

## ACCESS EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT FOR INGRESS AND EGRESS (this “Agreement”) is dated as of March \_\_\_, 2019 by and between 4810-4832 Cemetery Center, LLC, an Ohio limited liability company (“4810-4832 Cemetery”), and the Board of Education of the Hilliard City Schools (the “Board”).

### RECITALS

A. 4810-4832 Cemetery owns real property located in the City of Hilliard, County of Franklin, Ohio, as described in *Exhibit A* attached hereto and incorporated herein by this reference (“Parcel 1”).

B. The Board owns real property located in the City of Hilliard, County of Franklin, Ohio, Parcel No. 050-002847-00, as described in *Exhibit B* attached hereto and incorporated herein by this reference (“Parcel 2”).

C. 4810-4832 Cemetery desires to create an easement for pedestrian and vehicular ingress and egress over, upon and across a portion of Parcel 2 to connect Parcel 1 to Cemetery Road via a portion of J W Reason School Road and such sidewalks as may exist from time to time adjacent to J W Reason School Road, the foregoing intended to be for the primary benefit of the construction and operation of a restaurant on Parcel 1 (the “Project”) pursuant to that certain Ground Lease dated as of July 20, 2018 (the “Lease”) by and between 4810-4832 Cemetery and Swensons Drive-In Restaurants, LLC, an Ohio limited liability company (“Swensons”).

### EASEMENT

1. Easements for Ingress and Egress. The Board hereby grants and conveys to 4810-4832 Cemetery: (a) the exclusive right to construct (for which such construction may be performed by Swensons) and use the driveway, access way, sidewalks, walkways, an exit, an entrance, and other paved areas spanning across and between Parcel 1 and Parcel 2 (the “New Access Drive”) for the use and benefit of 4810-4832 Cemetery, Swensons and 4810-4832 Cemetery’s and Swensons’ employees, customers, agents, tenants, invitees and licensees, for purposes of

pedestrian and vehicular ingress and egress to and from Parcel 1 to J W Reason School Road, in, over, through, under, and across the real property described/depicted in *Exhibit C* attached hereto and incorporated herein by this reference (the “New Access Drive Easement”); and (b) the non-exclusive right to access and use a portion of J W Reason School Road and such sidewalks as may exist from time to time adjacent to J W Reason School Road in, over, through, under, and across the real property described and depicted in *Exhibit D* attached hereto and incorporated herein by this reference (the “Reason School Road Easement”) (the Reason School Easement and the New Access Drive Easement shall hereinafter collectively be referred to as the “Easements”), for the use and benefit of 4810-4832 Cemetery, Swensons and 4810-4832 Cemetery’s and Swensons’ employees, customers, agents, tenants, invitees and licensees, for purposes of pedestrian and vehicular ingress and egress to and from the New Access Drive and Cemetery Road.

2. Barriers. Neither party shall unreasonably prevent, hinder or interfere in any way with the free flow and passage of vehicular and pedestrian traffic to and from Parcel 1 and Parcel 2, provided however, notwithstanding anything to the contrary contained herein the parties acknowledge that such free flow will be limited to a single access point between Parcel 1 and Parcel 2, as such access point may change as allowed herein. The parties hereto acknowledge that the flow and passage of vehicular and pedestrian traffic to and from Parcel 1 and Parcel 2 may be reasonably disrupted for limited periods of time for periods of repair, restoration, reconstruction, or to prevent a public taking through condemnation or other means of public acquisition. Any disruption of pedestrian and vehicular ingress and egress shall be for the shortest time practicable. Notwithstanding the foregoing, 4810-4832 Cemetery (in which 4810-4832 Cemetery will require the following by Swensons) agrees to install and maintain an electronic gate and will cause to close access with said gate between Parcel 1 and Parcel 2 and the parking lot servicing Parcel 1 for a period between ½ hour before and ½ hour after the afternoon release of students from the school located on Parcel 2 on the days when classes are in session at the school on Parcel 2.

3. Compliance with Law and Indemnification. 4810-4832 Cemetery and the Board covenant and agree, with respect to their respective parcels, to comply with all laws, rules, regulations and requirements of all public authorities, and to indemnify, defend and hold each other harmless against all claims, demands, loss, damage, liabilities and expenses and all suits, actions and judgments (including but not limited to costs and attorney’s fees) arising out of or in any way related to 4810-4832 Cemetery’s or the Board’s failure to maintain its respective parcel in a safe condition. 4810-4832 Cemetery and the Board shall give prompt and timely notice of any claim made or suit or action commenced against the other party which in any way would result in indemnification under this Agreement.

