

PRE-ANNEXATION AGREEMENT

This Pre-Annexation Agreement (the "Agreement") is made and entered into this _____ day of _____, 2015, by and between Sawmill Seldom Seen LLC, an Ohio limited liability company (hereinafter the "Landowner"), Schottenstein Real Estate Group. LLC, an Ohio Limited Liability Company, (hereinafter the "Developer") and the City of Powell, Ohio, an Ohio municipal corporation organized and existing under the Constitution and laws of the State of Ohio and its municipal charter (hereinafter the "City"), under the circumstances summarized in the following recitals.

RECITALS:

WHEREAS, Landowner owns approximately 43.88 +/- acres of land located on Sawmill Parkway and Seldom Seen Road (which land is depicted on Exhibit A and referred to herein as the "Property") which is contiguous with the boundaries of the City; and

WHEREAS, Landowner is in a contractual relationship with Developer Schottenstein Real Estate Group. LLC, an Ohio Limited Liability Company, which plans to purchase, zone and develop the Property within the City of Powell; and

WHEREAS, the Property would benefit from certain City services, including in particular police protection and comprehensive planning and zoning services; and

WHEREAS, the City is capable of providing and hereby agrees to offer its municipal services to the Property if the Property is annexed to the City; and

WHEREAS, the Parties agree that it is in their mutual interest prior to the annexation process to enter into this Agreement for the development of the Property for the mutual benefit of Landowner, Developer and the City; and

NOW THEREFORE, in consideration of the covenants and agreements contained herein, Landowner and the City covenant and agree as follows:

Section 1. Annexation Petitions and Related Approvals.

A. Petition(s) for Annexation; Annexation. The Landowner shall prepare or has already prepared, an annexation petition, map, legal description and other related information, as may be required by the Ohio Revised Code ("ORC"), to annex the Property to the City. The annexation process shall be an "Expedited Type II" annexation as provided in ORC Section 709.023. Landowner agrees that it will execute any necessary annexation petition, as appropriate, and will execute any other documents reasonably necessary to effectuate the annexation as may be required by law at its cost or expense. The annexation petition shall appoint Thomas L. Hart, Esquire, as the petitioner's agent and may be filed solely with the Property or may be filed as a joint annexation petition with other parcels so long as all other parcels so joined are supported by one hundred (100%) of the owners of each parcel and the joinder of any such additional parcels will in no way affect the agreements of the parties memorialized in this Agreement. The petition will be filed with the Delaware County Commissioners. The Landowner agrees that all costs and expenses in petitioning for the annexation will be borne by the Landowner or Developer. Should the City desire for its own attorney to represent its interests with regard to the annexation petition, those costs will be borne by City. Landowner further agrees that they will continue to support the annexation to the City throughout the process, including any appeal or court action at no further expense to City, unless the City desires to retain its own attorneys; provided, however, Landowner's continued cooperation in the annexation of the Property shall be subject to and conditioned upon the City's performance of its duties and obligations as memorialized in this Agreement.

B. City Service Resolution. Pursuant to and in accordance with the ORC, the City agrees to enact, prior to twenty (20) days after the date of filing the annexation petition(s) with the Board of County Commissioners of Delaware County, Ohio (the "Commissioners"), the appropriate Service Resolution stating the services that will be provided to the Property upon annexation. The Service Resolution, once adopted, shall be immediately certified and filed with the Clerk of the Commissioners.

C. Development Considerations. The property is currently zoned under the Liberty Township zoning ordinance, which township zoning previously permitted a "big box" retail store. The parties agree that "big box" retail is not the appropriate zoning of this parcel. Landowner's or Developer's intended use of the Property is that of a Planned Commercial District (PC) under the Powell Zoning Code to include a mix of commercial and residential uses such as neighborhood retail and office uses, and a multifamily rental community to include attached homes targeted for senior empty nester housing. Landowner and Developer propose the Development Plan for the Property attached hereto as Exhibit B and incorporated herein by reference.

The City agrees that the Property will retain its Liberty Township zoning, including any development plan and development standards text approval, pursuant to Chapter 1141 of the Codified Ordinances of the City of Powell. Upon filing of an application to rezone the Property under the Powell Zoning Code, Council intends to enact legislation formally referring such application to the Powell Planning and Zoning Commission for its review and consideration in accordance with the applicable provisions of the Codified Ordinances. Such review and consideration shall occur during the pendency of the annexation process. The City' planning staff and administration agree that, if the rezoning application and accompanying preliminary development plan is generally consistent with Exhibit B attached hereto, City staff and

administration will professionally review and timely process the application to zone the property to a PC Zoning District. The City understands it has one hundred twenty (120) days to accept the annexation after the annexation petition has been approved by the Commissioners and a copy of the record is filed with the Clerk of the City and laid before Council; (ORC Section 709.04). At the request of the Landowner, the City agrees to delay acceptance of the annexation until legislative approval of the rezoning can be accomplished contemporaneously with the acceptance of the annexation. If, for some reason, the rezoning ordinance cannot be approved in a form or substance acceptable to Landowner, the City agrees, at the request of Landowner, to permit Landowner to withdraw its request to annex the property to the City and/or to forbear from acceptance of the annexation by allowing the 120-day period to expire, thus effectively rejecting the annexation of the Property. If the annexation approval occurs prior to or other than concurrently with the legislative approval of the rezoning, and the rezoning is subsequently not approved substantially in accordance with Exhibit B (or as it may be modified acceptably to Landowner and Developer) or is referred to a vote of the electorate or a building moratorium is enacted which would limit Landowner's or Developer's use of the Property, City agrees, at Landowner's or Developer's request: (i) to reconsider the ordinance accepting the annexation, and to rescind, repeal and reject the annexation approval within fourteen (14) days of the date of the disapproval of the rezoning or referral to a vote of the electorate or the enactment of the building moratorium, or (ii) to detach/de-annex the Property from the City or not oppose any owner's petition to detach/de-annex its part of the Property from the City.

