

DRAFT: November __, 2011

**LIBERTY TOWNSHIP – CITY OF POWELL
AMENDED AND RESTATED
COOPERATIVE ECONOMIC DEVELOPMENT AGREEMENT**

INDEX

<u>Item</u>	<u>Page</u>
ARTICLE 1 DESIGNATION OF TERRITORY	2
Section 1. Territory Covered by the CEDA	2
Section 2. Sub-Areas	2
Section 3. Alteration of Territory	3
Section 4. Survey	3
Section 5. Deletion of Annexed Property	3
ARTICLE 2 ANNEXATION AND DEVELOPMENT OF SUB-AREA 2	3
Section 1. Sub-Area 2 Annexation Conditions	3
Section 2. Consent of Owners	4
Section 3. Zoning and Development of Sub-Area 2	4
Section 4. Minor Modifications	6
Section 5. Major Modification	6
Section 6. Annexation Support	6
Section 7. Detachment	7
ARTICLE 3 ANNEXATION AND DEVELOPMENT OF SUB-AREA 3	9
Section 1. Sub-Area 3 Annexation Conditions	9
Section 2. Expedited Procedure Number 2	9
Section 3. Alternative Annexation Conditions	9
Section 4. Annexation of TOWNSHIP Property	11
Section 5. Cooperative Efforts	11
Section 6. Sawmill Parkway and Adjoining Roadways	11
ARTICLE 4 ANNEXATION AND DEVELOPMENT OF SUB-AREA 4	11
Section 1. Annexation Moratorium	11
Section 2. Consent Exception to Moratorium	12
Section 3. Cooperative Efforts	12
Section 4. Annexations Following Moratorium Period	12
Section 5. Annexation of TOWNSHIP Property	12
ARTICLE 5 NONCONFORMANCE OF BOUNDARIES	12
Section 1. TOWNSHIP Boundaries	12
Section 2. Cooperative Efforts	13
Section 3. Annexation Payments	13
ARTICLE 6 SERVICES AND ROADWAYS	16
Section 1. Provision of Services	16
Section 2. Zoning	17
Section 3. Sawmill Parkway and Adjoining Roadways	17

<u>Item</u>	<u>Page</u>
ARTICLE 7 TERM OF AGREEMENT	18
Section 1. Term and Renewal	18
Section 2. Early Termination	18
ARTICLE 8 GENERAL PROVISIONS	18
Section 1. Support of Agreement	18
Section 2. Signing Other Documents	18
Section 3. Mediation	18
Section 4. Default	19
Section 5. Amendments	19
Section 6. Immunities Preserved	19
Section 7. Powers Preserved	19
Section 8. Beneficiaries	19
Section 9. Other Parties	20
Section 10. Severability	20
Section 11. Parties Bound	20
Section 12. Counterparts	21
Section 13. Annual Review	21
Section 14. Liberal Construction	21
Section 15. Annexation of City Property	21
Section 16. Notices	21
CERTIFICATE OF AVAILABILITY OF FUNDS	23
ATTACHMENT A CEDA TERRITORY	
ATTACHMENT B SENATE BILL 5	
ATTACHMENT C TOWNSHIP ZONING PLAN	
ATTACHMENT D EXAMPLE OF ANNEXATION PAYMENTS	
ATTACHMENT E EXAMPLE OF TOWNSHIP TAXES	
ATTACHMENT F SAWMILL PARKWAY THOROUGHFARE STANDARDS EXHIBIT	
ATTACHMENT G DEVELOPMENT PLAN	

**LIBERTY TOWNSHIP – CITY OF POWELL
AMENDED AND RESTATED
COOPERATIVE ECONOMIC DEVELOPMENT AGREEMENT**

This Amended and Restated Cooperative Economic Development Agreement (the “Agreement”) is entered into on or as of _____ (the “Effective Date”), by and between THE BOARD OF TRUSTEES OF LIBERTY TOWNSHIP, the legislative authority of Liberty TOWNSHIP, Delaware County, Ohio (hereinafter “TOWNSHIP) and THE COUNCIL OF AND FOR THE CITY OF POWELL, the legislative authority of the City of Powell, Delaware County, Ohio (hereinafter “CITY” and, collectively with the TOWNSHIP, the “Parties” and each a “Party”).

WHEREAS, the TOWNSHIP and CITY are political subdivisions located entirely within the State of Ohio and the TOWNSHIP and CITY are contiguous and overlapping political subdivisions located within Delaware County, Ohio (hereinafter “COUNTY”); and

WHEREAS, the TOWNSHIP and CITY wish to cooperate in creating and preserving jobs and employment opportunities, and to cooperate in inducing and fostering economic development with their respective jurisdictions, and more particularly within the territories to which this Agreement pertains and in a manner which is both consistent with the terms and spirit of this Agreement and sensitive to the character of the area; and

WHEREAS, the Parties hereto wish to allow for and establish the conditions under which the municipal powers of the CITY may be extended to an agreed-upon area and recognize that such an extension of municipal powers will operate to the mutual benefit of the TOWNSHIP, CITY, and COUNTY, and to those businesses and residents who reside or choose to locate within the territories to which this Agreement pertains; and

WHEREAS, the TOWNSHIP and CITY wish to cooperate in improving and advancing the welfare of the citizens of the COUNTY residing within the territories to which this Agreement pertains in a number of ways which include promoting economic development in a manner compatible with the character of the area and addressing mutually satisfactory planning and development standards; and

WHEREAS, the TOWNSHIP and CITY wish to cooperate in facilitating quality development within the territory of the CITY and TOWNSHIP, in a manner consistent with the wishes of the TOWNSHIP, while also preserving the geographic integrity of the TOWNSHIP’s boundaries and the character of the area; and

WHEREAS, the incorporated areas of the CITY have not previously been excluded from the TOWNSHIP under Ohio Revised Code Chapter 503, and the Parties recognize the mutual benefits they receive by not excluding TOWNSHIP areas hereinbefore annexed to and/or which currently comprise the incorporated area of the CITY and desire to continue this policy and practice under the terms set forth herein; and

WHEREAS, the Parties understand that new economic development within the territories to which this Agreement pertains and which occurs in a manner consistent with the wishes of both Parties will result in increasing the real and personal property tax bases for the TOWNSHIP and CITY, thereby furthering the economic welfare of the residents; enhancing the financial ability of schools in order to continue the offering of quality educational programs; increasing the availability of appropriately skilled individuals for employment within and around the Parties' respective jurisdictions; and consequently furthering the creation and preservation of job and employment opportunities within this area and the stabilization and enhancement of the Parties' economic base; and

WHEREAS, the Parties recognize that their cooperative goals and objectives would be frustrated and hindered if their respective jurisdictional territories are reduced or should the CITY conform its existing boundaries or if proposed future annexations to the CITY are removed from the TOWNSHIP and the Parties desire to avoid any destabilizing effect by utilizing, in part, the provisions of Ohio Revised Code Section 709.191 in order to provide for a system of annual payments in the event territory of the TOWNSHIP is annexed to the CITY in a manner contrary to the terms of this Agreement; and

WHEREAS, the TOWNSHIP and CITY did, on the 24th day of April, 2002 and after proper notice and pursuant to and in compliance with Ohio Revised Code Section 701.07, hold a joint public hearing concerning the original Agreement; and

WHEREAS, the Board of TOWNSHIP Trustees of the TOWNSHIP enacted Resolution No. 02-143, passed on April 29, 2002, and the City Council of the CITY enacted Ordinance No. 2002-18, passed on April 27, 2002, which authorized the respective Parties to enter into the original Cooperative Economic Development Agreement (hereinafter called "Agreement" or sometimes "CEDA"), all in accordance with Ohio Revised Code Section 701.07 and/or Ohio Revised Code Section 709.192, with the Agreement becoming effective on May 1, 2002; and

WHEREAS, the Parties desire to amend and restate the Agreement, incorporating herein all of the terms of the original Agreement as are not in conflict with the revisions set forth herein; and

WHEREAS, in furtherance of their objectives and as set forth herein, the Parties intend to modify the parameters of certain of the Sub-Areas in order to promote economic development and employment opportunities in such a way so as to benefit the Parties' respective jurisdictions and their citizens; and

WHEREAS, the parties desire to cooperatively explore other areas and opportunities in order to achieve mutually agreed upon benefits and goals which serve the purposes of both jurisdictions; and

WHEREAS, the TOWNSHIP and CITY have, on the ____ day of _____ and after proper notice and pursuant to and in the compliance with Ohio Revised Code Section 701.07, held a joint public hearing concerning this amended and restated version of the Agreement; and

WHEREAS, the Board of TOWNSHIP Trustees of the TOWNSHIP has enacted Resolution No. _____, passed on _____, and the City Council of the CITY has enacted Ordinance No. _____, passed on _____, which authorize the respective Parties to enter into this amended and restated version of this Cooperative Economic Development Agreement (hereinafter called "Agreement" or sometimes "CEDA"), all in accordance with Ohio Revised Code Section 701.07 and/or Ohio Revised Code Section 709.192.

