

ANNEXATION AGREEMENT

BY AND BETWEEN

LIBERTY TOWNSHIP (DELAWARE COUNTY), OHIO

AND

THE CITY OF POWELL, OHIO

Dated as of

April 20, 2015

ANNEXATION AGREEMENT

This Annexation Agreement (“Agreement”) is made and entered into on or as of the 20th day of April, 2015 (the “Effective Date” herein) by and between the Board of Trustees of Liberty Township, the legislative authority of and for Liberty Township, a political subdivision duly organized and validly existing under the laws of the State of Ohio (“Township” or “Liberty” herein), and the Council of the City of Powell, Ohio, the legislative authority of and for the City of Powell, Ohio, a municipal corporation duly organized and validly existing under its Charter and the Constitution and the laws of the State of Ohio (“City” or “Powell” herein, collectively with the Township, the “Parties” and each a “Party” hereto).

WHEREAS, the Township and City are political subdivisions located adjacent and contiguous to each other and having, to a certain extent, overlapping jurisdictions within Delaware County, Ohio (“County” herein); and

WHEREAS, the Township and City have cooperated in numerous matters, including but not limited to, cooperation in the development, annexation and services to citizens and properties within the Township and the City and in order to foster and promote harmony and development within each of the Parties respective jurisdictional areas; and

WHEREAS, a certain landowner has expressed a desire to pursue annexation of property located south of Home Road; and

WHEREAS, if such annexation takes place, the City has agreed to adopt, maintain and enforce the Township’s Zoning Plan for said property; and

WHEREAS, the City has further agreed that upon the annexation of this property to the City, the City will make service payments to the Township based upon the activities taking place on this property; and

WHEREAS, the annexation of this property will, if successful, require economic development assistance in various forms, including the extension of utility service lines through said property; and

WHEREAS, the City and Township are willing to entertain reciprocal requests for economic development assistance in connection with infrastructure improvements and extensions of utility services affecting this property if the annexation occurs upon terms mutually satisfactory to both Parties; and

WHEREAS, the Parties believe that annexation of certain real property located within Liberty Township, which property is listed and described in Attachment A which is attached hereto and incorporated herein, will benefit their mutual interests if annexed to the City, the subject property more specifically consisting of three (3) parcels of real property designated as Delaware County Auditor Tax Parcel Numbers 31931304002000, 31931601001000 and 31931601002000 (collectively, the “Annexation Parcel”); and

WHEREAS, the Annexation Parcel is further depicted and shown on the map labeled “Annexation Parcel Map” attached hereto and incorporated herein as Attachment B, provided that in the event there is any discrepancy between Attachments A and B, the specific tax parcel reference contain in Attachment A shall prevail; and

WHEREAS, this Agreement is authorized under the provisions of Section 709.192 of the Ohio Revised Code and other applicable laws of the state of Ohio, and has been approved by the respective legislative authority of both Parties.

NOW, THEREFORE, in consideration for the mutual promises contained herein, the Parties covenant and agree as follows:

ARTICLE 1

ANNEXATION OF ANNEXATION PARCEL AND LIMITATIONS

Section 1.1. Designation of Annexation Parcel. This Agreement shall apply to the annexation of the Annexation Parcel enumerated on Attachment A. The perimeter boundary of the Annexation Parcel is graphically set forth on Attachment B for purposes of reference only.

Section 1.2. Annexation of Annexation Parcel. The Township agrees and consents to the annexation of the Annexation Parcel to the City in accordance with the terms of the Agreement.

