

PRE-ANNEXATION AGREEMENT

This Pre-Annexation Agreement (the "Agreement") is made and entered into this _____ day of _____, 2020, by and between Liberty Reserve LLC, an Ohio limited liability company (hereinafter the "Landowner"), TMB Investments, Ltd., 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 or controls approximately 8.601 +/- acres of land located on Home Road near Steitz Road (which real property is depicted on Exhibit A and referred to herein as the "Property") which is contiguous with the boundaries of the City through Delaware County Right of Way of Home Road; and,

WHEREAS, Landowner and Developer are related business entities, and Landowner plans to zone the Property within the City of Powell and engage the services of Developer to develop and operate a residential community thereon; 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, Developer, 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 Aaron Underhill (and other attorneys with the law firm of Underhill & Hodge LLC) as the petitioner's agent and will be filed solely with the Property. The petition will be filed with the Delaware County Commissioners. The Landowner and Developer agree that all costs and expenses in petitioning for the annexation will be borne by 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 as Farm Residence District (FR-1). The parties agree that FR-1 is not the appropriate zoning of this parcel. The intended use of the Property by the Landowner and Developer is that of a Planned Residence District (PR) under the Powell Zoning Code to include a rental community containing forty-two (42) two-family residences contained within twenty-one (21) buildings. Landowner and Developer propose a Development Plan for the Property, attached hereto as Exhibit B and incorporated herein by reference, that includes forty-two (42) units and a density of 4.88 dwelling units per acre.

Upon filing of an application to rezone the Property under the Powell Zoning Code, such application shall be forwarded 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 are generally consistent with Exhibit B attached hereto, and with forty-two (42) two-family residences contained within twenty-one (21) buildings and a density of 4.88 dwelling units per acre as described above, City staff and administration will professionally review and timely process the application to zone the property to a PR 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 Developer, 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 Developer, the City agrees, at the request of Developer, 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 in accordance with Exhibit B, or is referred to a vote of the electorate, or a building, utility, or any access moratorium is enacted which would limit Landowner's use of the Property, or similar action taken by City, Delaware County, or any other property that creates a lack of services to the property, or if all governmental approvals, including but not limited to Federal, State of Ohio, Delaware County, and City government engineering approvals are not finalized within sixty (60) days after council acceptance and approval of a development plan as shown on Exhibit B and consistent with the density described above, or Developer is unable to receive a construction loan, the City agrees, upon receipt of a written request from the Landowner and/or Developer: (i) to reconsider the ordinance accepting the annexation, and to rescind, repeal and reject the annexation approval within fourteen (14) days of any of the above described events occurring; or (ii) to detach/de-annex the Property from the City and 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.** Developer will obtain all necessary permits from all levels of government to allow Landowner 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.

F. Assignment of Agreement. 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 Developer is a member, or to any affiliate entity of which Developer is a member.

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 _____, 2020.

CITY OF POWELL, OHIO

By: _____

Printed: _____

Title: City Manager

LANDOWNER

LIBERTY RESERVE, LLC

By: _____

Printed: _____

By: _____

Printed: _____

DEVELOPER

TMB INVESTMENTS, LTD.

By: _____

Printed: _____

Title: _____

INDEX OF EXHIBITS

- A. Description of Property
- B. Development Plan

0128851.0615531 4820-2109-5873v1

EXHIBIT A

PARCEL ONE:

Situated in the State of Ohio, County of Delaware, Township of Liberty, Range 19, Township 3, Section 2, United States Military Lands and in the Northwest part of Farm Lot 7 and being 13.910 acres out of an original 20.831 acres (measured), 21.00 acres (per deed) conveyed to Susanne Hal Pearl et al. shown in Volume 64, Pg. 1581.

Commencing for reference at a R.R. spike (fnd.) in the centerlines of Steitz Road (Co. Rd. 125, 50' R/W) and Home Road (Co. Rd. 124, 60' R/W), thence;

S86°37'11" East a distance of 861.02 feet with the center of said Home Road to a Nail (set) said Nail being the TRUE PLACE of BEGINNING for this description, thence;

N00°37'49" East a distance of 232.00 feet leaving said road with a west line of said 21.00 acre tract and being the east line of a 1.71 acre tract conveyed by deed to Winfred Wirth shown in D.B. 542, Pg. 659 to an I.P. (set) at the northeast corner of said 1.71 acre tract, passing a Wood Post (fnd.) at 30.00 feet, thence;

N89°10'11" West a distance of 326.40 feet with the north line of said 1.71 acre tract to an I.P. (set) on the northwest corner of said 1.71 acre tract, thence;

N02°34'49" East a distance of 620.04 feet with a new line through said 21.00 acre tract to an I.P. (set) on the south line of a 30.924 acre tract conveyed by deed to R & S Pearl Family shown in D.B. 64, Pg. 1581 thence;

S86°02'27" East a distance of 824.33 feet with the south line of said R & S Pearl 30.924 acre tract to a ¼" I.P. (fnd.), said I.P. being the northeast corner of said 21.00 acre tract and being the northwest corner of a 116.398 acre tract conveyed by deed to Olentangy Schools Board of Education shown in D.B. 104, Pg. 366, thence;

S03°39'44" West a distance of 828.87 feet with the west line of said school Board and being the east line of said 21.00 acre tract to a Nail (set) in the center of said Home Road, passing a ¼" I.P. (fnd.) at 798.87 feet, thence;

N86°37'11" West a distance of 474.34 feet with the center of said Home Road returning to the True Place of Beginning and containing 13.910 acres more or less, subject however to all legal easements and right-of-way on record.

