

PRE-ANNEXATION AGREEMENT

THIS PRE-ANNEXATION AGREEMENT (the "Agreement"), entered into this 15th day of May, 2002, by and among TRIANGLE PROPERTIES, INC., an Ohio corporation, with its principal offices at 470 Olde Worthington Road - Suite 100, Westerville, Ohio 43082 (hereinafter referred to as the "Developer"); LIBERTY COMMUNITY INFRASTRUCTURE FINANCING AUTHORITY, a new community authority under Chapter 349 of the Ohio Revised Code (the "Act"), with its principal offices at 470 Olde Worthington Road, Westerville, Ohio 43082 (hereinafter referred to as the "Authority"); and CITY OF POWELL, OHIO, an Ohio municipal corporation, with its principal offices at 47 Hall Street, Powell, Ohio 43065 (hereinafter referred to as the "City");

WITNESSETH:

WHEREAS, the Developer has acquired title to certain parcels of real estate located in Liberty Township, Delaware County, Ohio (the "Township"), which parcels are more fully described on Exhibits A-1 through A-2 attached hereto and incorporated herein by reference, on which the Developer and its affiliates, successors and assigns are developing a mixed use development consisting of a private golf course, single and multi-family housing, office and retail uses collectively known as Golf Village (hereinafter referred to as the "Real Property"); and

WHEREAS, by Resolution No. 00-748 of the Board of County Commissioners of Delaware County, Ohio, a new community authority known as the Liberty Community Infrastructure Financing Authority was established pursuant to the Act and in accordance with the terms and conditions set forth in a petition filed by the Developer with the Delaware County Board of County Commissioners on July 28, 2000 (the "Authority Petition"); and

WHEREAS, pursuant to an Infrastructure Acquisition and Construction Agreement, dated April 19, 2001 (the "Construction Agreement"), between the Developer and the Authority, a copy of which is attached hereto and incorporated by reference as Exhibit B, the Developer has agreed to construct certain infrastructure improvements (the "Project") described in "Exhibit B" to the Construction Agreement on behalf of the Authority and to convey the Project to the Authority; and

WHEREAS, pursuant to a Trust Agreement, dated as of April 1, 2001 (the "Trust Agreement"), between the Authority and The Huntington National Bank, as trustee (the "Trustee"), a copy of which is attached hereto and incorporated by reference as Exhibit C, the Authority has issued \$22,300,000.00 Community Facilities Adjustable Rate Bonds, Series 2001 (the "Series 2001 Bonds" and, together with any Developer Bonds [as such term is defined in the Trust Agreement] and any other bonds which may be issued by the Authority to refund the Series 2001 Bonds or the Developer Bonds, the "Project Bonds"), the proceeds of which, along with a Community Facilities Subordinated Excess Cost Advancement Note (the "ECA Note") and a Community Facilities Subordinated Letter of Credit Advancement Note (the "LCA Note" and, together with the ECA Note, the "Notes") both of which are initially delivered to the Developer, the Authority used to acquire and finance the Project; and

WHEREAS, debt service on the Project Bonds, the Notes, and any other notes, loans and other costs incurred by the Authority in the exercise of its powers under the Act, is to be paid by a Community Development Charge (as such term is defined in the Trust Agreement) imposed upon the Owners of all lots or parcels within the Real Property pursuant to the Declaration of Covenants and Restrictions for Liberty Community Infrastructure Financing Authority, Delaware County, Ohio, dated March 26, 2001 and filed of record on March 28, 2001 in the Recorder's Office of Delaware County, Ohio, in Official Record Book 0082, Pages 171-210, a copy of which is attached hereto and incorporated herein by reference as Exhibit D-1 (the "Original Declaration"), and as amended by the Supplemental Declaration to the Declaration of Covenants and Restrictions for Liberty Community Infrastructure Financing Authority, Delaware County, Ohio, dated August 17, 2001 and filed of record on August 20, 2001 in the Recorder's Office of Delaware County, Ohio, in Official Record Book 0120, Pages 1552-1556, a copy of which is attached hereto and incorporated herein by reference as Exhibit D-2 (the "Amended Declaration" and, together with the Original Declaration, the "Declaration"); and