- A. **Procedure:** The petitioners for the annexation of the Annexation Parcel to the City shall file the annexation pursuant to and shall comply with the provisions of “Expedited Procedure No. 1” as contained in Sections 709.021 and 709.022 of the Ohio Revised Code. Any such annexation of the Annexation Parcel shall also comply with the terms of this Agreement.
- B. **Scope of Petition:** The agent for the annexation petitioner(s) shall process the annexation of the Annexation Parcel under one (1) annexation petition which includes all of the Annexation Parcel.
- C. **Time Frame:** This Agreement shall only apply if the annexation petition for the Annexation Parcel is filed with the Clerk of the Board of the Delaware County Commissioners on or before June 30, 2015 and, upon filing, is diligently processed to completion in order to accomplish the annexation of the Annexation Parcel to the City pursuant to the terms of this Agreement.
- D. **Effect of Annexation:** The City shall not exclude the Township from any portion of the Annexation Parcel by changing Township boundaries under Chapter 503 of the Ohio Revised Code or any future statute of like tenor or effect. In other words, it is the express intention and agreement of the Parties that there shall exist an overlay of the City and Township boundaries for all portions of the Annexation Parcel which will be annexed to the City under the terms of this Agreement and that the Annexation Parcel remains subject to the Township’s real property taxes,

excluding the Township's road and bridge inside millage which may only be levied in the unincorporated portion of the Township. If any proceedings or other effort is initiated or made which seeks to initiate a change to the Township boundaries in order to exclude all or any portion of this property from the Township, the City and the Township shall exercise their best efforts in resisting such change, including, without limitation, denying any petition seeking such change; refraining from supporting such change; vigorously resisting, in both administrative and judicial forums, and with the assistance with the City's and Township's legal counsel, any effort or action seeking such change; and otherwise undertaking such actions as may be reasonably requested by either Party which will be detrimental to the success of any effort seeking such change.

- E. Cooperative Efforts: Upon the filing of any annexation petition for the annexation of the Annexation Parcel to the City in accordance with the terms of this Agreement, the Township and the City shall cooperate in good faith to facilitate the approval and success of such petition. In such an instance, each Party shall refrain from taking any action that would directly or indirectly delay the annexation process or endanger the possible approval of the annexation petition by the Commissioners. If such annexation petition does not comply with the terms of this Agreement, the City shall refrain from any act which would, directly or indirectly, contribute to the success of the petition. This obligation shall include refraining from acceptance of a petition seeking to annex any such property.
- F. Effect of Tax Abatement on Township: If, during the term of this Agreement, the City, with respect to any property comprising any portion of the Annexation Parcel, grants any exemption, deferral, or abatement of any residential, commercial or industrial, real, personal or public utility real and personal property taxes pursuant to Sections 725.02, 1728.10, 3735.67, 5709.40, 5709.41, 5709.62 or 5709.88 of the Revised Code (or any future or similar statute(s) of like tenor or effect) with respect to any such property, then, beginning on January 1 of the year following such action and continuing on each January 1 thereafter, the City shall pay to the Township a sum equal to the difference between (i) the tax revenue received by the Township during the previous calendar year with respect to the property on which such exemption, deferral or abatement was granted, and (ii) the tax revenue that the Township would have received during such previous year with respect to such property had such exemption, deferral or abatement not been granted by the City.

ARTICLE 2

ANNEXATION PARCEL ZONING AND LIMITATIONS

Section 2.1. Zoning and Development of the Annexation Parcel. The Annexation Parcel is currently zoned in the Township as a Planned Residence District under the Liberty Township Zoning Resolution (which, together with the Development Plan and Text adopted and approved by the Township, is hereinafter referred to as the “Township Zoning Plan”). Upon the annexation of and the acceptance by the City of the Annexation Parcel, the City shall adopt, maintain and enforce the Township Zoning Plan for the Annexation Parcel. Except as otherwise provided in Sections 2.2 and 2.3, below, this obligation shall include accepting, adopting, incorporating, administering and enforcing, without change or modification, all parts of the Township Zoning Plan with respect to the zoning, use and development of the Annexation Parcel.