NOW, THEREFORE, the TOWNSHIP and CITY agree as follows:

ARTICLE 1
DESIGNATION OF TERRITORY

Section 1. Territory Covered by the CEDA. This Agreement shall cover and be applicable to all territory (both incorporated and unincorporated) located within the TOWNSHIP including, without limitation, all areas located within the CITY. This territory is hereinafter referred to as "the CEDA Territory" and is further described and outlined on the map attached hereto and incorporated herein as Attachment A.

Section 2. Sub-Areas. For purposes of this Agreement, the CEDA Territory consists of five (5) separate parts as shown on the map attached as Attachment A, all of which together comprise the entire CEDA Territory. These five (5) sub-areas are designated and hereinafter referred to as follows:

- A. Sub-Area 1: The area, designated in brown on the attached map, which consists of the entire incorporated area of the CITY as of May 1, 2002.
- B. Sub-Area 2: The area, designated in yellow on the attached map, which consists of the property known as The Golf Village.
- C. Sub-Area 3: The area, designated in green on the attached map, which consists of the unincorporated area of the TOWNSHIP located south of Hyatts Road, but excluding Sub-Area 1, Sub-Area 2 and Sub-Area 5.
- D. Sub-Area 4: The area, designated in blue on the attached map, which consists of the unincorporated territory of the TOWNSHIP located north of Hyatts Road.
- E. Sub-Area 5: The area designated in red on the attached map.

Section 3. Alteration of Territory. The CEDA Territory, or any referenced Sub-Area or parcels therein, may be altered by the mutual written agreement of the TOWNSHIP and CITY, but only by means of appropriate legislation authorizing such alteration approved by the legislative authorities of the TOWNSHIP and CITY, and any person who becomes a party to this

Agreement after its initial inception. Moreover, any mutually agreed change in the status of a parcel(s) from one Sub-Area to another shall not require compliance with the full modification process set forth in Ohio Revised Code Section 701.07(A). Real estate located outside of the CEDA Territory which is annexed to the CITY shall, upon request of the TOWNSHIP and to the extent permitted by law, be detached from the TOWNSHIP in which such real estate was formerly located and attached to the TOWNSHIP, in which event, such real estate shall become part of the CEDA Territory and subject to the terms of this Agreement.

Section 4. Survey. Should any alteration of the above-described CEDA Territory, or any Sub-Area therein, require a survey to be made, the CITY shall have the responsibility to acquire the services of a surveyor to perform such survey and the TOWNSHIP and CITY shall share the costs of such surveying services equally.

Section 5. Deletion of Annexed Property. Should any unincorporated area of the TOWNSHIP be annexed to a municipal corporation other than the CITY, then such annexed area shall, upon acceptance by such municipal corporation, be deleted from the CEDA Territory and no longer be subject to the terms of this Agreement. The CITY agrees, upon the request of the TOWNSHIP, to assist the TOWNSHIP in its efforts opposing any such annexation; provided, however, that this provision does not obligate the CITY to hire either outside legal counsel or independent consultants to assist the TOWNSHIP in opposing such annexation. In addition, the CITY shall not consent to any boundary adjustment or transfer of real estate within the CEDA Territory to or with another municipal corporation.

ARTICLE 2
ANNEXATION AND DEVELOPMENT OF SUB-AREA 2
(Golf Village)

Section 1. Sub-Area 2 Annexation Conditions. Following the signing of this Agreement, all or any part of Sub-Area 2 may, upon proper petition(s) to and with the final approval of the Delaware County Commissioners, be annexed to, and accepted by, the CITY under the conditions hereinafter set forth in this Article 2 and subject to all other limitations and conditions contained in this Agreement.

Section 2. Consent of Owners. [COMPLETED] An annexation petition for the annexation of real estate within Sub-Area 2 to the CITY shall, unless this unanimity requirement is otherwise waived in writing by the Board of Trustees of the TOWNSHIP, be signed by all owners of real estate within the area proposed to be annexed. The terms “owner” or “owners” of real estate in the territory proposed for annexation shall be defined in the same manner as those terms are defined in proposed Section 709.02(E) of Am. Sub. S.B. 5 as signed by the Governor of the State of Ohio on July 27, 2001. (This legislation is hereinafter referred to in this Agreement as “Senate Bill 5,” a copy of which is attached hereto and incorporated herein as Attachment B.) This definition of the terms “owner” or “owners” of real estate in the territory proposed for annexation shall remain in effect for purposes and during the term and any renewal of this Agreement regardless of the effective date of Senate Bill 5 and shall not be affected by any subsequent change or amendment to or declaration of invalidity with respect to Senate Bill 5.

Section 3. Zoning and Development of Sub-Area 2. [COMPLETED] The real property located within Sub-Area 2 is currently zoned in the TOWNSHIP as a Planned Residence District and Planned Commercial and Office District, except for an approximately 20 acre tract of land located at the northeast corner of Sub-Area 2 at the junction of Home Road and the railroad tracks which is zoned in the TOWNSHIP as an Industrial District. The TOWNSHIP zoning regulations and development standards imposed on the use and development of all real estate located within Sub-Area 2 as of the date of this Agreement are reflected and shown in the “TOWNSHIP Zoning Plan”, a copy of which is attached hereto and incorporated herein as Attachment C. Upon the annexation of and the acceptance by the CITY of any real estate located within Sub-Area 2, the CITY shall adopt, maintain and enforce the TOWNSHIP Zoning Plan for such real estate. This obligation shall include accepting, adopting, incorporating, administering and enforcing, without change or modification, all parts of the TOWNSHIP Zoning Plan with respect to the zoning, use and development of all real estate located within Sub-Area 2 which is annexed to the City on or after the date of this Agreement. This obligation shall also include maintaining the TOWNSHIP’s purposes, plan and integrity of and for Sawmill Parkway (including the future extension thereof) and all adjoining roadways within the CEDA Territory as outlined in Article 6, Section 3, hereof. Notwithstanding the foregoing, this Section 3 is subject to the following modifications:

A. The approximately 20 acre tract of land located at the northeast corner of Sub-Area 2 at the junction of Home Road and the railroad tracks which is currently designated under the TOWNSHIP Zoning Plan as an Industrial District may be rezoned (by either the CITY after acceptance of the annexation or the TOWNSHIP prior to such acceptance) at the request of the Developer to a Planned Commercial zoning district utilizing the same TOWNSHIP zoning district regulations and development standards as the Planned Commercial tract located east of Sawmill Parkway. The term “Developer” as used in this Article 2 shall mean and refer to Triangle Properties, Inc., an Ohio corporation with its principal offices at 470 Olde Worthington Road, Suite 100, Westerville, Ohio 43082.

B. The 30 acre tract of land located at the northeast corner of Seldom Seen Road and Sawmill Parkway which is currently designated under the TOWNSHIP Zoning Plan as a 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 18± acres and planned commercial non-retail and office uses for the remaining acreage utilizing the same TOWNSHIP zoning district regulations and development standards as the Planned Commercial tract located west of Sawmill Parkway on Home Road.

C. The approximately 15 acre tract of land located at the southwest corner of Home Road and Sawmill Parkway which is currently designated under the TOWNSHIP Zoning Plan as a Planned Commercial and Office District may 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 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 paragraphs 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).

E. Except as set forth in paragraphs A through C, above, the TOWNSHIP will not initiate or approve a legislative change of the zoning district classifications of any real estate located within Sub-Area 2 under Ohio Revised Code Section 519.12 without the prior approval of the CITY.

Section 4. Minor Modifications. Upon the annexation of real estate located within Sub-Area 2 to the CITY, the CITY may, administratively (but not legislatively), approve minor modifications of an insignificant nature to the TOWNSHIP Zoning Plan established for such area which occur as a result of adjustments required to be made in the processing and filing of a final plat for such area. Minor modifications shall include changes to internal (but not loop) street alignments within proposed subdivisions, locations of lot lines and drainage easements and other similar administrative changes of an insignificant nature which do not materially affect the TOWNSHIP Zoning Plan for such area. A minor modification shall not include any change or revision which represents a significant departure from the TOWNSHIP Zoning Plan for all or any portion of real estate located within Sub-Area 2 including, without limitation: a change in the use or character of or for such area; an increase in the overall density established by the TOWNSHIP Zoning Plan for Sub-Area 2;” any change adversely impacting the TOWNSHIP’s purposes, plan and integrity of and for Sawmill Parkway (including the future extension thereof) and all adjoining roadways within the CEDA Territory as outlined in Article 7, Section 3, hereof; an overall reduction in designated open space; any rezoning of the area; any change in the development standards or permitted uses established for Sub-Area 2 under the TOWNSHIP

Zoning Plan; any change in the zoning categories established for Sub-Area 2 under the TOWNSHIP Zoning Plan; any change in either the access points along Sawmill Parkway or the planned roadway connections between developments; and any change requiring or accomplished by legislative action on the part of the CITY.