WHEREAS, the Real Property is contiguous with the boundaries of the City; and

WHEREAS, the Developer and the Authority have determined that the Real Property would benefit from City services; and

WHEREAS, the City has determined to offer its municipal services to the Real Property if the Real Property is annexed to the City; and

WHEREAS, the City has determined that it is willing and able to purchase the Authority's interest in the Project upon the completion of annexation in order to assist in the financing of the activities set forth in the Petition and the Construction Agreement; and

WHEREAS, the Authority is willing to convey to the City its interest, if any, in all community facilities and infrastructure built pursuant to the Petition and the Construction Agreement upon the City's purchase of the Authority's interest in the Project;

NOW THEREFORE, in order to gain mutual benefits, the City, the Developer and the Authority covenant, agree and obligate themselves as follows:

Section 1. **Annexation Petition.** The Developer will sign and will use its best efforts to cause the underlying owners to sign, within ten (10) days of full execution of this Agreement, an annexation petition (the "Annexation Petition") thereby agreeing to annex the Real Property to the City. Notwithstanding anything herein to the contrary, all parties hereto acknowledge that the obligations set forth in this Agreement are expressly conditioned upon the Developer obtaining all of the signatures of the underlying owners of the Real Property as required for a valid annexation petition under Ohio Revised Code §709.022. The Authority agrees to sign the Annexation Petition with respect to any portion of the Real Property owned by the Authority. The Developer will pay for the cost of the annexation plat and for the cost of its attorney, Robert E. Albright, Esq. The City will pay for the cost of its attorney, Glen Dugger, Esq., and the cost of legal services provided by Richard Simpson, Esq. The Authority will pay for the cost of legal

services provided by Price Finley, Esq. The Developer agrees that, once this agreement is fully executed, the Developer will not remove its name from the Annexation Petition. The City and the Authority agree to support the Annexation Petition through the entire annexation process, including appeal of the Annexation Petition if the Delaware County Board of County Commissioners rejects the Annexation Petition or if the Township challenges or appeals approval of the Annexation Petition. The City and the Authority will provide affidavits for presentation to the Delaware County Board of County Commissioners in support of the Annexation Petition if necessary and will provide representatives to testify at the request of the Developer regarding the merits of the annexation.

Section 2. Appeal of the Annexation Petition. Should the Delaware County Board of County Commissioners deny the Annexation Petition or should the Township appeal or challenge approval of the Annexation Petition, the City and the Developer agree to pursue the appeal of the denial of the Annexation Petition or institute an action in mandamus to reverse the commissioners' decision; provided, however, that the City and the Developer may agree, in writing, not to pursue the appeal of the denial of the Annexation Petition. The Developer will pay for the cost of its attorney Robert E. Albright, Esq., and the City will pay for the cost of its attorney Glen Dugger, Esq. All other costs related to the appeal shall be divided equally between the City and the Developer. The Developer and the City agree to support the Annexation Petition through the entire appeal process and provide affidavits and/or representatives to testify regarding the merits of the annexation as necessary. The City and the Developer agree to use their best efforts and to employ all available means, including but not limited to appeal to the highest court possible, to bring about annexation of the Real Property to the City.

Section 3. Service Resolution. Pursuant to Section 709.031(B) of the Ohio Revised Code, the City agrees to enact a resolution setting forth the services that will be provided to the Real Property following annexation (a copy of which is attached hereto as Exhibit E). The City agrees to provide witnesses for the hearing before the Delaware County Board of County Commissioners and to provide affidavits in support of that resolution.

Section 4. Zoning. The Real Property to be annexed is currently zoned in the Township and the Township has approved the development plan. The City, through its development and planning staff, has reviewed the Real Property and believes the Real Property, as zoned in the Township, constitutes and is wholly appropriate for a planned unit development. The City further believes that the Real Property, as zoned in the Township, is appropriate and consistent with the City's Master Plan for the northwest area of the City. The City therefore agrees that the Real Property will be zoned Planned Residence District and Planned Commercial District as defined in the City Planning and Zoning Code in accordance with the Development Plan as heretofore approved by the Township and attached hereto as Exhibit F (which includes the Planned Commercial, Planned Residential and Industrial Districts). The City further agrees to approve the Development Plan attached hereto as Exhibit F, and the Landscape Plan and Graphics Plan attached hereto as Exhibits G-1 through G-3 and shall also approve any variances necessary for the Real Property to be developed in accordance with said Plans. By execution of this Agreement, the City hereby accepts without change all of the development standards set forth in the rezoning ordinance approved by the Township for the Real Property (the "Development Standards") and the restrictions set forth in the Master Declaration of Covenants,