4. Insurance. 4810-4832 Cemetery agrees (provided that it is acknowledged and agreed that the same may be provided by Swensons under the terms of the Lease, or by way of any subsequent tenant in interest to Parcel 1) to maintain (or to cause to be maintained) in full force and effect commercial general liability insurance with a financially responsible insurance company or companies, written on an occurrence basis covering claims of loss from contractual liability (including without limitation, coverage of the indemnities under this Agreement), bodily injury including death, personal injury and broad-form property damage arising out of incidents or accidents arising directly or indirectly from the actions, or failure to act when obligated to do so, of 4810-4832 Cemetery, or its tenant, and their agents, employees and contractors in connection

with the rights and obligations set forth herein, with a combined single limit in an amount not less than One Million Dollars (\$1,000,000) per occurrence. Such limits may be provided through a combination of primary and excess (umbrella) liability policies. Such insurance shall be primary and shall provide that the Board is an additional insured. Such insurance shall contain a provision that it may not be cancelled or reduced in scope or amount below that required hereunder without thirty (30) days of advance written notice to the Board. 4810-4832 Cemetery shall provide to the Board, or shall direct that such be provided to the Board, within fifteen (15) days of the Board's written request therefor, a certificate of insurance evidencing the maintenance of the required insurance.

5. Maintenance, Expenses.

(a) 4810-4832 Cemetery agrees to maintain in good condition and repair, subject to reasonable wear and tear, any portion of the New Access Drive located on Parcel 1, and to pay all expenses incurred in connection therewith.

(b) The Board covenant and agree to maintain in good condition and repair, subject to reasonable wear and tear, all driveways, access ways, sidewalks, walkways, exits, entrances, and other paved areas (other than the that portion of the New Access Drive located on Parcel 1), on Parcel 2, and to pay all expenses incurred in connection therewith, including the payment of all real estate taxes and assessments. As consideration in exchange for the same, 4810-4832 Cemetery agrees to pay to the Board the sum of Two Hundred and no/100 Dollars (\$200.00) per month as reimbursement for its contributive share of costs, maintenance and expense for all of the foregoing improvements on Parcel 2 that comprise the Easements.

6. Covenants Running with Land. The rights contained within this Agreement shall run with Parcel 1 and shall inure to and be for the benefit of 4810-4832 Cemetery, their successors and assigns, and the tenants (to specifically include Swensons), subtenants, licensees, concessionaires, mortgagees in possession, customers and business invitees of the parties.

7. Warranty of Title and Quiet Enjoyment. The Board warrants that it has indefeasible fee simple title to Parcel 2 subject to no encumbrances which will materially restrict 4810-4832 Cemetery's use of the Easements.

8. Attorney's Fees. In the event that either party brings an action to enforce its rights hereunder, the prevailing party in such action shall be entitled to receive all costs and reasonable attorney's fees in addition to any damages to which it is due by reason of such action. The owners of the Parcels herein described shall only be liable for any violation of this Agreement during their respective periods of ownership, and in the event any action is brought for recovery of monetary damages for any breach hereof, the claimant shall look solely to the interest of the then owner of the Parcel in breach for the recovery of such monetary damages.

9. Notices. Any demands or notice allowed or required hereunder shall be given in the manner and to the addresses specified as follows:

- (i) 4810-4832 Cemetery: 4810-4832 Cemetery Center, LLC

Address: 6640 Riverside Drive, Suite 500  
Dublin, Ohio 43017

with a copy to: Isaac Wiles Burkholder & Teetor, LLC  
Two Miranova, Suite 700  
Columbus, Ohio 43215  
Attention: Bruce H. Burkholder  
Telephone: 614.340.7434  
E-Mail:bburkholder@isaacwiles.com

(ii) The Board: Board of Education of the  
Hilliard City Schools  
Address: 2140 Atlas Street  
Hilliard, Ohio 43228

10. Construction of New Access Drive and Additional Easement improvements; Construction Easements. In relation to the construction of the New Access Drive by 4810-4832 Cemetery (and/or Swensons, as indicated), the following rights and obligations shall apply:

(a) 4810-4832 Cemetery will be responsible for (as such work hereunder shall be performed by Swensons in accordance with the terms of the Lease) the construction and installation of a sidewalk that intersects with and continues onto Parcel 2 that will be located just east of the westerly lot line of Parcel 1. This sidewalk will run from the sidewalk on Cemetery Road in a northerly direction to the parking lot adjacent to the westerly side of the School (the "West Sidewalk"). 4810-4832 Cemetery (and by extension, Swensons) and the Board agree to cooperate regarding the exact location of the West Sidewalk and the location in which it will connect to the School's existing western parking lot, provided however, the parties hereto agree that the general location shall be on the western portion of Parcel 1, and the final location of the West Sidewalk shall be subject to the prior written approval of Swensons.