Section 5. Major Modification. Except as otherwise permitted in Sections 3 and 4, above, there shall be no change, amendment, revision or modification of or to the TOWNSHIP Zoning Plan for all or any portion of Sub-Area 2 unless the legislative authorities of both Parties mutually consent in writing to the same. In addition, the CITY shall continue to maintain and implement the TOWNSHIP's purposes, plan and integrity of and for Sawmill Parkway (including the future extension thereof) and all adjoining roadways within the CEDA Territory as outlined in Article 7, Section 3, and there shall be no change, amendment, revision or modification with respect thereto without the prior written consent of the Board of Trustees of the TOWNSHIP. Any person desiring to make such change shall be required to obtain the prior written approval of the legislative authorities of both Parties, and absent the approval of both, no such change shall be made.

Section 6. Annexation Support. [COMPLETED] The TOWNSHIP will not oppose, and will support, the annexation of territory to the CITY within Sub-Area 2 when requested by all owners (as defined in Article 2, Section 2) thereof and where the technical conditions of state annexation laws regarding the petition, map and description are met. The CITY shall not support or accept an annexation petition which is not requested by all owners thereof. In all cases, however, the annexation of territory within Sub-Area 2 shall be and remain subject to all terms and conditions contained in this Agreement. The Parties agree, upon request of one Party or the other, to ask the County Commissioners to expedite annexations of real estate within Sub-Area 2 which conform to the terms of this Agreement and, for such purpose, shall provide the Commissioners with a copy of this Agreement.

Section 7. Detachment. [NOW TERMINATED – SEE SECTION 7(C) BELOW] The CITY has represented to the TOWNSHIP that the primary inducement for the Developer to annex territory within Sub-Area 2 to the CITY is that the CITY intends to issue general revenue bonds, notes or other evidence of indebtedness in an amount sufficient for the CITY to completely retire the existing bonds issued by the Liberty Community Infrastructure Financing Authority. The TOWNSHIP will not oppose, directly or indirectly, the repurchase and/or issuance of such bonds. The CITY agrees that in the event that the bond repurchase and the issuance of such bonds, notes or other evidence of indebtedness by the CITY does not occur for any reason whatsoever within 180 days following the CITY's final acceptance of the first such annexation, the annexation of territory located within Sub-Area 2 shall be unwound by detaching all such territory (as well as any other territory within the CEDA Territory for which an annexation has occurred on or after the date of this Agreement) from the CITY and attaching it to the unincorporated territory of the TOWNSHIP with the consent of City Council (which consent shall be given in an ordinance passed for that purpose), all through the provisions of Ohio Revised Code Section 709.38. In the event of such a detachment, there shall be no apportionment of indebtedness, no adjustment of assets and no payments made by the TOWNSHIP with respect to the detachment. To this end, any detachment will be without cost or loss to the TOWNSHIP. If the repurchase of the bonds and issuance of bonds, notes or other

indebtedness by the CITY as outlined above does not occur within the stated 180 day period, then the CITY shall, within three days after the expiration of this 180 day time period, provide the TOWNSHIP with a properly signed and irrevocable detachment petition for such territory (including an accurate map and description) which complies with the provisions of Ohio Revised Code Section 709.38 as well as the irrevocable written authorization from the owners thereof for the TOWNSHIP to process such petition. The CITY shall also take such other actions as the TOWNSHIP may request in support of such detachment. Upon receipt of the detachment petition, the TOWNSHIP may proceed to process such petition in order to have the territory detached from the CITY and attached to the unincorporated territory of the TOWNSHIP. Upon the final approval of the County Commissioners of the detachment of the territory from the CITY and its attachment to the unincorporated territory of the TOWNSHIP, this Agreement shall, except as otherwise hereinafter provided, terminate. Notwithstanding the foregoing:

A. In the event the County Commissioners disapprove the detachment petition or if the approval of the County Commissioners of the detachment is challenged in a court of law or other tribunal, then this Agreement shall continue in effect until a final, unappealable decision is rendered in the proceeding, provided that during the pendency of such challenge, the CITY shall refuse to accept or service any unincorporated area of the TOWNSHIP within the CEDA Territory proposed for annexation to the CITY and shall take no action in support of such annexation including, without limitation, the passage of any service resolution or ordinance relating thereto. (If the CITY is under a legal obligation to pass such a resolution or ordinance, it shall state that the CITY will furnish no services to the territory and will refuse to accept the territory if the annexation is approved.) The CITY shall also take such actions as may be reasonably requested by the TOWNSHIP in opposition to any such annexation and in support of such detachment approval and attachment. If such final decision results in the territory not being detached from the CITY and attached to the unincorporated territory of the TOWNSHIP in the manner contemplated herein, the TOWNSHIP may, at its option and in its sole and absolute discretion, elect, in writing, to waive its right under this Section 7 to detach such territory, in which case, this Agreement shall continue in effect and the provisions of paragraph B, below, shall become immediately effective.

B. If for any reason whatsoever all territory previously annexed to the CITY under the provisions of this Agreement is not detached from the CITY and attached to the unincorporated territory of the TOWNSHIP in the manner contemplated herein, the TOWNSHIP may, at its option and in its sole and absolute discretion, elect, in writing, to waive its right under this Section 7 to have such territory detached, in which case, this Agreement

shall continue in effect. Furthermore and in such event, the CITY shall, during the term of this Agreement and any renewal thereof, make an annual payment to the TOWNSHIP in an amount which is the equivalent of a full 1.2 mill assessment per calendar year, without reduction or rollback, on all property annexed within the CEDA Territory to the CITY from and after the date of this Agreement, using the real and personal property, including public utility real and personal property, valuation for the year that the payment is due.. There shall be added to each annual payment a sum equivalent to that amount of revenue deriving from estate tax collections which would have been owed to the TOWNSHIP if no annexation had occurred. If there has been an exemption or abatement by the CITY of commercial and industrial real, personal, or public utility property taxes pursuant to Section 725.02, 1728.10, 3735.67, 5709.40, 5709.41, 5709.62, or 5709.88 of the Revised Code (or any future or similar statute of like tenor or effect), there shall be no reduction in the payments owed to the TOWNSHIP due to that exemption. The payments to be made by the CITY to the TOWNSHIP under this paragraph B shall be calculated as if the exemption or abatement had not occurred. The annual payments required under this paragraph B shall be made to the TOWNSHIP within 60 days after the end of each calendar year. (For example, an annual payment for calendar year 2002 would be due and payable on or before March 1, 2003.)

C. In the event of the repurchase of the bonds issued by the Liberty Community Infrastructure Financing Authority and the issuance of bonds, notes or other evidence of municipal indebtedness by the CITY within 180 days following the CITY's final acceptance of the first such annexation, the provisions of this Section 7 shall terminate.

ARTICLE 3
ANNEXATION AND DEVELOPMENT OF SUB-AREA 3
(Territory South of Hyatts Road)

Section 1. Sub-Area 3 Annexation Conditions. Following the signing of this Agreement, all or any portion of Sub-Area 3 may, upon proper petition(s) to and with the final approval of the Delaware County Commissioners, be annexed to and accepted by the CITY under the conditions hereinafter set forth in this Article 3 and subject to all other limitations and conditions contained in this Agreement.

Section 2. Expedited Procedure Number 2. All annexations of property within Sub-Area 3 to the CITY shall only be accepted by the City if the annexation petition is filed pursuant to, complies with and is processed and approved under the provisions contained in Ohio Revised Code Sections 709.021 and 709.023, collectively referred to as "Expedited Procedure Number 2," as such provisions exist on the Effective Date of this Agreement. It is the intention and

agreement of the Parties to require that any petition seeking to annex property from the TOWNSHIP to the City be filed pursuant to, comply with and be processed and approved under the provisions of "Expedited Procedure Number 2," and to prohibit the City from accepting an annexation petition which fails to comply with this requirement. If the provisions of Expedited Procedure Number 2 are subsequently repealed or are modified in such a way as to adversely impact the purpose and intent of this Agreement, the Parties shall, upon the written request of a Party, meet within thirty (30) days after receipt of such request and revise the affected portion(s) of this Agreement in such a manner so as to accomplish the purpose and intent of this Agreement, with time being of the essence. Until the affected portion(s) of the Agreement is so revised, the City shall refrain from accepting any annexation petition in accordance with the provisions of Section 2, hereof. The purpose and intent of this Agreement as it relates to these provisions is to require that an annexation petition be signed by all owners of real estate within the area proposed to be annexed, that the City be prohibited from conforming the boundaries of properties annexed to the City in order to exclude the TOWNSHIP from such area(s) and that such annexed property remain subject to the TOWNSHIP's real property taxes.