Easements, Conditions and Restrictions for the Golf Village Subdivision filed for record on March 5, 2001 and recorded in Official Records 0076, pages 1894-1962 and any amendments thereto (the "Restrictions"). The City agrees that it will not impose any development standards in addition to the Development Standards and the Restrictions attached hereto. The Development Standards and the Restrictions attached hereto shall take precedence over any development standards set forth in the City's zoning code. Upon application of a building permit, if the applicant meets the standards set forth in the Development Standards and the Restrictions, the City shall review and administratively approve the building permit pursuant to procedures set forth in a letter agreement between the Developer and the City.

A. The approximately 20 acre tract of land located at the northeast corner of Subarea 2 at the junction of Home Road and the railroad tracks which is currently designated under the Township's zoning plan as an Industrial District may be revised (by either the City after acceptance of the annexation or the Township prior to such acceptance) at the request of the Developer to Planned Commercial with the same Township zoning district regulations and development standards as the Planned Commercial tract located east of Sawmill Parkway.

B. The approximately 30 acre tract of land located at the northeast corner of Seldom Seen Road and Sawmill Parkway which is currently designated under the Township's zoning plan as Planned Commercial and Office District and limited to office use may be revised (by either the City after acceptance of the annexation or the Township prior to such acceptance) at the request of the Developer to allow for planned commercial retail uses for up to 15 acres and planned commercial non-retail and office uses for the remaining acreage with the same Township zoning district regulations and development standards as the Planned Commercial located west of Sawmill Parkway on Home Road.

C. The approximately 18 acre tract of land located on the southwest corner of Home Road and Sawmill Parkway which is currently designated under the Township's zoning plan as a Planned Commercial and Office District may be requested to be revised at the request of the Developer for a commercial and/or retail use; provided, however, that any such change of zoning or use shall require the prior approval of both the Township and the City as duly authorized in writing by their respective legislative authorities by appropriate resolutions or ordinances authorizing such approval.

D. Prior to modifying the zoning and/or development standards for the tracts referred to in paragraph A or B above, the requested modification shall be timely forwarded to the Board of Trustees (if proposed to be modified in the City) or to City Council (if proposed to be modified in the Township) for review and recommendation prior to any action on the proposed modification. The reviewing body may then forward its recommendation on the proposed modification to the other body for consideration at the meeting at which the modification will be reviewed. The recommendation will be given due consideration at the meeting and will, to the extent practicable, be implemented if the recommendation comports with the above-stated development standards for the tract(s).

The City has held a joint meeting of City Council and the City's Planning and Zoning Commission at which the Developer presented the Development Plan, the Landscape Plan, the Graphics Plan, the Development Standards and the Restrictions. The City Council and the Planning Commission have each accepted the Development Plan. The Landscape Plan, the Graphics Plan, the Development Standards and Restrictions are each subject to the minor revisions set forth in the memorandum attached hereto as Exhibit H.

Should a referendum petition be filed for the purpose of defeating the rezoning of the Real Property the City shall, at its cost, use its best efforts to defend the legality of the applicable zoning ordinance. If such referendum petition is placed on the ballot, the City shall repeal the ordinance approving the rezoning of the Real Property for the purpose of leaving the current Township zoning in place and/or administratively adopt the Township zoning.

The City agrees that, should it annex property contiguous to the Real Property, it shall rezone such annexed property under the terms of the Northwest Area Plan as adopted by the City and the Township.

Section 5. **Acquisition of the Project.** In consideration of the Developer's agreement to execute and file, or cause to be executed and filed, the Annexation Petition and immediately following and as soon as the Authority is prepared to close the transaction, the City agrees to acquire the Project from the Authority. Upon such acquisition and the payment of the Purchase Price (as defined below), the parties agree that all Authority indebtedness will be retired or otherwise defeased, and the City agrees to take all necessary steps to complete the Project in accordance with the terms of the Construction Agreement.

