

## FIRST AMENDMENT TO ESCROW AGREEMENT

This First Amendment to Escrow Agreement (the "Amendment") is entered into this <sup>th</sup> 5 day of December, 2008 (the "Effective Date") by and between **8 N. Liberty Street, LLC**, an Ohio limited liability company having an office and place of business located at 8 North Liberty Street, Powell, Ohio 43065 ("Owner") and **City of Powell, Ohio**, an Ohio municipal corporation having an office and place of business located at 47 Hall Street, Powell, Ohio 43065 ("Powell") and **Esquire Title Services, Inc.**, an Ohio corporation having an office and place of business located at 615 Copeland Mill Rd., Suite 1H, Westerville, Ohio 43081 ("Escrow Agent"). Owner, Powell and Escrow Agent are sometimes individually referred to as "Party" and collectively referred to as "Parties".

### **Background Information**

- A. Owner owns the property commonly known as 8 North Liberty Street, Powell, Ohio 43065 (the "Property") and has made certain improvements (the "Work") in the road area contained in the right of way owned by Powell (the "Construction Area", the description of which is attached hereto as Exhibit A).
- B. Powell consented to Owner making the improvements within the Construction Area, contingent upon Owner depositing certain funds with the Escrow Agent as security for the performance of the Work within the Construction Area.
- C. Owner, Powell and Escrow Agent entered into an escrow agreement (the "Agreement") setting forth the rights, duties and obligations of Owner relative to the Work located in the Construction Area.
- D. Owner, having completed the Work in the Construction Area, is requesting release of a portion of the Escrow Deposit; however, recognizing that Owner is required to maintain the Work in the Construction Area for the required, minimum two-year period as outlined within the Codified Ordinances of Powell (except as may be otherwise set forth within the Resolution of Conditional Acceptance (the "Resolution"), which is attached hereto as Exhibit C) from the date of the approval of the Resolution (12/02/08), the Escrow Deposit shall be reduced from \$46,900.00 to \$4,690.00 as an inducement to Owner to comply with its maintenance obligations ("Maintenance Obligations") relative to the Work in the Construction Area.

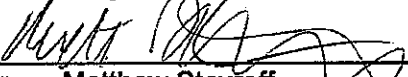
**NOW THEREFORE**, in consideration of the promises contained herein and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged the undersigned Parties agree as follows:

1. Deposit of Funds/Reduction of Escrow Deposit. The Parties agree that the Escrow Deposit (as defined in the Agreement) shall be reduced from \$46,900.00 to \$4,690.00 and that Escrow Agent is authorized to release \$42,210.00, plus all interest earned as of the Effective Date, to Owner as of the date of execution by all Parties to this Amendment.
2. Release of Escrow Money. Except as provided this Section 2 (2) herein, Escrow Agent shall hold the Escrow Deposit and shall not release any portion of the Escrow Deposit to Owner until Powell notifies the Escrow Agent, with copies to Owner, that the Maintenance Obligations have been completed in accordance with the plans and specifications to the reasonable satisfaction of Powell ("Approval Notification"). Powell shall arrange for inspection of the Owner's Maintenance Obligations within ten days following Owner's written notice to Powell that Owner has completed such Maintenance Obligations, and the Maintenance Obligations have been satisfied as determined by Powell pursuant to the terms stated herein, Powell will provide the Approval Notification within 5 days following its inspection of the Maintenance Obligations. Upon the receipt of the Approval Notification from Powell to Escrow Agent that the Maintenance Obligations have been completed by Owner, Escrow Agent shall immediately and unconditionally remit to Owner the Escrow Deposit.

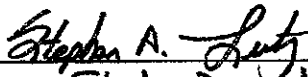
However, in the event that the Maintenance Obligations have not been completed to the reasonable satisfaction of Powell in accordance with the plans and specifications as approved by Powell as are attached to the Agreement as Exhibit B and provided that Powell has delivered written notice of such Maintenance Obligations that have not been completed to the satisfaction of Powell to Owner ("Disapproval Notification") and Owner has failed to correct the same within ten (10) days of such Disapproval Notification from Powell to Owner, then Powell shall provide notice to Escrow Agent of the same and Escrow Agent shall, upon receipt of written notification from Powell, unconditionally release all or that portion of the Escrow Deposit to Powell that Powell determines is necessary to complete the Maintenance Obligations and Powell shall use the same to complete the Maintenance Obligations set forth herein. In the event that Powell determines it is not necessary to receive the entire Escrow Deposit to complete the Maintenance Obligations as provided herein, then the amount of the Escrow Deposit which is not received or utilized by Powell to complete the Work shall be remitted to Owner.

3. **Miscellaneous.** Except as amended hereby, the Agreement remains valid and in full force and effect and shall bind and inure to the benefit of the successors and assigns of Owner, Powell and Escrow Agent. In the event of any ambiguity or inconsistency between the terms of the Agreement and the terms of this Amendment, the terms of this Amendment shall control. Captions are included for convenient reference only. This Amendment may be executed in counterparts, which taken together shall constitute one instrument, notwithstanding the fact that all signatures are not contained on the same copy. It is the intention of the Parties that the laws of Ohio should govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the Parties.

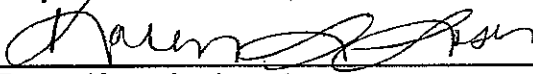
8 N. Liberty Street, LLC

  
By: Matthew Stavroff  
Its: MANA.org member

City of Powell, Ohio

  
By: Stephen A. Lutz  
Its: City Manager

Esquire Title Services, Inc.

  
By: Karen Lash  
Its: Vice President