence North 70°-39'-02" East along the centerline of West Wallings Road, as aforesaid, 414.89 feet to a point at the most Northerly corner of said Parcel "B2C";

Thence South 3°-55'-32" West along an Easterly line of said Parcel "B2C" a distance of 92.15 feet to an angle point;

Thence South 6°-31'-13" East along an Easterly line of said Parcel "B2C" a distance of 311.50 feet to a point;

Thence South 0°-11'-33" West a distance of 307.78 feet to a point on a Southerly line of said Parcel "B2C";

Thence South 79°-39'-53" West along a Southerly line of said Parcel "B2C" a distance of 310.74 feet to a point;

Thence North 9°-52'-33" West along a Westerly line of said Parcel "B2C" a distance of 76.22 feet to an angle point;

Thence North 10°-20'-00" West along a Westerly line of said Parcel "B2C" a distance of 561.50 feet to a point in the centerline of West Wallings Road, as aforesaid, and the place of beginning, and containing 5.5493 acres of land, according to a survey by The Western Reserve Surveying Company in March, 2011, be the same more or less but subject to all legal highways.

NOTE: Parcel "D" in this description is also Parcel "D" in the Lot Split Plat for the City of North Royalton recorded in Volume 365, Page 88 of Cuyahoga County Map Records.

EXHIBIT D

Legal description of the Association Property

Situated in the City of North Royalton, County of Cuyahoga, State of Ohio and known as being part of Original Royalton Township, Section No. 19 and is further bounded and described as follows:

Beginning at a 5/8" iron pin found at the intersection of the centerline of Wallings Road (60 feet wide) with the centerline of State Road (66 feet wide). Thence North 70°-39'-02" East, along said center line of Wallings Road, a distance of 422.98 feet to the Northeasterly corner of a parcel of land conveyed to the Wallings Plaza, Inc. by deed recorded in Volume 14497, Page 1001 of Cuyahoga County Records and the principal place of beginning of the land herein described:

Thence South 10°- 19'-22" East along the Easterly line of land so conveyed to the Wallings Plaza, Inc., passing through a 5/8" iron pin (#7513) found at 30.12 feet and along the Easterly line of a parcel of land conveyed to Linda C. DePiero by deed recorded in Volume 98-13515, Page 13 of Cuyahoga County Records, a distance of 444.96 feet to a 5/8" iron pin (#7065) set;

Thence North 79°-40'-00" East, a distance of 270.74 feet to a 5/8" iron pin (#7065) set;

Thence North 10°-20'-00" West, passing through a 5/8" iron pin (#7065) set at 457.52 feet (the Southerly right of way line of Wallings Road, as aforesaid), a distance of 487.90 feet to the center line thereof;

Thence South 70°-39'-02" West, along said center line of Wallings Road, a distance of 274.05 feet to the principal place of beginning and containing 2.8986 Acres but subject to all legal highways

LESS AND EXCLUDING THEREFROM all condominium Units created pursuant to that certain Declaration of Condominium Ownership for Royalton Office Center Condominiums, dated November 2001, recorded among the official records of Cuyahoga County, Ohio, as AFN 200112200816, as amended by that certain First Amendment to Declaration of Condominium Ownership for Royalton Office Center Condominiums and By-Laws of the Royalton Office Center Condominiums Unit Owners' Association, Inc., dated July 26, 2011, recorded among the official records of Cuyahoga County, Ohio, as AFN 201107260261.