Section 3. Annexation of TOWNSHIP Property. In no case shall any real estate owned, whether in whole or in part, by the TOWNSHIP be annexed to the CITY without the written consent of the Board of Trustees of the TOWNSHIP. This shall exclude dedicated road rights-of-way and other real estate where the TOWNSHIP's interest consists solely of a right-of-way interest.

Section 4. Cooperative Efforts. If an annexation petition is filed and processed seeking to annex to the CITY any real estate located within Sub-Area 3 which does not comply with the provisions of this Article 3 and all other provisions of this Agreement, the CITY shall refrain from any act which would, directly or indirectly, contribute to the success of such petition. This obligation shall include, without limitation, refusing to accept any such annexation and otherwise undertaking such other actions as may be reasonably requested by the TOWNSHIP which will be detrimental to the success of such filed annexation petition. The TOWNSHIP agrees not to oppose, directly or indirectly, any annexation petition which is filed seeking to annex to the CITY any real estate located within Sub-Area 3 which complies with the provisions of this Article 3 and all other provisions of this Agreement. This obligation shall include, without limitation, refraining from filing a resolution objecting to the annexation petition under Ohio Revised Code Section 709.023(D) and otherwise undertaking such other actions as may be reasonably requested by the City which will contribute to the success of such filed annexation petition.

Section 5. Sawmill Parkway and Adjoining Roadways. Although the CITY will have zoning and development control over real estate annexed pursuant to the provisions of this Article 3, the CITY shall continue to be obligated to maintain and implement the TOWNSHIP's purposes, plan and integrity of and for Sawmill Parkway (including the future extension thereof) and all adjoining roadways within the CEDA Territory. The nature of this obligation is contained in Article 7, Section 3, hereof.

ARTICLE 4
ANNEXATION AND DEVELOPMENT OF SUB-AREA 4

(Territory North of Hyatts Road)

Section 1. Annexation Moratorium. No property located within Sub-Area 4 shall be proposed by the CITY for annexation to the CITY, and no property located within Sub-Area 4 shall be accepted by the CITY for annexation to the CITY for a period of fifteen (15) years following the Effective Date of this Agreement. This 15-year moratorium period may be lessened if the legislative bodies of both the CITY and TOWNSHIP mutually initiate, develop, process and adopt an enforceable and binding Comprehensive Master Land Use Plan satisfactory in scope and content to both Parties. However, neither the CITY nor TOWNSHIP shall have any obligation to initiate, diligently pursue, cooperate in or adopt such joint plan during this 15-year period.

Section 2. Consent Exception to Moratorium. Property north of Hyatts Road may be annexed to and accepted by the CITY, provided the Board of Trustees of the TOWNSHIP consents, in writing, to such annexation. The TOWNSHIP shall, however, be under no obligation whatsoever with respect to consenting to any annexation. If property north of Hyatts Road and generally along Sawmill Parkway, as extended, is proposed to be developed other than as a single-family residential development, the Parties agree, upon the request of a Party, to meet and discuss, in good faith, the annexation of said property. While there is no obligation for the TOWNSHIP to consent to such annexation, property annexed from Sub-Area 4 during the moratorium period shall become part of Sub-Area 5. It is contemplated by the Parties that mutual benefits will accrue by virtue of such non-residential annexations, as outlined in the various provisions of this Agreement, and that, in all likelihood, such benefits will facilitate favorable review of such annexation requests by the TOWNSHIP.

Section 3. Cooperative Efforts. If an annexation petition is filed and processed seeking to annex to the CITY any real estate located within Sub-Area 4 prior to the expiration of this 15-year period, the CITY shall refrain from any act which would, directly or indirectly, contribute to the success of such petition. This obligation shall include, without limitation, refusing to furnish any CITY services to the area proposed to be annexed; signing and providing affidavits and furnishing representatives to provide factual testimony in any proceeding in order to oppose the annexation; vigorously resisting, in both administrative and judicial forums, and with the assistance of the CITY's legal counsel, any action seeking such an annexation; refusing to accept any such annexation; and otherwise undertaking such actions as may be reasonably requested by the TOWNSHIP which will be detrimental to the success of any such annexation.

Section 4. Annexations Following Moratorium Period. After the expiration of the 15-year moratorium period set forth in Section 1 above, property located within Sub-Area 4 may be annexed to and accepted by the CITY only in the manner provided for and subject to the conditions of Article 3 hereof. Moreover, such property shall become part of Sub-Area 3.

Section 5. Annexation of TOWNSHIP Property. In no case shall any real estate owned, whether in whole or in part, by the TOWNSHIP be annexed to the CITY without the written consent of the Board of Trustees of the TOWNSHIP. This shall exclude dedicated road rights-of-way and other real estate where the TOWNSHIP's interest consists solely of a right-of-way interest.

ARTICLE 5
ANNEXATION AND DEVELOPMENT OF SUB-AREA 5

Section 1. Sub-Area 5 Annexation Conditions. Following the Effective Date of this Agreement, all or any portion of Sub-Area 5 may, upon proper petition(s) to and with the final approval of the Delaware County Commissioners, be annexed to and accepted by the CITY under the conditions hereinafter set forth in this Article 5 and subject to all other limitations and conditions contained in this Agreement.

Section 2. Expedited Procedure Number 1. From and after the Effective Date of this Agreement, annexations of property within Sub-Area 5 to the City shall only be accepted by the City if the annexation petition is filed pursuant to, complies with and is processed and approved under the provisions contained in Sections 709.021 and 709.022 of the Ohio Revised Code, collectively referred to as “Expedited Procedure No. 1,” as such provisions exist on the Effective Date of this Agreement. It is the intention and agreement of the Parties to require that any petition seeking to annex property within Sub-Area 5 to the City be filed pursuant to, comply with and be processed and approved under the provisions of “Expedited Procedure Number 1,” and to prohibit the City from accepting an annexation petition which fails to comply with this requirement. If the provisions of Expedited Procedure Number 1 are subsequently repealed or are modified in such a way as to adversely impact the purpose and intent of this Agreement, the Parties shall, upon the written request of a Party, meet within thirty (30) days after receipt of such request and revise the affected portion(s) of this Agreement in such a manner so as to accomplish the purpose and intent of this Agreement, with time being of the essence. Until the affected portion(s) of the Agreement is so revised, the City shall refrain from accepting any annexation petition in accordance with the provisions of Article 5 hereof. The purpose and intent of this Agreement as it relates to these provisions is to require that an annexation petition be signed by all owners of real estate within the area proposed to be annexed, that the City be prohibited from conforming the boundaries of properties annexed to the City in order to exclude the TOWNSHIP from such area(s) and that such annexed property remain subject to the TOWNSHIP’s real property taxes.

Section 3. Annexation of TOWNSHIP Property. In no case shall any real estate owned, whether in whole or in part, by the TOWNSHIP be annexed to the CITY without the written consent of the Board of Trustees of the TOWNSHIP. This shall exclude dedicated road rights-of-way and other real estate where the TOWNSHIP’s interest consists solely of a right-of-way interest.

Section 4. Cooperative Efforts. The TOWNSHIP agrees not to oppose directly or indirectly, but rather to support, any annexation petition seeking to annex to the CITY any real estate located within Sub-Area 5 which is proposed for non-single-family-residential development and which complies with the provision of this Article 5 and all other provisions of this Agreement. This obligation shall commence upon written notification by the CITY that the CITY and a landowner(s), potential purchaser(s) and/or developer(s) are engaged in discussions regarding potential annexation of the property designated in the written notice, and shall continue until such potential annexation is either accepted by the City or is formally abandoned by the interested parties, but in no event shall the obligation continue for longer than one year from the date of the written notification. This obligation shall include, without limitation, signing and

providing affidavits and furnishing representatives to provide factual testimony in any proceeding in order to support the annexation; supporting, in both administrative and judicial forums, any action seeking such an annexation; and otherwise undertaking such actions as may be reasonably requested by the CITY which will be beneficial to the success of such annexation. If an annexation petition is filed and processed seeking to annex to the CITY any real estate located within Sub-Area 5 which does not comply with the provisions of this Article 5 and all other provisions of this Agreement, the CITY shall refrain from any act which would, directly or indirectly, contribute to the success of such petition. This obligation shall include, without limitation, refusing to furnish any CITY services to the area proposed to be annexed; signing and providing affidavits and furnishing representatives to provide factual testimony in any proceeding in order to oppose the annexation; resisting, in both administrative and judicial forums, and with the assistance of the CITY's legal counsel, any action seeking such annexation; refusing to accept any such annexation; and otherwise undertaking such actions as may be reasonably requested by the TOWNSHIP which will be detrimental to the success of such annexation.

Section 5. Sawmill Parkway and Adjoining Roadways. Although the CITY will have zoning and development control over real estate annexed pursuant to the provisions of this Article 5, the CITY shall continue to be obligated to maintain and implement the TOWNSHIP's purposes, plan and integrity of and for Sawmill Parkway (including the future extension thereof) and all adjoining roadways within the CEDA territory. The nature of this obligation is contained in Article 7, Section 3, hereof.