The "Purchase Price" for the Project shall be determined as follows:

- (a) the sum of the following:
 - (i) an amount sufficient to pay all but \$6,545,000 of the principal of and any accrued and unpaid interest on the Project Bonds;
 - (ii) the principal of and any accrued and unpaid interest on the Notes; and
 - (iii) the Project Completion Amount, defined as an amount equal to:
 - (A) \$6,709,667 (which is the current estimated cost to complete the Project over and above the amount available from the proceeds of the Project Bonds, including legal fees of the Authority incurred in connection with the negotiation of this Agreement, the payment of which the parties hereby approve),
 - (B) LESS any and all amounts advanced by the Developer to complete the Project pursuant to the terms of the Construction Agreement and in accordance with the provisions of the ECA Note (i.e., the principal amount of the ECA Note less any accrued but unpaid

interest on the ECA Note which may have been added to the principal amount of the ECA Note);

- (b) LESS any and all amounts held by the Trustee in the Capitalized and Accrued Interest Account (as such term is defined in the Trust Agreement) upon the defeasance of all outstanding Series 2001 Bonds.

Section 6. **Completion of the Project.** The Authority agrees to complete the Project using any moneys available from the Purchase Price following the defeasance of the Project Bonds (other than the \$6,545,000 principal amount of Developer Bonds to be purchased by the Developer in accordance with Section 8 hereof) and the transfer to the City of any amounts required by this Agreement to be paid to the City. Moneys shall be disbursed by the Authority for the payment of costs of the Project, including the costs of installing electrical and gas distribution lines, upon receipt of an invoice from the Developer and countersigned by the City. Upon the exhaustion of such moneys, the Developer agrees to complete the Project from its own resources.

Section 7. **City General Obligation Bonds.** The City intends to finance a portion of the Purchase Price by issuing, within 60 days after the effective date of the City ordinance accepting the annexation of the Real Property to the City, but in no case later than December 31, 2002, bonds, notes, or other evidence of indebtedness of the City, which may be a general obligation of the City (the "City General Obligation Bonds"), in an amount currently estimated at \$22,155,000. Should the City issue City General Obligation Bonds to acquire the Project, the City agrees that the City General Obligation Bonds shall be (a) the full general obligation of the City, and the full faith, credit and revenue of the City shall be pledged for the prompt payment of the same, and (b) shall be payable from the Community Development Charge (as defined herein), which shall be assigned by the Authority to the City. The City agrees to take all necessary steps in order to make the City General Obligation Bonds legal, valid and binding obligations of the City; and the faith, credit and revenue of the City, including the Community Development Charges shall be irrevocably pledged for the prompt payment of the principal of and interest on the City General Obligation Bonds at maturity. The City agrees to adopt an ordinance authorizing the issuance of the City General Obligation Bonds with terms consistent with this Agreement. In addition, the City agrees, in the interim period between the approval of this Agreement and the issuance of the City General Obligation Bonds, not to incur other indebtedness that would cause the City General Obligation Bonds to exceed any limitation of indebtedness or taxation, either statutory or constitutional, which would preclude the issuance of the City General Obligation Bonds. The City will pay all costs associated with the issuance of the City General Obligation Bonds, including attorney fees.

Section 8. **Developer Bonds.** By a date not later than the date that the City issues the City General Obligation Bonds, the Developer shall take all necessary steps to purchase and own \$6,545,000 of Developer Bonds. The Authority shall use the proceeds of the Purchase Price to defease all of the Project Bonds and the Notes, except for the Developer Bonds, and shall subsequently defease the Trust Indenture. Notwithstanding any conflicting provisions of the Construction Agreement, the Authority and the Developer agree that the resolutions passed and agreements and documents executed by the Authority in connection with the Developer Bonds,

including, if necessary, a supplemental trust agreement, shall contain, among other things, the following provisions:

A. The Developer Bonds shall bear interest at a rate that is adjusted weekly on Thursday of each week. The interest rate for the Developer Bonds shall be a rate equal to two hundred seventy-five (275) basis points over the BMA Index (as such term is defined in the Trust Indenture) on the Thursday that the interest rate is being adjusted. Interest on the Developer Bonds shall be computed on the basis of a year of 365 or 366 days, as appropriate, and on the actual number of days elapsed. If, as of January 20th of any year, beginning January 20, 2013, moneys received by the Authority during the immediately preceding calendar year from the collection of the Community Development Charge exceed 1.25 multiplied times the highest debt service payment in any year for the "Combined Bond Amortization", as such term is defined hereinbelow, the interest rate for the Developer Bonds shall be increased immediately to five hundred seventy-five (575) basis points over the BMA Index. For purposes of this Agreement, "Combined Bond Amortization" means a projected principal and interest payment schedule having substantially equal debt service payments in each year, that would amortize both the principal amount of Developer Bonds outstanding as of the immediately preceding December 31st and the principal amount of outstanding City General Obligation Bonds, determined by combining into a single amortization schedule (i) an amortization schedule that, based on the number of years equal to thirty (30) minus the number of whole twelve-month periods elapsed from the date of issuance of the Developer Bonds to the date of the calculation, would fully amortize the outstanding principal amount of Developer Bonds, plus any accrued and unpaid interest thereon, at an interest rate of six per centum (6%) per annum, and (ii) the then-existing amortization schedule for the outstanding City General Obligation Bonds (provided that if any portion of the City General Obligation Bonds are short-term notes or bear interest at a variable rate, an amortization schedule will be used that, based on the number of years equal to thirty (30) minus the number of whole twelve-month periods elapsed from the date of issuance of the City General Obligation Bonds to the date of the calculation, would fully amortize the outstanding principal amount of City General Obligation Bonds, plus any accrued and unpaid interest thereon, at an interest rate of six per centum (6%) per annum).

B. The Developer Bonds shall be subject to optional redemption by the Authority at the direction of the City on any date after December 31, 2012 at a redemption price equal to 100% of the principal amount redeemed plus accrued interest to the redemption date, upon deposit by the City with the Authority of moneys sufficient to cause such redemption.

Section 9. Community Development Charge. Moneys remaining in the Community Development Charge Account on the date of the payment of the Purchase Price shall remain in the Community Development Charge Account (as such term is defined in the Trust Agreement) for the benefit of any outstanding Project Bonds. Subject to any limitations set forth in the Authority Petition and the Declaration, the Authority covenants that it will annually determine the Community Development Charge and take all necessary steps to cause the Community Development Charge to be collected at such times and in such amounts which will provide amounts sufficient and appropriate to pay when due all principal of and interest due on the Developer Bonds and the City General Obligation Bonds and to provide for any costs of operation of, and maintenance and repair of Community Facilities (as such term is defined in the

Trust Agreement), if any are to be made by, the Authority. The Authority warrants that the Community Development Charge as provided for in the Petition and the Declaration is valid and enforceable as provided therein and in the Act.

In addition, the Authority covenants that: (i) while the Developer Bonds remain outstanding, the Community Development Charge shall be determined and certified to the Delaware County Auditor for collection in each calendar year at the rate of 10.25 mills for each one dollar (\$1.025 for each \$100.00) of assessed valuation (the "Minimum CDC Amount"); and (ii) thereafter, until such time as Community Development Charge receipts equal 125% of the maximum annual debt service in any calendar year on the City General Obligation Bonds, the Community Development Charge shall be determined and certified to the Delaware County Auditor for collection in each calendar year at the Minimum CDC Amount, and no portion of that Community Development Charge shall be reduced or waived. After such time as the conditions described in clauses (i) and (ii) above have been satisfied, the Community Development Charge shall be determined and certified to the Delaware County Auditor for collection in each calendar year at a rate (which may be less than the Minimum CDC Amount) which will yield receipts at least equal to 125% of the debt service charges payable for that calendar year on the City General Obligation Bonds. The Authority further agrees that, if at any time during the term of the City General Obligation Bonds, the City has advanced moneys from its general fund (or another fund) to pay debt service charges on such bonds because moneys received by the City from the collection of the Community Development Charge are insufficient to pay such debt service charges, the Authority shall not reduce the Community Development Charge below the Minimum CDC Amount until the City has restored to the general fund (or other fund, as applicable), from the Community Development Charge after first paying any principal and interest then due on the City General Obligation Bonds, the total amounts advanced by the City, plus interest on the amount of such advances at the interest rate of five percent (5.0%) per annum, compounding annually.