Section 2.2. Minor Modifications. Upon the annexation of the Annexation Parcel to the City, the City may, administratively (but not legislatively), approve minor modifications of an insignificant nature to the Township Zoning Plan established for the Annexation Plan which occur as a result of adjustments required to be made in the processing and filing of a final plat for such area. Minor modifications shall include changes to internal (but not loop) street alignments within proposed subdivisions, locations of lot lines and drainage easements and other similar administrative changes of an insignificant nature which do not materially affect the Township Zoning Plan for such area. A minor modification shall not include any change or revision which represents a significant departure from the Township Zoning Plan for all or any portion of the Annexation Parcel including, without limitation: a change in the use or character of or for such area; an increase in the overall density established by the Township Zoning Plan for the Annexation Parcel; an overall reduction in designated open space; any rezoning of the area; any change in the development standards or permitted uses established for the Annexation Parcel under the Township Zoning Plan; and any change requiring or accomplished by legislative action on the part of the City.

Section 2.3. Major Modification. Except as may otherwise be permitted in Section 2.2 for minor modifications, there shall be no change, amendment, revision or modification of or to the Township Zoning Plan for all or any portion of the Annexation Parcel unless the legislative authorities of both Parties mutually consent in writing to the same.

ARTICLE 3

SERVICES AND PAYMENTS

Section 3.1. Contribution of Services. Upon the annexation of the Annexation Parcel to the City, the City shall furnish to said property all the customary governmental services furnished by the City to other areas of the City. The Township and City agree to engage in activities to promote, complement and benefit the development and use of this property as determined in the sole discretion of each of these Parties. The Township is not expected or required to undertake any such activity to the detriment of other Township areas. The Township also agrees to explore with the City areas of snow removal and road maintenance responsibilities which can be shared between the Parties to further improve the efficiency of these services in and near the area(s) to be annexed and to share a portion of these responsibilities. Nothing contained in this

Section 3.1 shall be construed as obligating either Party to provide a particular service, level of service or financial commitment, and such matters shall be left to the further mutual agreement of the Parties.

Section 3.2. Payments to the Township. In consideration of the mutual promises contained herein and the Township's consent to the annexation of the Annexation Parcel to the City and its contribution of services as set forth herein, the City shall pay service fee payments to the Township. The amounts to be paid to the Township shall be equal to fifty percent (50%) of the gross amount of the income tax actually collected by the City, without any setoffs or deductions whatsoever other than refunds, from the net profits of any business located on and from persons working in any portion of the Annexation Parcel including, without limitation, income tax revenue collected from construction activities occurring on the Annexation Parcel. The obligation to make these payments to the Township shall begin on the date the City accepts the annexation of the Annexation Parcel and shall continue during the term and any renewal of this Agreement. The cost of administering, enforcing and collecting the City income tax generated from the area included within the Annexation Parcel shall be at the sole cost and responsibility of the City.

Section 3.3. Distribution of Payments. Within thirty (30) days of the last day of March, June, September and December of each year (or if any such date is not a business day, on the immediately succeeding business day), the City shall (i) calculate and pay to the Township the service fee payment amounts for the prior three months and (ii) provide an accounting of the income tax receipts and a breakdown for the calculation of the payment(s).

ARTICLE 4

TERM OF AGREEMENT

Section 4.1. Term and Renewal. The initial term of this Agreement (the "Initial Term") shall be for a period of fifty (50) years, commencing on the Effective Date and shall, upon timely prior written notice, terminate at midnight, April 19, 2065. Unless all legislative authorities of the Parties affirmatively act to terminate this Agreement within one (1) year prior to the expiration of the Initial Term or any subsequent twenty-five (25) year term provided for in this Section, this Agreement shall automatically be renewed for an additional period of twenty-five (25) years, and this Agreement shall continue to be automatically renewed thereafter for similar twenty-five (25) year periods at the end of each renewal period with no limit upon the number of such renewals. The provision herein for automatic extension of this Agreement recognizes that the accrual of benefits to the Parties from this Agreement may take decades. The "Term" of this Agreement shall include the Initial Term and any extensions thereof pursuant to this Section.