Section 6. Services. The TOWNSHIP shall furnish or cause to be furnished to the territory located within Sub-Area 5 all usual and customary governmental services furnished by the TOWNSHIP to other comparable properties outside of Sub-Area 5. The TOWNSHIP will also undertake to provide snow plowing service in times of snow emergency, as may be requested by the City, for _____ Road, beginning at _____ and ending at _____, and for such other road(s) as the Parties may mutually agree. In addition, the TOWNSHIP will also engage in economic development activities which serve to complement and benefit potential economic development areas located in Sub-Area 5 as determined in the sole discretion of the TOWNSHIP. The TOWNSHIP is not expected or required to undertake any promotional activity to the detriment of development areas located within the boundaries of the TOWNSHIP and outside of Sub-Area 5. In addition, any Party may furnish to Sub-Area 5 such non-customary governmental services as the Parties deem appropriate and as allowed by law. Nothing contained herein shall be construed as obligating any party to provide any particular service, or level of service or financial commitment to the territory comprising Sub-Area 5, and such matters shall be left to the further mutual agreement of the Parties.

Section 7. CEDA Mediation. The Parties are currently engaged in mediation involving an alleged breach(s) of the Agreement. The Parties agree to withdraw each other's claims and the TOWNSHIP agrees to forego its right to litigate its claim, with the settlement of this dispute to be reflected in a separate writing outside of this Agreement.

Section 8. Payments to TOWNSHIP. In consideration of the TOWNSHIP waiving its right to litigate its alleged breach of the Agreement and in consideration of the services provided by the TOWNSHIP in territory located within Sub-Area 5, the City agrees to pay the TOWNSHIP an Annual Services Fee. Beginning on the Effective Date and continuing for a period of five years, the Annual Services Fee shall be 50% of the actual total income tax (as defined below) collected by the CITY from non-single-family-residential taxpayers located within Sub-Area 5. Beginning on the fifth (5th) anniversary date of the Effective Date, the Annual Services Fee shall be 50% of the net actual total income taxes after amounts are deducted from the gross actual total income tax proceeds (i) to reimburse the CITY for half the salary and benefits costs of any additional police officers hired to provide police service to annexed properties located within Sub-Area 5, and (ii) to reimburse either party for costs incurred during the immediately preceding calendar year for routine road maintenance and services (e.g. snow plowing). The Annual Services Fee for a service year is due and payable monthly, on or before 30 days after the income tax is received by the CITY. The term “income taxes” shall mean the net sum of income taxes collected by the CITY in a calendar year from the net profit, as allocated to the CITY as provided in Ohio Revised Code Section 718.02, attributable to business conducted by commercial taxpayers and net income taxes collected by the CITY in a calendar year from all salaries, wages, commissions, or other compensation earned by employees of such businesses for work performed within the said defined area. The term “actual total income tax” means “income taxes” collected less refunds, less any mandated school reimbursement and less cost of collection. The parties hereto agree that municipal income taxes collected from individuals residing in single-family dwellings in the territory that is within Sub-Area 5 shall not be included in the term “Fee Calculation Income Taxes”, with the exception that net municipal income taxes attributable to net profit earned by and collected from a sole proprietorship whose principal place of business is within the territory described in Article 5 shall be included in the term “actual total income tax”.

Section 9. Inside Millage Reimbursements. For property annexed to the City from Sub-Area 5 after the Effective Date, the City shall reimburse to the TOWNSHIP each year, an amount equal to the taxes the TOWNSHIP would have collected for its road and bridge inside millage of _____ mills from such property had no annexation occurred. This reimbursement shall be made annually in December of each calendar year based upon the then current tax valuation of each such annexed property.

Section 10. Effect of Tax Abatement on TOWNSHIP. If, during the term of this Agreement, the City, with respect to any property located within Sub-Area 5, grants any exemption, deferral, or abatement of any residential, commercial or industrial, real, personal or public utility real and personal property taxes pursuant to Sections 725.02, 1728.10, 3735.67, 5709.40, 5709.41, 5709.62, or 5709.88 of the Revised Code (or any future or similar statute(s) of like tenor or effect), then, beginning January 1 of the year and continuing on each January 1 thereafter, the City shall pay to the TOWNSHIP, a sum equal to the difference between the tax revenue generated by any fire/EMS levy(ies) received by the TOWNSHIP during the previous calendar year with respect to the property on which such exemption, deferral or abatement was granted and the tax revenue from such fire/EMS levy(ies) that the TOWNSHIP would have received during such previous year with respect to such property had such exemption, deferral or abatement not been granted by the City.

Section 11. Sub-Area 5 Additions. If property located within Sub-Area 3 and situated north of Home Road is annexed to the City and subsequently developed for nonresidential use, then such property shall be removed from Sub-Area 3 and become part of Sub-Area 5, thereby being subject to the provisions of this Article 5.

ARTICLE 6

NONCONFORMANCE OF BOUNDARIES

Section 1. TOWNSHIP Boundaries. During the term of this Agreement and any renewal thereof, the CITY shall not initiate legislation to exclude from the TOWNSHIP lands which comprise, have been previously annexed to, or which are subsequently annexed to the CITY under this Agreement by changing TOWNSHIP boundaries under Section 503.07 of the Ohio Revised Code or any future or similar statute of like tenor or effect. It is the intention of the Parties that the Liberty TOWNSHIP boundary lines shall not be altered in any way so as to exclude from the TOWNSHIP any existing or future CITY areas within the CEDA Territory. In other words, it is the express intention and agreement of the Parties that there shall exist an overlay of the CITY and TOWNSHIP boundaries for all portions of the CITY which are currently part of the TOWNSHIP and for all future unincorporated areas of the TOWNSHIP which may be annexed into the CITY.

Section 2. Cooperative Efforts. If any proceeding or other effort is initiated or made which seeks to initiate a change to the TOWNSHIP's boundaries in order to exclude the TOWNSHIP from the CITY, the CITY and the TOWNSHIP shall exercise their best efforts in resisting such change, including, without limitation, denying any petition seeking such change; refraining from supporting such change; vigorously resisting, in both administrative and judicial forums, and with the assistance of the CITY's and TOWNSHIP's legal counsel, any effort or action seeking such change; and otherwise undertaking such actions as may be reasonably requested by either Party which will be detrimental to the success of any effort seeking such change.

Section 3. Annexation Payments. If, during the term of this Agreement or any renewal thereof, (a) the CITY initiates legislation to exclude from the TOWNSHIP lands which comprise, have been previously annexed to, or which are subsequently annexed to the CITY under this Agreement by changing TOWNSHIP boundaries under Section 503.07 of the Ohio Revised Code or any future or similar statute of like tenor or effect, or (b) the boundaries of the TOWNSHIP are conformed in areas annexed on or after the date of this Agreement in such way so as to exclude the TOWNSHIP from any such area of the CITY, then the CITY shall, pursuant to Ohio Revised Code Section 709.191 and for all areas annexed to the CITY on or after the date of this Agreement, make the following annual payments to the TOWNSHIP with respect to commercial and industrial real, personal and public utility real and personal property taxes, and residential and retail real property taxes, using the property valuation for the year that the payment is due:

- A. If the exclusion of the territory from the TOWNSHIP occurs during a renewal term, 50% of the "TOWNSHIP TAXES" in the excluded territory that would have been due the TOWNSHIP for each remaining year if no annexation had occurred.

B. If the exclusion of the territory from the TOWNSHIP occurs during the initial 50 year term of this Agreement, then the annual payment shall be calculated as follows:

1. If 10 or less years remain in the initial term, 150% of the TOWNSHIP TAXES in the excluded territory that would have been due the TOWNSHIP each year if no annexation had occurred.

2. If more than 10 but less than 20 years remain in the initial term, 150% of the TOWNSHIP TAXES in the excluded territory that would have been due the TOWNSHIP each year for the first 10 years following the exclusion, and then 140% of such TAXES for each remaining year.

3. If more than 19 but less than 30 years remain in the initial term, 150% of the TOWNSHIP TAXES in the excluded territory that would have been due the TOWNSHIP each year for the first 10 years following the exclusion; 140% of such TAXES that would have been due the TOWNSHIP each year for the next 10 years; and 130% of such TAXES for each remaining year thereafter.

4. If more than 29 but less than 40 years remain in the initial term, 150% of the TOWNSHIP TAXES in the excluded territory that would have been due the TOWNSHIP each year for the first 10 years following the exclusion; 140% of such TAXES that would have been due the TOWNSHIP each year for the next 10 years; 130% of such TAXES that would have been due the TOWNSHIP each year for the next 10 years; and 120% of such TAXES for each remaining year thereafter.

5. If 40 or more years remain in the initial term, 150% of the TOWNSHIP TAXES in the excluded territory that would have been due the TOWNSHIP each year for the first 10 years following the exclusion; 140% of such TAXES that would have been due the TOWNSHIP each year for the next 10 years; 130% of such TAXES that would have been due the TOWNSHIP each year for the

next 10 years; 120% of such TAXES that would have been due the TOWNSHIP each year for the next 10 years; and 110% of such TAXES for each remaining year thereafter.