The Authority agrees that, during each year that the City General Obligation Bonds or the Developer Bonds remain outstanding, on or before December 15th of each year, the Authority shall provide to the City an itemized list of its Operating and Maintenance Expenses for the following calendar year. For purposes of this Agreement, "Operating and Maintenance Expenses" shall mean the sum of the following: (a) the premium to maintain (i) an errors and omissions insurance policy for the members of the board or trustees of the Authority in the amount of \$1,000,000/\$3,000,000, (ii) a bond on each board member of the Authority in the amount of \$10,000 (\$15,000 for the Chair of the board of trustees of the Authority and \$25,000 for the Treasurer of the Authority) or such larger amounts as may be required by law, and (iii) a general liability insurance policy in the amount of \$1,000,000/\$3,000,000; (b) the cost of obtaining an audit of its financial statements as required by law and the cost, if any, of providing notice of and obtaining a meeting space for the annual meeting of the board of trustees of the Authority; and (c) operating expenses in an amount not to exceed \$12,500 (a portion of which shall be used for reasonable accounting and/or legal fees). The insurance company providing the insurance coverage and bond described in this paragraph shall be qualified to do business in the State of Ohio and shall be rated in one of the two highest rating categories by A.M. Best Rating. The Authority shall establish a General Fund from which Operating and Maintenance Expenses

shall be paid. Any disbursements from the General Fund to pay Operating and Maintenance Expenses described under subparagraph "c" above shall be approved in writing by the City.

For any calendar year during which the Developer Bonds or the City General Obligation Bonds remain outstanding, the Authority agrees that upon receipt of the Community Development Charge collected by the Delaware County Auditor, the Community Development Charge shall be disbursed in the following priority: (1) to the Authority's General Fund to pay Operating and Maintenance Expenses for such calendar year to the extent that the amounts held in the Authority's General Fund and Operating and Maintenance Reserve Fund (as defined in Section 10 hereof) are not sufficient to pay such Operating and Maintenance Expenses; (2) to pay any interest due on the Developer Bonds and to optionally redeem any Developer Bonds which the City has directed the Authority to optionally redeem, in accordance with Section 8 hereof; (3) to pay to the City principal and interest due on the City General Obligation Bonds; and (4) to use any remaining Community Development Charge receipts in such manner as shall be directed by the City.

Section 10. Tap Fees. The Authority agrees to continue to collect all sewer tap fees as set forth in the Trust Agreement, even if completion of the annexation is delayed due to an appeal. Following the payment of the Purchase Price by the City and the defeasance of the Trust Indenture, the Authority shall transfer to the City all but \$200,000 of the moneys held in the Tap Fees Account under the Trust Indenture. The Authority further agrees to transfer to the City all tap fees collected by the Authority after completion of the annexation of the Real Property and the City's purchase of the Project. The Authority shall not reduce or discount the tap fee amount without the prior written consent of the City. The Developer may sell, transfer or assign the taps purchased hereunder. The City shall use its best efforts to recommend all developers / builders who purchase land for development within the Real Property to purchase sewer taps from the Authority.

The \$200,000 of tap fees retained by the Authority shall be held by the Authority in a separate and distinct account for the benefit of the holders of the Developer Bonds, to be designated the "Operating and Maintenance Reserve Fund". While any moneys are held in the Operating and Maintenance Expense Reserve Fund, the Authority shall pay Operating and Maintenance Expenses by first transferring moneys in an amount equal to the estimated Operating and Maintenance Expenses for such year from the Operating and Maintenance Reserve Fund to its General Fund. The Operating and Maintenance Reserve Fund shall not be replenished and shall be extinguished (and any balance transferred to the City for the payment of interest on the City General Obligation Bonds) if at the end of any year, the amount of Community Development Charges received for such year equal or exceed the Operating and Maintenance Expenses for such year plus 125% of the interest due on the Developer Bonds for such year.

