

ORDINANCE NO. 2004-73  
Passed February 1, 2005

AN ORDINANCE APPROVING THE SECOND AMENDMENT TO THE PRE-ANNEXATION AGREEMENT AMONG THE CITY OF POWELL, TRIANGLE PROPERTIES, INC. AND THE LIBERTY COMMUNITY INFRASTRUCTURE FINANCING AUTHORITY.

WHEREAS, this Council has previously approved the Pre-Annexation Agreement (the "Agreement") dated May 15, 2002 among the City of Powell (the "City"), Triangle Properties, Inc. (the "Developer"), and the Liberty Community Infrastructure Financing Authority (the "Authority") pursuant to which property within the jurisdiction of the Authority (the "District") was annexed into the City; and

WHEREAS, this Council has approved amendment to such agreement by passing Ordinance 2003-72 which allows the addition of land to the district, and

WHEREAS, Triangle Properties, Inc, as the "Developer" as defined in Chapter 349, Ohio Revised Code, desires to amend the Agreement to provide for the allowance of more operating expenses as provided in Section 9 of the Original Agreement and Section 6 of the First Amendment for additional operating expenses of the District, including but not limited to fiscal and legal services, which necessitates a Second Amendment to the Agreement..

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE MUNICIPALITY OF POWELL, DELAWARE COUNTY OHIO, THAT:

Section 1. The Council hereby approves the terms and provisions of the Second Amendment to the Pre-Annexation Agreement (the "Amendment") attached hereto as Exhibit A.

Section 2. The City Manager is hereby authorized and directed to execute, acknowledge and deliver, in the name and on behalf of the City, the Second Amendment in substantially the form submitted and now on file with the City, which is hereby approved, with such changes therein not inconsistent with this Ordinance and not substantially adverse to the City and the residents of the City and approved by the City Manager executing the same on behalf of the City. The approval of such changes by the City Manager and that such are not substantially adverse to the City and residents of the City shall be conclusively evidenced by the execution of the Second Amendment by the City Manager.

Section 3. It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4. This Ordinance shall take effect and be in force at the earliest date permitted by law.

VOTE ON ORDINANCE 2004-73

Y 5 N 0

Jan Wiencek 4/19/05  
Date

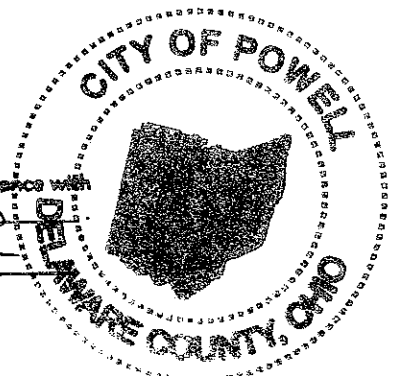
Dan Wiencek  
Mayor

Dawn Nauman 4/19/05  
Date

Dawn Nauman  
Clerk of Council

This legislation has been posted in accordance with the City Charter on this date 5/16/05

Dawn Nauman  
Clerk of Council



CERTIFICATE

The undersigned Clerk of Council hereby certifies that the foregoing is a true copy of Ordinance No. 2004-13 duly adopted by the City Council of City of Powell, Ohio on FEB. 1, 2005 and that a true copy thereof was certified to the County Auditor of Delaware County, Ohio, on FEB 11, 2005.

Dawn Nauman

Clerk of Council  
City of Powell, Ohio

**SECOND AMENDMENT TO THE  
PRE-ANNEXATION AGREEMENT**

THIS SECOND AMENDMENT TO THE PRE-ANNEXATION AGREEMENT (the "Second Amendment"), entered into as of March 2, 2005, 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, the Authority and the City have entered into a Pre-Annexation Agreement (the "Original Agreement") dated as of May 15, 2002 pursuant to which the Real Property, as defined in the Original Agreement, was annexed into the City and the City purchased the Authority's interest in the Project, as defined in the Original Agreement; and

WHEREAS, the Developer, the Authority and the City have entered into the First Amendment to the Pre-Annexation Agreement (the "First Amendment") dated as of December 17, 2003 pursuant to which the Additional Property, as defined in the First Amendment, was added to the property within the jurisdiction of the Authority and the Additional Indebtedness, as defined in the First Amendment, was approved by all parties, and among other various amendments, the operating and expenses allowed under Section 9 of the Original Agreement were increased from \$12,500 to \$25,000 pursuant to Section 6 of the First Amendment; and

WHEREAS, the parties hereto desire to amend the Original Agreement and the First Amendment for the benefit of all the parties as provided herein;

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

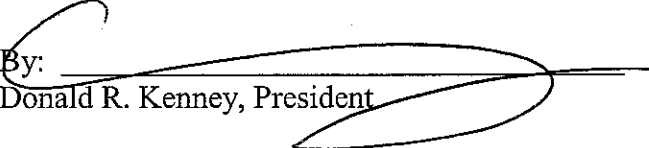
Section 1. All capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Original Agreement.

Section 2. Section 9 of the Original Agreement, which reads "operating expenses in an amount not to exceed \$12,500 (a portion of which shall be used for reasonable accounting and/or legal fees)" as amended by the Section 6 of the First Amendment to read "operating expenses in an amount not to exceed \$25,000 (a portion of which shall be used for reasonable accounting and/or legal fees)" is hereby amended to read: "operating expenses in an amount not to exceed \$115,000 (a portion of which shall be used for reasonable accounting and/or legal fees)".

Section 3. This Second Amendment 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 Second Amendment to produce or account for more than one of those counterparts.

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

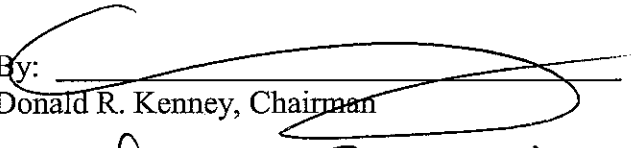
By:   
Donald R. Kenney, President

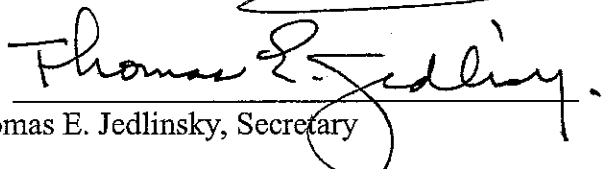
**CITY OF POWELL, OHIO**  
an Ohio municipal corporation

By:   
Stephen A. Lutz, City Manager

Per authority granted by Ordinance No. 2004-73 passed on the 1<sup>st</sup> day of February, 2005.

**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. 2004-4 passed on the 15<sup>th</sup> day of September, 2004.