This description was prepared from records on file at the Recorders Office, Delaware County, Ohio and from an actual field survey performed on August 19, 2003.

DESCRIPTION APPROVED
FOR TRANSFER
Chris Bausman
Delaware County Engineer
8/30/03

Basis of Bearing: Bearings are based on the centerline of Home Road as being N86°37'11" West shown in D.B. 104, Pg. 366 Recorders office, Delaware County Ohio.

Iron Pins set are 5/8" rebar 30" long and are capped E.Z. 8067.

EXCEPTING THEREFROM THE FOLLOWING PARCEL (being the parcel conveyed to Beautiful Savior Lutheran Church in Volume 1277, Page 1093):

Situated in the State of Ohio, County of Delaware, Liberty Township, Range 19, Twp. 3, Section 2, United States Military lands and being in the N.W. part of Lot 7 and being 7.018 Acres out of a 13.910 Acre tract (Parcel #31924001036001) conveyed to the OHIO DISTRICT LUTHERAN CHURCH EXTENSION FUND, INC., shown in O.R. 418, Pg. 685 and being more particularly described as follows:

Commencing for reference at a R.R. Spike (found) at the centerline intersection of Steitz Road Co. Rd. 125, 50' R/W) and Home Road (Co. Rd. 124, 60' R/W), thence;

S 86°37'11" East a distance of 967.36 feet with the centerline of Home Road to a Nail (set), said Nail being the TRUE PLACE OF BEGINNING for this legal description, thence;

N 03°39'45" East a distance of 832.59 feet, passing an I.P. (set) at 30.00 feet, leaving Home Road with a new line through said 13.910 Acres to a set I.P. on the north line of the 13.910 Acres and being a south line of 30.924 Acre tract conveyed to PEARL EDWARD TRUSTEE (Parcel # 319-21001039000) shown in D.B. 172, Pg. 1173, also being the north line of Farm Lot 7 and the south line of Farm Lot 26, thence;

S 86°02'27" East a distance of 368.00 feet with a south line of the 30.924 Acres and the said common Farm Lot lines to a ¼" I.P. (found) at the northwest corner of a 116.398 Acre tract conveyed to OLENTANGY SCHOOLS BOARD OF EDUCATION (Parcel # 319-24001034000) shown in D.B. 104, Pg. 366, thence;

S 03°39'45" West a distance of 828.87 feet with a western line of said Olentangy Schools tract to a Nail (set) in the center of Home Rd., passing a ¼" I.P. (found) at 798.87 feet, thence;

N 86°37' 11" West a distance of 368.00 feet with the center of Home Rd., returning to the TRUE PLACE OF BEGINNING and containing 7.018 acres more or less, subject however to all legal easements and rights-of-way of record.

PPN of Excepted Property: 319-240-01-036-002

PROPERTY ADDRESS: Vacant Lot, Home Road, Powell, Ohio 43065

PPN: 319-240-01-036-001

PARCEL TWO:

The following described tract of land is situated in the State of Ohio, Delaware County, Liberty Township, Range 19, Township 3, Quarter Section 2, Farm Lot 7, being all of Winifred P. Wirth's 1.71 acre tract described in Deed Volume 498, page 32, and being more particularly described as follows:

Commencing at a railroad spike found at the intersection of the centerline of Steitz Road (C.R.#125) with the centerline of Home Road (C.R.#124)(60');

Thence South $86^{\circ}12'00''$ East 526.72 feet, following the centerline of Home Road, to a cotton gin spindle found at the southwest corner of said 1.71 acre tract and marking the point of beginning,

Thence North $04^{\circ}38'11''$ East 228.70 feet, passing at 30.00 feet an iron pin set, to an iron pin set;

Thence South $86^{\circ}46'13''$ East 326.40 feet, to an iron pin set;

Thence South $05^{\circ}57'14''$ West 232.09 feet, passing at 202.05 feet an iron pin set, to a Mag nail set in the centerline of Home Road;

Thence North $86^{\circ}12'00''$ West 321.00 feet, following the centerline of Home Road to the point of beginning, containing 1.711 acres, more or less and subject to all valid easements and restrictions of record.

Property Address: 4026 Home Road, Powell, Ohio 43065
PPN: 319-240-01-037-000