Section 11. Term of Agreement; Events of Default and Remedies. This Agreement shall remain in effect until the later of (a) the date that the City General Obligation Bonds (or any securities subsequently issued to refund such bonds) are no longer outstanding, or (b) the date that the City has recovered, with interest, any amounts advanced to pay debt service on the City General Obligation Bonds, as provided in Section 9 hereof. Except as otherwise provided in this

Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by any party hereto, or any successor to such party, such party or successor shall, upon written notice from the others, proceed promptly to cure or remedy such default or breach. In case such remedial action is not taken or not diligently pursued within thirty (30) days of such written notice, the party asserting default or breach may institute such proceedings at law or in equity (including but not limited to an action in mandamus) as may be necessary or desirable in its opinion to remedy such default or breach.

Section 12. **Miscellaneous.**

- (a) This Agreement and the rights and obligations of the parties hereunder shall be subject to the terms and conditions hereof and inure to the benefit of and be binding on the respective successors and assigns.
- (b) The Developer and the Authority hereby agree, to the extent that this Agreement is inconsistent with the Construction Agreement, that this Agreement shall control.
- (c) While this Agreement is in effect, the Developer agrees to use its best efforts to add any parcels of real property which may qualify under the Act for addition to the jurisdiction of the Authority (and thereby included within the definition of the Real Property subject to this Agreement and to the collection of the Community Development Charge) by filing with the Delaware County Commissioners an application to amend the Authority Petition in accordance with the Act.
- (d) With the exception of rights conferred expressly in this Agreement, nothing expressed or mentioned in or to be implied from this Agreement is intended or shall be construed to give to any person other than the parties hereto, any legal or equitable right, remedy, power or claim under or with respect to this Agreement or any covenants, agreements, conditions and provisions contained herein. This Agreement and all of those covenants, agreements, conditions and provisions are intended to be, and are, for the sole and exclusive benefit of the parties hereto, as provided herein.
- (e) No cancellation, modification, amendment or deletion of, or any addition or other change to, this Agreement or any provision thereof, or waiver of any right or remedy herein provided, shall be effective for any purpose unless specifically set forth in a writing signed by each of the Developer, the Authority and the City.
- (f) No representation, warranty, covenant, agreement, obligation or stipulation contained in this Agreement shall be deemed to constitute a representation, warranty, covenant, agreement, obligation or stipulation of any present or future trustee, member, officer, agent or employee of the Developer, the Authority or the City in an individual capacity, and to the

extent authorized and permitted by applicable law, no official executing or approving the Developer's, the Authority's, or the City's participation in this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the issuance thereof.

- (g) This Agreement shall inure to the benefit of and shall be binding upon the Developer, the Authority, the City and their respective permitted successors and assigns.

The parties hereto agree to observe and perform faithfully at all times all covenants, agreements and obligations under this Agreement.

Each covenant, agreement and obligation of the Authority or the City under this Agreement is binding upon each officer of the Authority or the City, as applicable, who may have the authority or duty from time to time under law to take any action which may be necessary or advisable to observe or perform that covenant, agreement or obligation.

- (h) 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.
- (i) 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.
- (j) This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. All claims, counterclaims, disputes and other matters in question between the Authority, its agents and employees, the Developer, its employees, contractors, subcontractors and agents, and the City, its agents and employees, arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within the County of Delaware, State of Ohio.
- (k) All representations and warranties of the parties hereto contained in this Agreement shall survive the execution and delivery of this Agreement and the issuance and delivery of the City General Obligation Bonds and the City Revenue Notes.
- (l) If for any reason any one or more articles, sections, sentences, clauses or parts of this Agreement are held invalid by any court of law or duly authorized public body, such determination shall not affect, impair or invalidate the remaining provisions of this Agreement but shall be confined in its operation to the specific articles, sections, sentences, clauses or parts of this Agreement held invalid and the invalidity of any

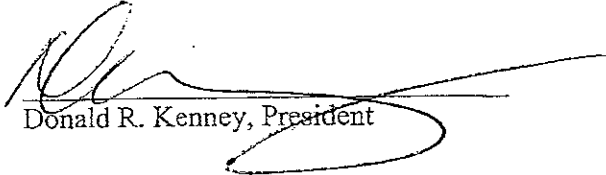
article, section, sentence, clause or part of the Agreement in any one or more instance shall not prejudice in any way the validity of the Agreement in any other instance.