D. Approval and Permit Regulation.

(i) **Compliance Statement.** Nothing in this Agreement shall exempt the parties hereto from the zoning, development plan and subdivision platting processes of

City. The execution and delivery of this Agreement shall not serve as a variance of the zoning, development plan and platting process mandated by the Codified Ordinances and the Subdivision Regulations of City, but will serve as a preliminary understanding and guide for the proposed zoning and development of the Property.

(ii) **Council Action**. The obligations of and agreements by the City contained herein shall be effective and enforceable upon, and subject to, the approval of all necessary legislation and/or motions by Council. It is acknowledged that the initial legislation approving this Agreement is merely the first in a series of legislative acts implementing this Agreement. All subsequent Council actions implementing this Agreement shall be considered to be in furtherance of this Council Action.

(iii) **Permits**. Landowner or Developer will obtain all necessary permits from all levels of government to allow Landowner or Developer to build and develop Property consistent with its intended use.

(iv) **Replatting**. City will cooperate with Developer to cause the Property to be replatted from the currently effective plat to permit the development of the Property generally in accordance with the Development Plan Concept. In connection therewith, City will cooperate in vacating the existing public road designated "Revere Court" as well as the platted setbacks along Seldom Seen Road, it being the intention of the parties that setbacks will be addressed in the Development Standards Text in connection with the zoning.

Section 2. Miscellaneous

A. **Intent of Parties**. This Agreement shall be binding upon the Parties hereto and their respective successors and/or assigns, and by execution hereof, all Parties represent that they

are duly authorized to sign it. By passage of Ordinance No. _____ on _____, the City authorized the execution of this Agreement.

B. Cancellation or Termination. This Agreement may be cancelled or otherwise terminated by mutual written agreement of the Parties hereto or pursuant to the terms of this Agreement as to conflict in law, impracticality and/or acts of God.

C. Remedies. Except as otherwise limited by Chapter 2744 of the Ohio Revised Code as to action for or against the City, the Parties hereto shall be afforded and do possess the right to seek every remedy available at law or in equity provided for under the laws of the State of Ohio as pertains to the terms and conditions, duties, obligations, privileges and rights of this Agreement and the enforcement thereof.

D. Enforcement. Unless this Agreement is cancelled or otherwise terminated, this Agreement will be enforceable against any Party hereto per the laws, ordinances, resolutions, regulations or policies in effect at the time of the execution of this Agreement.

F. Assignment of Agreement. Landowner or Developer may assign this Agreement, or any part thereof or any duty, obligation, privilege or right granted under this Agreement to any newly formed entity of which Landowner or Developer is a member, or to any affiliate entity of which Landowner or Developer is a member. Landowner or Developer will not otherwise assign the Agreement without the express written consent of the City, which shall not unreasonably be withheld.

G. Relative Rights. The rights and obligations of the parties hereunder shall be subject to the terms and conditions hereof, and will inure to the benefit of, and be binding on, the respective successors and assigns.

H. Entire Agreement Merger Clause; Statement of Incorporation. It is agreed that the Agreement merges all of the oral negotiations, representations, discussions and understandings between the Parties, their legal counsel, agents or representatives. This Agreement contains the entire Agreement of the Parties with respect to its subject matter. All documents related to this Agreement and/or attached hereto as exhibits or addendums shall be incorporated into this Agreement by reference as if fully set out at length herein.

I. Severability. If any clause, sentence, paragraph or part of this Agreement shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Agreement and the remainder of said Agreement shall continue in full force or effect.

J. Cooperation. The City will cooperate with Landowner to obtain any required and/or necessary permit from any government or governmental agency not a party to this Agreement.

K. Modifications or Amendment of Agreement. No modifications, amendments, alterations or additions shall be made to this Agreement except in a writing signed by all Parties hereto.

L. Recitals. The Parties acknowledge and agree that the facts and circumstances as described in the Recitals hereto are an integral part of this Agreement and as such are incorporated herein by reference.

M. Executed Counterparts. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same agreement. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

N. **Captions**. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

O. **Survival of Representations and Warranties**. All representations and warranties of Landowner and the City in this Agreement shall survive the execution and delivery of this Agreement.

P. **Effective Date**. This Agreement shall be effective when signed by all the Parties hereto.

Q. **Time**. Time shall be of the essence in doing and performing all things to be done under the terms of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives this _____ day of _____, 2015.

CITY OF POWELL, OHIO

By: _____

Printed: _____

Title: City Manager

SAWMILL SELDOM SEEN LLC, AN OHIO LIMITED LIABILITY COMPANY

By: _____

Printed: _____

Title: _____

SCHOTTENSTEIN REAL ESTATE GROUP, LLC, AN OHIO LIMITED LIABILITY CORPORATION

By: _____

Printed: _____

Title: _____

INDEX OF EXHIBITS

- A. Description of Property
- B. Development Plan

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