

PRE-ANNEXATION AGREEMENT

This Pre-Annexation Agreement (the "Agreement") is made and entered into this _____ day of _____, 2019, by and between Home Steitz, LLC an Ohio limited liability company ("Developer") and TLK Development, LLC an Ohio limited liability company (hereinafter the "Landowner") 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 "Powell" or the "City"), under the circumstances summarized in the following recitals. Together the Developer, Landowner and City may sometimes be referred to as the "Parties".

RECITALS:

WHEREAS, Landowner owns or controls approximately 11.746+/- acres of land located on Home Road (which land is depicted on Exhibit A and referred to herein as the "Property") which is contiguous with parcel number 319-230-02-001-002 owned by Howard R. Vance containing approximately 0.549 acres (hereinafter the "Vance Property") which is contiguous with the boundaries of the City; and

WHEREAS, Developer has prepared an annexation petition to annex approximately 11.555 acres of land including all of the Vance Property and a portion of the Property as depicted on Exhibit A; and

WHEREAS, Developer is under contract to purchase the Property from Landowner; and

WHEREAS, the Property would benefit from certain City services, including in particular police protection and comprehensive planning and zoning services offered by the City; 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 during the annexation process to enter into this Agreement for the development of the Property for the mutual benefit of Landowner and the City; and

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

Section 1. Annexation Petitions and Related Approvals.

A. Petition(s) for Annexation; Annexation. Developer agrees to prepare or has already prepared, at its expense, 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 they will execute (or have already executed) any necessary annexation petitions, as appropriate, and will not remove names from the petitions within the statutory period, and will execute any other documents reasonably necessary to effectuate the annexation as may be required by law as long as Landowner does not thereby incur additional cost or expense. The petition will be filed with the Delaware County Commissioners. Developer agrees that the costs for its own attorney to represent its interests with regard to the annexation petition will be borne by Developer. Developer and Landowner further agree 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 Landowner; provided, however, Landowner's and Developer'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 and the economic viability to Developer to continue to so cooperate.

B. City Service Resolution. Pursuant to and in accordance with the ORC, the City agrees to enact (or has already enacted), 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. Developer's intended use of the Property is a neighborhood commercial development including but not limited to the following uses: Retail Sales; Convenience Business; Commercial Establishments; Civic Facilities; Office Uses; General Business; Office Type Business; Office Research Centers; Services Business; Personal Services; Elderly Housing Facilities; Life-Care Facilities; Nursing Homes; Child Daycare; Agriculture; Restaurants; Medical or Dental Office Facilities; Hospitals and Clinics; Multi-family Residential housing.

The following uses shall be prohibited: Nuisance or hazardous materials of any kind whatsoever; Automotive Fuel, Repair or Service Stations; Automotive Sales, New or Used as a primary business; Nightclubs; Adult Entertainment or Bookstores; Storage facilities. The Property shall be developed generally in accordance with the approved Preliminary Development Plan for the Property, attached hereto as Exhibit B, provided however, as such Plan and uses may be adjusted and approved in accordance with the zoning ordinances of the City and as may be agreed by the Developer as follows.

The Property is currently subject to the Liberty Township zoning ordinance. The Developer has filed and received approval on January 16, 2019 of its application for preliminary development plan and development standards text approval, pursuant to Chapter 1131 and 1143

of the Codified Ordinances of the City of Powell. The parties acknowledge that such approval occurred during the pendency of the annexation process. The City's planning staff and administration agree that, if the forthcoming final development plan and development standards text is generally consistent with Exhibit B attached hereto, the zoning and final development plan application will be supported by staff as responsive to the planning and zoning plans, principles and objectives of the City of Powell. 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 and Developer, the City agrees, at the request of either, to permit Developer 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 and final development plan are subsequently not approved substantially in accordance with Exhibit B (or as it may be modified acceptably to Developer and City staff) or is referred or a building moratorium is enacted which would limit Landowner's or Developer's use of the Property, and/or Developer fails to acquire title to 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, at the requests of Landowner

or Developer ; or (ii) to detach/de-annex from City the Property or not oppose any owner's petition to detach/de-annex its part of the Property from the City.

All of the surface drainage on the Property discharges to stormwater facilities located within and falling under Delaware County purview. Accordingly, all stormwater design and discharge requirements shall be reviewed and approved in accordance with the standards of the Delaware County Engineer.

D. Approval and Permit Regulation.

(i) **Compliance Statement.** Nothing in this Agreement shall absolve the Parties hereto from the responsibility to comply with the zoning and development plan process before the Planning Commission, Board of Zoning Appeals, and City Council of the City.

(ii) **Council Action.** The obligations of and agreements by the City contained herein shall be effective and enforceable upon 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.** Developer will obtain all necessary permits from all levels of government to allow Developer to build and develop Property consistent with its intended use.

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. Any cause of action brought to enforce this Agreement shall have exclusive venue in a court of competent jurisdiction in Delaware County, Ohio.

F. Assignment of Agreement. Landowner and Developer shall not assign this Agreement, or any part thereof or any duty, obligation, privilege or right granted under this Agreement prior to the completion of the Annexation, without the express written consent of the City, which shall not unreasonably be withheld, unless such assignment is to a single purpose limited liability company which the managers of Developer control, in which case no such consent shall be required.

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 and Developer 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, Developer 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 _____, 20____.

CITY OF POWELL, OHIO

By: _____

Printed: _____

Title: City Manager

HOME STEITZ, LLC

By: _____

Title: _____

TLK DEVELOPMENT, LLC

By: _____

Printed: _____

Title: _____

INDEX OF EXHIBITS

- A. Description of Property
- B. Concept Plan

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