6. For purposes of this paragraph B, the term “year” (or “years”) means full calendar years. If TOWNSHIP territory is excluded from the CITY during a calendar year in such a manner that the TOWNSHIP would not collect all of its taxes from the excluded area for the full calendar year in which the exclusion initially occurs, then the CITY shall pay the TOWNSHIP the additional sum of \$500,000. The CITY shall also pay the TOWNSHIP the sum of \$500,000 upon the expiration of this Agreement. The initial \$500,000 payment shall be due and payable to the TOWNSHIP within 60 days after the date the TOWNSHIP territory is first excluded, and, for the last year of the Agreement, within 60 days after the expiration of the Agreement (or the renewal, if any). If, however, the TOWNSHIP would continue to collect all of its taxes in the excluded area during and for the entire calendar year of the first year in which the exclusion occurs, then the initial \$500,000 payment for the first calendar year is not applicable. (By way of illustration, the example attached hereto and incorporated herein as Attachment D serves to further explain and illustrate the manner in which these payments would occur.)

C. If there has been an exemption or abatement by the CITY of commercial and industrial real, personal, or public utility property taxes pursuant to Section 725.02, 1728.10, 3735.67, 5709.40, 5709.41, 5709.62, or 5709.88 of the Revised Code (or any future or similar statute of like tenor or effect), there shall be no reduction in the payments owed to the TOWNSHIP due to that exemption or abatement. The payments to be made by the CITY to the TOWNSHIP under this Section 3 shall be calculated as if the exemption or abatement had not occurred. In addition, the annual amounts due the TOWNSHIP under this Section shall include the sums that would have been due the TOWNSHIP as a result of any TOWNSHIP levies passed or imposed after the exclusion of TOWNSHIP territory has occurred. There shall also be added to each annual payment a sum equivalent to that amount of revenue

deriving from estate tax collections which would have been owed to the TOWNSHIP if no annexation had occurred.

D. The annual payments required under this Section 3 shall be made to the TOWNSHIP within 60 days after the end of each calendar year. (For example, the annual payment due for calendar year 2002 would be due and payable on or before March 1, 2003.) If the CITY fails to make an annual payment to the TOWNSHIP as required by this Section 3, the TOWNSHIP may utilize the remedy provided for in Ohio Revised Code Section 709.191, in addition to any other remedies available to the TOWNSHIP. The CITY agrees that the annual payments provided for in this Section 3 are lawful and reasonable, and the CITY further agrees and covenants not to contest or in any way challenge the validity of this Section 3 or any payment required to be made thereunder.

E. As used in this Article 6, Section 3, the term "TOWNSHIP TAXES" shall be defined and liberally construed to mean and include the revenue which would otherwise have been derived and owed to the TOWNSHIP from those voted and unvoted taxes, levy proceeds, and bond levy proceeds which would be lost to the TOWNSHIP as a result of the conforming of CITY boundaries so as to exclude the TOWNSHIP from any area within the CEDA Territory which is annexed to the CITY on or after the date of this Agreement. Such taxes, levies or bonds are taxed and calculated at millage rates and the total amount of such indebtedness or millage shall be calculated each year at their full rate using the property valuation for the year that the payment is due and without consideration of any reductions or rollbacks, and without consideration of any other reductions which might otherwise result from any exemptions or abatements which might be, or might have been, granted by the CITY with respect to commercial and industrial real, personal or public utility real and personal property taxes pursuant to Sections 725.02, 1728.10, 3735.67, 5709.40, 5709.41, 5709.62, or 5709.88 of the Ohio Revised Code or any future or similar statute of like tenor or effect. Although TOWNSHIP TAXES are intended to be understood and construed to include all revenue which, if the exclusion of TOWNSHIP territory had not occurred, would have been otherwise derived and owed to the TOWNSHIP with respect to commercial and industrial real, personal and public utility real and personal property taxes, and residential and retail real property taxes, and any other voted or unvoted bond or tax levy, the Parties agree that when calculating the sum of TOWNSHIP TAXES, the Parties hereto shall not include any sums which the TOWNSHIP would continue to collect, if any, within the corporate limits of the CITY as a result

of any apportionment pursuant to Ohio Revised Code Sections 503.10, 709.05(B), 133.04, or other statutes of like tenor and effect. TOWNSHIP TAXES shall also include any increases in voted levies or any additional levies (whether tax, bond or otherwise) which generate revenue from within the unincorporated territory of the TOWNSHIP after the effective date of this Agreement. In addition, TOWNSHIP TAXES shall include an amount which is the equivalent of a full 1.2 mill assessment, without reduction or rollback, on all such property. There shall also be added to each annual payment a sum equivalent to that amount of revenue deriving from estate tax collections which would have been owed to the TOWNSHIP if no annexation had occurred. (By way of illustration, the example attached hereto and incorporated herein as Attachment E serves to further explain and illustrate the manner in which TOWNSHIP TAXES would be computed.)

F. The City's initiation of legislation conforming TOWNSHIP boundaries shall include legislation initiated by initiative petition.

ARTICLE 7 SERVICES AND ROADWAYS

Section 1. Provision of Services. During the term of this Agreement and any renewal thereof, the CITY and TOWNSHIP may furnish the CEDA Territory with such services, either individually or jointly, as the individual Parties deem appropriate and as are allowed or otherwise required by law.

Section 2. Zoning. It is understood that the CEDA Territory which is annexed to the CITY pursuant to this Agreement will be subject to CITY land use controls. Although the CITY's ability to make changes to the TOWNSHIP Zoning Plan for any property located in Sub-Area 2 is limited pursuant to the terms of this Agreement, the CITY will have complete zoning and development control if property is annexed to the CITY from Sub-Area 3 and Sub-Area 5; subject, however, to the CITY's continuing obligation with respect to the continued maintenance and implementation of the TOWNSHIP's purposes, plan and integrity of and for Sawmill Parkway (including the future extension thereof) and all adjoining roadways within the CEDA Territory as outlined in Section 3, below. The Parties recognize the mutual benefit which arises through cooperative efforts and, to this end, agree to establish a committee consisting of not more than five (5) persons from each Party to review development plans and zoning requests for properties annexed from Sub-Area 3 and Sub-Area 5 into the CITY. This committee shall meet upon the call of either Party and may make a non-binding recommendation to the CITY zoning authorities with respect to the development or zoning request.

Section 3. Sawmill Parkway and Adjoining Roadways. Upon the annexation of and the acceptance by the CITY of any real estate within the CEDA Territory, the CITY shall maintain, enforce and continue to implement the TOWNSHIP's purposes, plan and integrity of and for Sawmill Parkway (including the future extension thereof) and all adjoining roadways

within the CEDA Territory. The TOWNSHIP's purposes and plan for Sawmill Parkway for the area located south of Hyatts Road are reflected in the "Sawmill Parkway Thoroughfare Standards Exhibit" which is attached hereto and incorporated herein as Attachment F. The TOWNSHIP's purposes and plan for the future extension of Sawmill Parkway north of Hyatts Road (as that extension is reflected in both the Liberty TOWNSHIP Comprehensive Plan and the Delaware County Thoroughfare Plan) are to extend Sawmill Parkway to the northerly boundary line of the TOWNSHIP (for eventual connection to State Route 42) utilizing the same design and construction standards as shown on Attachment F with respect to the roadway's design, construction, alignment, width, speed limit, landscaping, buffering, access and traffic control limitations in order to achieve an unimpeded and continuous flow of traffic and preserve the integrity of Sawmill Parkway as a major north-south arterial highway. As part of such purpose and plan, major intersections are to be spaced and separated by at least 1,320± feet, and entryways (consisting solely of right in/right out access points) are to be placed no closer than 600± feet to either another entryway or intersection. The TOWNSHIP's purposes and plan for adjoining roadways within the CEDA Territory is two-fold: to provide for and require circulation and vehicular connection between developments along and near Sawmill Parkway in order to provide two (2) or more vehicular roadway connections between neighborhoods and to reduce the need to use Sawmill Parkway for trips to and from developments. The nature of the TOWNSHIP's purposes and plan for adjoining roadways is illustrated on the Development Plan attached hereto and incorporated herein as Attachment G. The Development Plan reflects a system of loop streets connecting developments and a limited number of access points on Sawmill Parkway, thereby minimizing and providing sufficient space between the number of intersections with Sawmill Parkway. The CITY shall take no action or approve any request which would be contrary to or in conflict with the TOWNSHIP's purposes, plan and integrity of and for Sawmill Parkway (including the future extension thereof) and all adjoining roadways within the CEDA Territory, as such purposes and plan are reflected in this Section 3.