- (m) The parties hereto acknowledge that the City Ordinance approving execution of this Agreement shall be considered the first ordinance in a series of ordinances that may be necessary to fully carry out the obligations set forth in this Agreement.
- (n) The parties hereto agree that, notwithstanding anything herein to the contrary, should the City be prevented from purchasing the Project as set forth herein in Sections 5 and 7 hereof or should the Real Property fail to be rezoned as set forth herein in Section 4, the City will cooperate and agree by ordinance to consent to an Ohio Revised Code §709.38 procedure at the request of the Developer, so long as such procedure occurs prior to the City's purchase of the Project and/or the City's issuance of the City General Obligation Bonds.

[Balance of this page intentionally left blank]

IN WITNESS WHEREOF, the Developer, the Authority, and the City have caused this Agreement to be executed in their respective names by their duly authorized officers, all as of the date first written above.

**TRIANGLE PROPERTIES, INC., an
Ohio corporation**

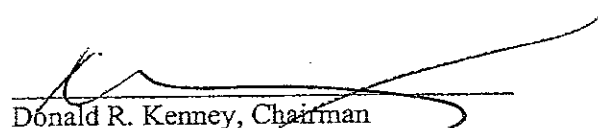
By: 
Donald R. Kenney, President

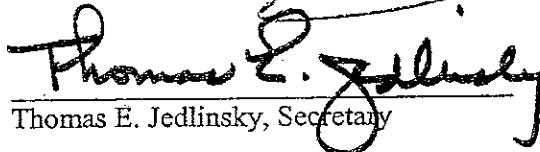
**CITY OF POWELL, OHIO, an Ohio
municipal corporation**

By: 
Stephen A. Lutz, City Manager

Per authority granted by Ordinance No. 2002-19 passed on the 7th day of May, 2002.

**LIBERTY COMMUNITY INFRASTRUCTURE
FINANCING AUTHORITY, a new community
authority established pursuant to Chapter 349 of the
Ohio Revised Code**

By: 
Donald R. Kenney, Chairman

By: 
Thomas E. Jedlinsky, Secretary

Per authority granted by Resolution No. 2001-6 passed on the 19th day of November, 2001, and by Resolution No. 2002-3 passed on the 6th day of May, 2002.

CITY OF POWELL
SECTION 5705.41
CERTIFICATE OF AVAILABILITY OF FUNDS

The undersigned, Finance Director of the City of Powell, Ohio (the "City"), located in the following Ohio county: Delaware, hereby certifies in connection with the Pre-Annexation Agreement (the "Agreement"), dated May 15, 2002, by and among the City, Triangle Properties, Inc., and the Liberty Community Infrastructure Financing Authority, that:

The amount required to meet the Agreement during the current fiscal year has been lawfully appropriated for the purpose and is in the treasury or in process of collection to the credit of an appropriate fund, free from any previous encumbrances.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of MAY, 2002.

CITY OF POWELL, OHIO

By: Nanette Metzger

Title: Finance Director

LIBERTY COMMUNITY INFRASTRUCTURE FINANCING AUTHORITY
SECTION 5705.41
CERTIFICATE OF AVAILABILITY OF FUNDS

The undersigned, Treasurer of the Liberty Community Infrastructure Financing Authority (the "Authority"), located in the following Ohio county: Delaware, hereby certifies in connection with the Pre-Annexation Agreement (the "Agreement"), dated May 15, 2002, by and among the City of Powell, Ohio, Triangle Properties, Inc., and the Authority, that:

The amount required to meet the Agreement during the current fiscal year has been lawfully appropriated for the purpose and is in the treasury or in process of collection to the credit of an appropriate fund, free from any previous encumbrances.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of May, 2002.

LIBERTY COMMUNITY INFRASTRUCTURE
FINANCING AUTHORITY

By: Nancy Williams

Title: Treasurer