(b) 4810-4832 Cemetery will be responsible for the restoration of the existing sidewalk that is currently located just east of the easterly side of the Parcel 1, into a location that is immediately to the east of, and otherwise contiguous to, J W Reason School Road that services the school on Parcel 2 to at least the same condition, if not better condition, than such sidewalk existed prior to the commencement of any construction on Parcel 2 (the "East Sidewalk").

(c) 4810-4832 Cemetery will be responsible for the construction and installation of a fence along the rear lot line of Parcel 1 on the boundary between Parcel 1 and Parcel 2 (the "Fence") and for the construction and installation of a sidewalk running parallel to the Fence that will connect the West Sidewalk to the East Sidewalk (the "Back Sidewalk"), which Back Sidewalk shall be located on Parcel 2, adjacent to the property line between Parcel 1 and Parcel 2.

(d) In conjunction with subsection (b) and (c) above, 4810-4832 Cemetery will provide for the construction of additional storm water drainage work required, if any relative to the installation of the East Sidewalk and Back Sidewalk (in the event such additional storm water drainage is necessitated, as the case may be). In conjunction with subsection (a) above, 4810-4832

Cemetery will provide for the construction of additional storm water drainage work required, if any relative to the installation of the West Sidewalk that is located on Parcel 2. The Board and 4810-4831 Cemetery acknowledge and agree that Swensons is not responsible to construct or to pay for the construction of the (i) East Sidewalk or Back Sidewalk or (ii) any storm water drainage work required, if any, relative to the installation of the West Sidewalk that will be located on Parcel 2, the East Sidewalk and/or the Back Sidewalk.

(e) The parties hereto agree that 4810-4832 Cemetery, in performing its responsibilities for the construction of the West Sidewalk, East Sidewalk and Back Sidewalk, respectively, may use asphalt product (in lieu of concrete) for the new construction or replacement of the sidewalk portions of such improvements.

(f) All portions of subsections (b) and (c) above, after construction, shall become the property of the Board, and all portions of subsections (a), (b) and (c) above shall be maintained in accordance with Section 5 above. Furthermore, any improvements constructed by 4810-4832 Cemetery and/or Swensons that is located on Parcel 2 shall become the property of the Board.

(g) The Board, subject to the limitations of the last sentence of Section 2 above, grants by way of this Agreement a temporary construction easement for the relocation and installation of the East Sidewalk, the West Sidewalk and the Back Sidewalk and the storm water drainage work described above, and for the construction of that portion of the New Access Drive that interconnects with and is placed upon Parcel 2. Notwithstanding the foregoing, 4810-4832 Cemetery and/or Swensons (by and through the covenants made herein by 4810-4832 Cemetery) covenants and agrees that no construction equipment shall be parked or placed (during non-construction operations) on Parcel 2 during the construction of the improvements upon Parcel 1 and the New Access Drive.

(h) During any period of construction to occur on Parcel 1, the Board will be notified and, provided each such representative of the Board has executed a non-disclosure agreement in form and substance acceptable to Swensons, one or more representatives of the Board shall be invited to attend the final pre-construction meeting. Further, Swensons shall endeavor to inform such representative(s) of the Board of subsequent select construction related meetings held throughout the construction phase of the proposed development of Parcel 1, to which such representative(s) of the Board shall be permitted to attend. The inadvertent failure to inform the Board of any such meeting, shall not constitute a default of this Agreement.

(i) 4810-4832 Cemetery acknowledges and agrees that construction on Parcel 2 of items (b) and (c) above will only occur on weekends or during any school holidays, or during recesses or breaks from school being in session on Parcel 2, including winter holiday, spring break, or summer recess. No construction on Parcel 2 of these items will be undertaken on weekdays when school is in session.

11. Enforcement. In the event of any violation or threatened violation by an owner, tenant or occupant of a Parcel of any of the terms, covenants and conditions of this Agreement, the owner of the other Parcel shall have the right, but not the obligation, to enjoin such violation or threatened violation in a court of competent jurisdiction in Franklin County, Ohio. The right of

injunction shall be in addition to any and all other remedies under statute, at law or in equity or under this Easement, including, without limitation, specific performance of this Agreement.

12. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the real property described herein to the general public or for general public purposes whatsoever, it being the intention of the parties that this Agreement shall be strictly limited to and for the purposes herein expressed.

13. No Third-Party Beneficiary. The provisions of this Agreement are for the exclusive benefit of the 4810-4832 Cemetery, Swensons, and their heirs, successors, grantees, assigns, employees, customers, agents, tenants, invitees and licensees, except as otherwise provided herein, and not for the benefit of any third person, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third person not otherwise identified above.

14. Modification. Except as expressly provided in this Section, this Agreement may not be modified in any respect whatsoever or rescinded, in whole or in part, except by the consent of each party hereto, and then only by written instrument duly executed, acknowledged by all of said parties, and recorded in the Official Public Records of Real Property of Franklin County, Ohio. No modification or termination of this Agreement shall affect the rights of any lienholder of any portion of the Parcels unless the lienholder consents in writing to the modification or termination. Each of said parties may consider, approve or disapprove any proposed modification or termination of this Agreement in its sole and absolute discretion.

15. Liens. The parties hereto agree that no mechanics and materialmen's liens shall be permitted to attach to the Easement[s] for any design, construction, maintenance, repair, replacement, reconstruction or landscaping. Any such mechanics and materialmen's liens that might be filed will be promptly transferred to bond by the party responsible for such mechanics lien, and the parties hereto agree to hold each other harmless for any of the costs of such improvements and maintenance.

16. Term. This Agreement and the Easement contained herein shall continue for so long as the Lease is in full force and effect. Notwithstanding anything to the contrary contained herein, this Agreement shall not automatically terminate in the event that the Lease terminates and instead, in the event of the termination or expiration of the Lease, if the owner of Parcel 1 shall within a reasonable time thereafter secure another replacement tenant to Swensons to occupy and use Parcel 1 (the "Replacement Tenant"), the Board, upon meeting with the Replacement Tenant may in its reasonable discretion consent to the continuation of this Agreement and the Easement contained herein.

The parties hereto agree, upon written request by the other party, to immediately execute a release of this Easement following any such termination.

**(Signature Pages Follow)**

4810-4832 CEMETERY:

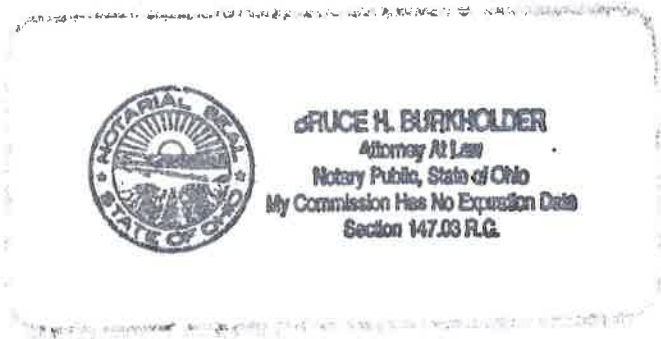
**4810-4832 CEMETERY CENTER, LLC,**  
an Ohio limited liability company

By: Timothy W. Reardon  
Name: Timothy W. Reardon  
Title: Manager

STATE OF OHIO                   §  
  §  
COUNTY OF FRANKLIN       §

BEFORE ME, the undersigned authority, on this 31<sup>st</sup> day of March, 2019, did personally appear Timothy W. Reardon, Manager of 4810-4832 Cemetery Center, LLC, an Ohio limited liability company, who acknowledged this instrument and stated that he executed same on behalf of the limited liability company.

Bruce Burkholder  
Notary Public, State of \_\_\_\_\_



BOARD:

**BOARD OF EDUCATION OF HILLIARD CITY SCHOOLS**

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

Name: Paul Lambert  
Title: President of the Board

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

Name: Brian Wilson  
Title: Treasurer

STATE OF OHIO                   §  
  §  
COUNTY OF FRANKLIN       §

BEFORE ME, the undersigned authority, on this \_\_\_\_ day of April, 2019, did personally appear Paul Lambert, President of the Board of Education of the Hilliard City Schools, who acknowledged this instrument and stated that he executed same on behalf of the school district.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

STATE OF OHIO                   §  
  §  
COUNTY OF FRANKLIN       §

BEFORE ME, the undersigned authority, on this \_\_\_\_ day of April, 2019, did personally appear Brian Wilson, Treasurer of Hilliard City Schools, who acknowledged this instrument and stated that he executed same on behalf of the school district.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_