ARTICLE 8 AREAS OF COOPERATION

Section 1. Overview and Purpose. The Parties believe that there may be areas of mutual interest which provide opportunities for cooperative efforts to benefit both jurisdictions. The Parties also recognize there may be other situations which arise in the future that will afford the Parties with an opportunity to accomplish goals which are not otherwise achievable through the efforts of a single Party. The Parties, by this Agreement, hereby commit to work cooperatively and in good faith with each other to mutually explore opportunities for cooperation and revenue sharing; to discuss with each other various levels and methods of cooperation; and, when in the mutual best interest of each Party, to take such action or actions as each Party determines is necessary or desirable in an effort to achieve mutually agreed-upon goals.

Section 2. Cooperative Efforts. As noted in Section 1, above, the Parties desire to work cooperatively and in good faith with each other in an effort to identify and explore opportunities which will benefit both jurisdictions. These opportunities may include discussions on shared services, revenue sharing tools and joint planning. Although it is not the purpose or intent of this Agreement to bind either Party to a particular course of cooperation or action, it is the goal of the Parties that they continue to communicate with each other and explore areas suitable for cooperative efforts.

**ARTICLE 9
TERM OF AGREEMENT**

Section 1. Term and Renewal. The term of this Agreement shall be for a period of fifty (50) years, commencing on the Effective Date and shall, upon timely prior written notice, terminate at midnight, _____. Unless either the TOWNSHIP or CITY delivers written notice to the other at least one (1) year in advance of such Party's desire to terminate this Agreement on the aforesated termination date, then this Agreement shall thereafter automatically renew for successive terms of one (1) year unless written notice is delivered by one Party to the other at least one (1) year in advance of the then expiration date of such Party's intent to terminate this Agreement.

Section 2. Early Termination. Notwithstanding the foregoing, this Agreement may be terminated at any time upon the mutual written consent of the TOWNSHIP and CITY as duly authorized in writing by their respective legislative authorities by appropriate resolutions or ordinances authorizing such consent.

**ARTICLE 10
GENERAL PROVISIONS**

Section 1. Support of Agreement. In the event that this Agreement, or any of its terms, conditions or provisions, is challenged by any third party or parties in a court of law, the Parties agree to cooperate with one another and to use their best efforts in defending this Agreement with the object of upholding this Agreement. Each Party shall bear its own costs in any such proceeding challenging this Agreement or any terms or provisions thereof.

Section 2. Signing Other Documents. The Parties agree to cooperate with one another and to use their best efforts in the implementation of this Agreement and to sign or cause to be signed, in a timely fashion, all other necessary instruments, legislation, petitions and similar documents, and to take such other actions as either Party may reasonably request in order to effectuate the purposes of this Agreement.

Section 3. Mediation. In the event the Parties have a dispute as to any of the terms of applicability of this Agreement, the Parties agree to use their best efforts to resolve the dispute through a mutually acceptable mediation process prior to any Party filing a lawsuit. Each Party participating in mediation shall pay its own costs of mediation, including its proportionate share of the compensation and administrative expenses required by the mediator and by the mediation services provider selected by the Parties. If a mediator has not been selected by the Parties within sixty (60) days after one of the Parties has requested that a dispute arising under this Agreement be mediated, or if the dispute has not been resolved within ninety (90) days after notice of the dispute has been provided to the other Party, then any of the Parties may commence a lawsuit or commence such other method of pursuing such remedies as may be available to any of the Parties.

Section 4. Default. A failure to comply with the terms of this Agreement shall constitute a default hereunder. The Party in default shall have ninety (90) days, after receiving

written notice from the other Party of the event of default, to cure that default. If the default is not cured within that time period, the non-defaulting Party may sue the defaulting Party for specific performance under this Agreement or for damages or both; or may pursue such other remedies as may be available. In any litigation between the TOWNSHIP and the CITY, the prevailing Party shall be entitled to recover from the losing Party all reasonable costs and expenses of suit, including reasonable attorney fees. In addition, upon default by the CITY, the TOWNSHIP may, at its option and upon written notice to the CITY and following the provision of notice and the passage of the 90 days allowed for cure as specified in this Section 4, require the CITY to make the annual payments referenced in Article 6, Section 3, hereof, to the TOWNSHIP, beginning in the calendar year following such notice, with such payments to be made in the manner and in the amounts specified therein.

Section 5. Amendments. This Agreement may be amended upon the mutual written consent of both Parties, as approved by the legislative authorities of each Party by appropriate resolutions or ordinances authorizing such amendment. A mutually satisfactory amendment may only be adopted in the same manner as the Agreement was initially authorized. All acts taken in accordance with and in implementation of this Agreement shall be deemed administrative, and not legislative, in nature. The provisions of this Agreement do not prohibit proceedings under the provisions of Ohio Revised Code Sections 709.43 through 709.48, inclusive, and will be subject to any ballot conditions if approved by the electorate of both Parties under such Sections.

Section 6. Immunities Preserved. By entering into this Agreement, neither the CITY nor the TOWNSHIP intend to relinquish or waive any of the immunities they now have or may hereafter be accorded under state and/or federal laws, including, without the limitation of any such immunities, all those immunities afforded to governmental entities and their officers and employees under Chapter 2744 of the Ohio Revised Code.

Section 7. Powers Preserved. This Agreement is not intended to be in derogation of the powers granted to municipal corporations by Article XVIII, Ohio Constitution, or any other provisions of the Ohio Constitution or the CITY charter or of the Ohio Revised Code; nor is it intended to be in derogation of the powers granted to TOWNSHIPS under any provisions of the Ohio Constitution or of the Ohio Revised Code. Notwithstanding the foregoing or anything to the contrary contained herein, the Parties hereby acknowledge their belief as to the lawfulness of this Agreement and agree not to challenge or contest any provision contained herein.

Section 8. Beneficiaries. This Agreement shall inure to the benefit of and shall be binding upon the TOWNSHIP and the CITY and their respective successors; subject, however, to the specific provisions hereof. This Agreement shall not inure to the benefit of anyone other than as provided in the immediately preceding sentence. This Agreement is not intended to and does not create rights or benefits of any kind for any persons or entities that are not a Party to this Agreement.

Section 9. Other Parties. Other municipal corporations, TOWNSHIPS, counties, the State or its agencies, landowners or developers may be made parties to this Agreement upon the mutual written consent of the TOWNSHIP and CITY.

Section 10. Severability. In the event that any section or provision of this Agreement, or any covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, or any application thereof, is held to be illegal or invalid for any reason:

A. that illegality or invalidity shall not affect the remainder hereof or thereof, any other section or provision hereof, or any other covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, all of which shall be construed and enforced as if the illegal or invalid portion were not contained herein or therein;

B. the illegality or invalidity of any application hereof or thereof shall not affect any legal and valid application hereof or thereof; and

C. each section, provision, covenant, agreement, obligation or action, or part thereof, shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law.

Notwithstanding the foregoing, if any provision hereof is determined to be illegal or invalid for any reason whatsoever, in such manner which results in the conformance of boundaries so as to exclude the TOWNSHIP from any CITY area, the TOWNSHIP may, at its option, require the CITY to make the annual payments set forth in Article 5, Section 3, hereof. Furthermore, should such a determination be made, the Parties agree, upon request of either Party, to immediately meet and modify the invalidated provision in such a manner so as to accomplish the purpose and intent of this Agreement, with time being of the essence. In the event the Parties are unable to reach an agreement on the requested modification within 30 days following such request, the TOWNSHIP may, at its option and not sooner than 30 days following the provision of written notice of its intention to do so, terminate this Agreement. Upon such termination, the annual payment provisions set forth in Article 6, Section 3, hereof, shall take immediate effect, and this Article 6, Section 3 shall, by and of itself, constitute an agreement between the Parties for annual payments to the TOWNSHIP under Ohio Revised Code Section 709.191, and this annual payment obligation agreement shall survive such termination and the CITY agrees not to dispute or otherwise contest the validity of such Section or any payments required to be made to the TOWNSHIP thereunder.

Section 11. Parties Bound. The rights and obligations established by this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective agents, servants, officials, employees, representatives, successors and assigns.

Section 12. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement, and the terms hereof are contractual and not mere recitals.

Section 13. Quarterly Review. Quarterly upon the request of either Party, elected representative(s) of the CITY and TOWNSHIP and others mutually invited to participate shall meet in order to review the mutually derived benefits of this Agreement, to discuss methods of cooperation and plans for development in and for the CEDA Territory, and to engage in dialogue concerning any other issues or opportunities of mutual concern and benefit.

Section 14. Liberal Construction. The Parties agree that just as Ohio Revised Code Section 701.07 is to be liberally construed to allow parties to enter into Cooperative Economic Development Agreements, the Parties further agree that this Agreement shall be liberally construed in order to facilitate the desire of each of the Parties to carry out this Agreement by providing government improvements and facilities and services, by promoting and supporting economic development, by creating and preserving employment opportunities, and by allowing for the sharing by the TOWNSHIP and CITY in the benefits of economic development. Each provision of this Agreement shall be construed and interpreted so as to permit maximum advantage to the Parties allowed by Ohio Revised Code Section 701.07.