ARTICLE 5

GENERAL PROVISIONS

Section 5.1. Support of Agreement. In the event that this Agreement, or any of its terms, conditions or provisions, is challenged by any third party or parties in a court of law, the

Parties agree to cooperate with one another and to use their best efforts in defending this Agreement with the object of upholding this Agreement. Each Party shall bear its own costs in any such proceeding challenging this Agreement or any terms or provisions thereof.

Section 5.2. Signing Other Documents. The Parties agree to cooperate with one another and to use their best efforts in the implementation of this Agreement and to sign or cause to be signed, in a timely fashion, all other necessary instruments, legislation, petitions and similar documents, and to take such other actions as either Party may reasonably request in order to effectuate the purposes of this Agreement.

Section 5.3. Mediation. In the event the Parties have a dispute as to any of the terms of applicability of this Agreement, the Parties agree to use their best efforts to resolve the dispute through a mutually acceptable mediation process prior to any party filing a lawsuit. Each Party participating in mediation shall pay its own costs of mediation, including its proportionate share of the compensation and administrative expenses required by the mediator and by the mediation services provider selected by the Parties. If a mediator has not been selected by the Parties within sixty (60) days after one of the Parties has requested that a dispute arising under this Agreement be mediated, or if the dispute has not been resolved within ninety (90) days after notice of the dispute has been provided to the other Party, then any of the Parties may commence a lawsuit or commence such other method of pursuing such remedies as may be available to any of the Parties.

Section 5.4. Default. A failure to comply with the terms of this Agreement shall constitute a default hereunder. The Party in default shall have ninety (90) days, after receiving written notice from the other Party of the event of default, to cure that default. If the default is not cured within that time period, the non-defaulting Party may sue the defaulting Party for specific performance under this Agreement or for damages or both; or may pursue such other remedies as may be available. In any litigation between the Township and the City, the prevailing Party shall be entitled to recover from the losing Party all reasonable costs and expenses of suit, including reasonable attorney fees.

Section 5.5. Character of Payments. Nothing in this Agreement is to be interpreted as the sharing of the proceeds of any tax levy by and between any Parties. Any language within this Agreement which employs an amount of any tax to be collected as part of a calculation for determining a sum to be paid by one Party to the other Party is intended, and therefore to be interpreted, as a reasonable, practical and convenient mechanism which the Parties have agreed to use to compute, in a less controversial manner, the payments to be made by one Party to another for services and other items of value to be received by the paying Party. No payments to be made under this Agreement are intended to be a sharing of proceeds of any tax levy proscribed by Section 709.192(D) of the Ohio Revised Code.

Section 5.6. Amendments. This Agreement may be amended only by a writing approved by the legislative authorities of all of the Parties by means of appropriate legislation authorizing such amendment. Any amendment, in order to be effective, must be authorized by appropriate legislation passed by each of the Parties.

Section 5.7. Immunities Preserved. By entering into this Agreement, none of the Parties intend to relinquish or waive any of the immunities they now have or may hereafter be accorded under state and/or federal laws, including, without the limitation of any such immunities, all those immunities accorded to governmental entities and their officers and employees under O.R.C. Chapter 2744.

Section 5.8. No Personal Liability. All covenants, obligations and agreements of the Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of any Party in other than their official capacity, and no official or member of a legislative authority executing this Agreement on behalf of any Party or any present or future member, officer, agent or employee of any Party shall be liable personally by reason of the covenants, obligations or agreements of the Parties contained in this Agreement.

Section 5.9. Powers Preserved. This Agreement is not intended to be in derogation of the powers granted to municipal corporations by Article XVIII, Ohio Constitution, or any other provisions of the Ohio Constitution or of the Ohio Revised Code; nor is it intended to be in derogation of the powers granted to township under any provisions of the Ohio Constitution or of the Ohio Revised Code. The Parties hereby acknowledge their belief as to the lawfulness of this Agreement and agree not to challenge or contest it, or any provisions contained herein.