Section 15. Annexation of City Property. Property owned by the CITY in Sub-Area 2, 3 and 5 (and, after the requisite 15 year moratorium period, in Sub-Area 4) may be annexed to the CITY under the requirements and subject to the conditions set forth in Ohio Revised Code Section 709.16. Upon completion of the annexation, such property shall remain subject to the terms of this Agreement. The CITY shall provide advance written notice to the TOWNSHIP of its intention to annex such property prior to making any request for such annexation.

Section 16. Notices. Any notice required or permitted to be given herein shall be given in writing by certified United States mail, return receipt requested, or by hand delivery addressed to the Parties at their respective addresses as set forth below.

If to the TOWNSHIP:

Liberty TOWNSHIP Board of Trustees
7761 Liberty Road
Powell, Ohio 43065

With a copy simultaneously sent or delivered to both:

Donald F. Brosius
Loveland & Brosius
Attorney at Law
50 West Broad Street, Suite 3300
Columbus, Ohio 43215-5917

and

Craig B. Paynter
Attorney at Law
65 East State Street

Columbus, Ohio 43215-4213

If to the CITY:

City of Powell
Attention: City Manager
47 Hall Street
Powell, Ohio 43065

With a copy simultaneously sent or delivered to:

City of Powell
Attention: City Attorney
47 Hall Street
Powell, Ohio 43065

Any Party may change its mailing address by serving written notice of such change and new address upon the other Party.

Section 17. Character of Payments. Nothing in this Agreement is to be interpreted as the sharing of the proceeds of any tax levy by and between any Parties. Any language within this Agreement which employs an amount of any tax to be collected as part of a calculation for determining a sum to be paid by one Party to another of the Parties is intended, and therefore to be interpreted, as a reasonable, practical and convenient mechanism which the Parties have agreed to use to compute, in a less controversial manner, the payments to be made by one Party to another for services and other items of value to be received by the paying Party. No payments to be made under this Agreement are intended to be a sharing of proceeds of any tax levy proscribed by Section 709.192(D) of the Ohio Revised Code. The Parties do not consider estate taxes to be a tax levy.

IN TESTIMONY WHEREOF, the TOWNSHIP and CITY, with the intent of being bound, have caused this Agreement to be duly signed in their respective names by their duly authorized officers on or as of the date first above written.

ATTEST:

THE CITY OF POWELL,
DELAWARE COUNTY, OHIO

Powell Council Clerk

By: _____
Stephen A. Lutz, City Manager

APPROVED AS TO FORM
AND CORRECTNESS:

Law Director

ATTEST:

THE BOARD OF TRUSTEES
OF LIBERTY TOWNSHIP, DELAWARE
COUNTY, OHIO

Mark Gerber
TOWNSHIP Clerk

By: _____
Robert Mann, Trustee

By: _____
Mary Carducci, Trustee

By: _____
Curt Sybert, Trustee

**SECTION 5705.41
CERTIFICATE OF AVAILABILITY OF FUNDS**

The undersigned, Finance Director of the City of Powell, Ohio (the "City"), located in Delaware County, Ohio, hereby certifies in connection with the Liberty TOWNSHIP – City of Powell Cooperative Economic Development Agreement (the "Agreement"), dated on or as of _____, by and between the Board of Trustees of Liberty TOWNSHIP, Delaware County, Ohio and the Council of the City of Powell, Delaware County, Ohio, that the amount required to meet the Agreement 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 TESTIMONY WHEREOF, I have hereunto set my hand this ____ day of _____.

CITY OF POWELL, OHIO

By: _____

Title: Finance Director

ATTACHMENT A

CEDA TERRITORY

ATTACHMENT B

SENATE BILL 5

ATTACHMENT C

TOWNSHIP ZONING PLAN

ATTACHMENT D

By way of example, if the Agreement becomes effective May 15, 2002 and the TOWNSHIP boundaries are conformed on October 26, 2007 so as to exclude TOWNSHIP territory from any CITY area annexed on or after the date of this Agreement, then the first annual payment would be due to the TOWNSHIP from the CITY on March 1, 2009. This payment would be the equivalent of 150% of the TOWNSHIP TAXES that would have been due during 2009 to the TOWNSHIP for calendar year 2008 from the excluded area if no annexation had occurred. (This assumes that during 2008 the TOWNSHIP would collect all its taxes due for the full calendar year in which the exclusion initially occurred, i.e. 2007. If, however, the TOWNSHIP would not collect all its taxes for the entire calendar year of 2007, then the CITY would also owe the TOWNSHIP \$500,000 for calendar year 2007, which amount would be due on December 25, 2007.) This multiplier of 150% would apply to all annual payments for years 2008 through 2017, inclusive. The annual payment for calendar year 2018 (which would be due March 1, 2019) would be at the rate of 140% for that year and the following nine years. Likewise, the annual payment for calendar year 2028 (which would be due March 1, 2029) would be at the rate of 130% for that year and the following nine years. The annual payment for calendar year 2038 (which would be due March 1, 2039) would be at the rate of 120% for that year and the following nine years. The annual payment for calendar year 2048 would be at the rate of 110% for that year and the remaining full calendar years in the term of the Agreement. Since the Agreement ends in the middle of a calendar year (i.e. midnight, May 14, 2052), then the CITY would owe the TOWNSHIP \$500,000 for the partial calendar year of 2052. This amount would be due and payable within 60 days following the expiration of the Agreement. To further illustrate, if the exclusion occurs on April 22, 2039, the first annual payment would be due to the TOWNSHIP on March 1, 2041. This payment would be the equivalent of 150% of the TOWNSHIP TAXES that would have been due during 2041 to the TOWNSHIP for calendar year 2040 from the excluded area if no annexation had occurred. (This assumes that during 2040 the TOWNSHIP would collect all its taxes for the full calendar year in which the exclusion initially occurred, i.e. 2039. If, however, the TOWNSHIP would not collect all its taxes for the entire calendar year of 2039, then the CITY would also owe the TOWNSHIP \$500,000 for calendar year 2039, which amount would be due on June 22, 2039.) The multiplier of 150% would apply to all annual payments for years 2040 through 2049, inclusive. The annual payment for calendar years 2050 and 2051 (which would be due, respectively, on March 1, 2051 and March 1, 2052) would be at the rate of 140%. Since the Agreement ends in the middle of a calendar year (i.e. midnight, May 14, 2052), then the CITY would owe the TOWNSHIP \$500,000 for the partial calendar year of 2052. This amount would be due and payable within 60 days following the expiration of the Agreement.

ATTACHMENT E

By way of illustration, at the date of the signing of this Agreement, TOWNSHIP TAXES within the CITY corporate limits include real property taxes in the form of the General Fund Levy (.9 mills), the 1999 Recreation Center Bond Levy (.650 mills), and the 2000 Fire and EMS Levy (4.00 mills), for a total millage of 5.55 mills, plus any revenues realized from personal property tax collections. If the boundaries of the TOWNSHIP are conformed at any time in 2002 in any area annexed to the CITY on or after the date of this Agreement, 1.2 mills would be added to the existing 5.55 mills, bringing the total millage to a full and unreduced 6.75 mills. Consequently, 150% of the TOWNSHIP TAXES would equate to 10.125 mills. The CITY would then owe the TOWNSHIP an amount which is equivalent to a full and unreduced 10.125 mill assessment on all such real property excluded from the TOWNSHIP during 2003, plus 150% of all personal property and estate tax revenues the TOWNSHIP would have been owed if the annexation had not occurred. (This assumes the TOWNSHIP would collect all its taxes during and for the full calendar year in which the exclusion occurred, i.e. 2002. If, however, the TOWNSHIP would not collect all its taxes for the entire calendar year of 2002, then pursuant to Article 5, Section 3 B 6, the CITY would also owe the TOWNSHIP \$500,000 for calendar year 2002, which amount would be due and payable within 60 days after the date the first such exclusion occurs.) The payment due for 2003 would then be made to the TOWNSHIP on or before March 1, 2004. Furthermore and by way of illustration, if, after the exclusion occurs, the fire levy is later replaced with a 6 mill levy or an additional 2 mill fire levy added (thereby bringing the total fire levy to 6 mills), the TOWNSHIP TAXES would equal a total of 8.75 mills. As a result, 150% of the TOWNSHIP TAXES would then equate to 13.125 mills, plus 150% of all personal property and estate tax revenues the TOWNSHIP would have otherwise realized if the annexation had not occurred.

ATTACHMENT F

**SAWMILL PARKWAY THOROUGHFARE
STANDARDS EXHIBIT**

ATTACHMENT G

DEVELOPMENT PLAN

LOCAL GOV'T\LIBERTY\CEDA AGREEMENT (AMENDED CEDA) 11-1-2011 BROSIOUS DRAFT\11/23/11

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11/23/2011