Section 5.10. Beneficiaries. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors. This Agreement shall not inure to the benefit of anyone other than as provided in the immediately preceding sentence. Except for the Parties, this Agreement is not intended to and does not create rights or benefits of any kind for any other persons or entities that are not a party to this Agreement.

Section 5.11. Agreement. The Parties acknowledge and agree that this Agreement is intended to and shall serve as an annexation agreement pursuant to Section 709.192 of the Ohio Revised Code.

Section 5.12. Liberal Construction. The Parties agree that just as Section 709.192 of the Ohio Revised Code is to be liberally construed to allow the Parties to enter into Annexation Agreements, the Parties further agree that this Agreement shall be liberally construed in order to facilitate the desires of each of the Parties to carry out this Agreement. Each provision of this Agreement shall be construed and interpreted so as to permit maximum advantage to the Parties allowed by Section 709.192 of the Ohio Revised Code.

Section 5.13. Notices. All notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other Party at the address set forth in this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by

certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. For purposes of this Agreement, notices shall be addressed to:

(a) The Township at:

Liberty Township Board of Trustees
10104 Brewster Lane, Suite 125
Powell, Ohio 43065
Attention: Township Administrator

With a copy simultaneously sent or delivered to:

Donald F. Brosius
Brosius, Johnson & Griggs, LLC
50 West Broad Street, Suite 3300
Columbus, Ohio 43215

(b) The City at:

City of Powell
47 Hall Street
Powell, Ohio 43065
Attention: City Manager

With a copy simultaneously sent or delivered to:

Gene Hollins
Frost, Brown, Todd
One Columbus, Suite 2300
10 West Broad Street
Columbus, Ohio 43215

The Parties, by notice given hereunder, may designate any further or different address to which subsequent notices, consents, certificates, requests or other communications shall be sent.

Section 5.14. Captions and Headings. The captions and headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections hereof.

Section 5.15. Counterparts. This Agreement may be executed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more of such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument.

Section 5.16. Governing Law and Choice of Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio or applicable federal law. All claims, counterclaims, disputes and other matters in question between the Parties or their respective agents and employees arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Delaware County, Ohio.

IN TESTIMONY WHEREOF, the Parties have caused multiple counterparts hereof to be executed by their duly authorized officers on or as of the date first set forth above.

ATTEST:

**THE CITY OF POWELL,
DELAWARE COUNTY, OHIO**

Powell Council Clerk

By: _____
Stephen A. Lutz, City Manager

APPROVED AS TO FORM:

Law Director

ATTEST:

**LIBERTY TOWNSHIP
DELAWARE COUNTY, OHIO**

Mark Gerber, Township Fiscal Officer

By: _____
David Anderson,
Township Administrator

ATTACHMENTS:

Attachment A – Annexation Parcel

Attachment B – Annexation Parcel Map

FISCAL OFFICERS' CERTIFICATIONS

The undersigned fiscal officer of Liberty Township (Delaware County), Ohio hereby certifies that the moneys required to meet the financial obligations of the Township under the foregoing Annexation Agreement have been appropriated lawfully for that purpose, and are in the treasury of the Township or in the process of collection to the credit of an appropriate fund, free from encumbrances. This certification is made in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

Fiscal Officer, Liberty Township,
Delaware County, Ohio

The undersigned fiscal officer of City of Powell, Ohio hereby certifies that the moneys required to meet the financial obligations of the City under the foregoing Annexation Agreement have been appropriated lawfully for that purpose, and are in the treasury of the Township or in the process of collection to the credit of an appropriate fund, free from encumbrances. This certification is made in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

Fiscal Officer, City of Powell, Ohio

ATTACHMENT A
LIBERTY-POWELL ANNEXATION AGREEMENT

The Annexation Parcel consists of the following parcels as numbered and in the records of the County Auditor of Delaware County, Ohio, and as further depicted and shown on the Annexation Parcel Map attached as Attachment B:

Parcel Numbers

319 313 040 02000

319 316 010 01000

319 316 010 02000

ATTACHMENT B

