

TEMPORARY RESOLUTION NO. 55-25

PERMANENT RESOLUTION NO. _____

A RESOLUTION TO AUTHORIZE THE MAYOR TO ENTER INTO A PRE-ANNEXATION AGREEMENT WITH MARK & BETH POWERS FOR PARCEL NUMBERS 0140112500, 0140101500, 0140104200 AND 0140112300 CONSISTING OF 143.319 +/- ACRES IN GREENFIELD TOWNSHIP, AND TO DECLARE AN EMERGENCY

WHEREAS, Mark and Beth Powers ("Petitioner") own property consisting of 143.319 +/- acres in Greenfield Township, Fairfield County, Ohio, which area will be described in the legal description and survey to be provided with the Annexation Petition to be filed imminently with the Fairfield County Board of County Commissioners ("BCC"); and

WHEREAS, a proposed Pre-Annexation Agreement has been negotiated between the City and the Petitioner and is attached hereto as Exhibit 1; and

WHEREAS, said property is contiguous to the City, and would benefit from municipal services provided by the City, including water, sanitary sewer, natural gas, stormwater, sanitation, police, and fire/EMS services; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LANCASTER, STATE OF OHIO:

SECTION 1. That the Pre-Annexation Agreement in the form presently on file with the Clerk of Council is hereby approved and authorized with changes therein not inconsistent with this Resolution and not substantially adverse to this City and which shall be approved by the Mayor. That the Mayor, for and in the name of the City, is hereby authorized to execute the Agreement, provided further that the approval of changes thereto by the Mayor, their character not being substantially adverse to the City, shall be evidenced conclusively by the execution thereof. This Council further authorizes the Mayor for and in the name of the City, to execute any amendments to the Agreement, which amendments are not inconsistent with this Resolution and not substantially adverse to this City.

SECTION 2. That this resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare of the City and for the further reason that this resolution must be enacted to meet the annexation timeline imposed by the Ohio Revised Code; wherefore, this resolution shall take effect and be in force immediately upon its adoption and approval by the Mayor.

Passed: _____ after _____ reading. Vote: Yeas _____ Nays _____

Date Approved: _____

President of Council

Clerk: _____

Mayor

Offered by: _____

Second by: _____

Requested by: Economic Development Committee



PRE-ANNEXATION AGREEMENT

This Pre-Annexation Agreement (hereinafter "Agreement") is entered into by and between the City of Lancaster, Ohio (hereinafter "City"), and Mark A. & Beth A. Powers (hereinafter "Developers") on the last date set forth below in order to document their agreement with respect to a proposed annexation of property to the City.

RECITALS

WHEREAS, Developers own approximately 143.319 +/- acres of real property on Wilson Road in Greenfield Township, Fairfield County, Ohio, including Parcel Nos. 0140112500, 0140101500, 0140104200, and 0140112300, which area is generally described in the legal description and GIS Map attached hereto as Exhibit A (hereinafter referred to as the "Property"); and

WHEREAS, such property is contiguous to the City, and would benefit from municipal services provided by the City, including water, sanitary sewer, stormwater, sanitation, gas, police, and fire/EMS services; and

WHEREAS, the City can provide such municipal services to the Property, if the Property is annexed to the City; and

WHEREAS, the Developers wish to annex its Property to the City, and to develop the site for an industrial development project; and

WHEREAS, the Property is currently situated within Greenfield Township and adjacent to the City's municipal corporate boundary; and

WHEREAS, the parties agree that it is in their mutual interest during the annexation process to enter into this Agreement for the development of the Property for the mutual benefit of the Developers and the City; and

WHEREAS, the City and Developers wish to address these issues as set forth below.

NOW THEREFORE, in consideration of the mutual benefits presented by an annexation of Developers' Property into the City, it is hereby agreed by and between the parties as follows:

1. **Annexation Petition** - The Developers will file a petition for annexation of the Property, to the City, in reliance upon the other mutual promises and terms set forth herein. The annexation process shall be an "Expedited Type 2" annexation as provided in Ohio Revised Code ("ORC") Section 709.023.
2. **Easements:** (i). The Developers covenant and agree that easements will be needed for the construction, installation, and maintenance of all City utilities which will service the Property. The specific location and width of such easements have not been determined at the time of execution of this Agreement. However, upon the City's

determination of the utility easements necessary, the Developers will grant such easements to the City in exchange for utility services.

3. **Service Resolution** - Pursuant to and in accordance with the ORC, the City agrees to enact, prior to twenty (20) days after the date of filing the annexation petition with the Board of County Commissioners of Fairfield County, Ohio (the "Commissioners"), the appropriate resolution of service (the "Service Resolution") stating that the services described in Section 4 of this Agreement will be provided to the Property upon annexation. The Service Resolution, once adopted, shall be immediately certified and filed with the Clerk of the Commissioners. In the event that the Commissioners approve the annexation petition, the City shall accept the annexation of the Property following County approval and the filing of a copy of the record with the Clerk of the City and laying it before Council (ORC Section 709.04) by emergency ordinance at the next regular meeting after the sixty (60) day waiting period has expired unless the Developers notify the City that it wants to delay acceptance of the annexation in accordance with Section 5 hereof. The City also agrees to provide all reasonable assistance requested by the Developers in pursuing the annexation. It is not expected that there will be any legal challenge to the Commissioners' approval of the annexation, or appeal of the Commissioners' approval of the annexation; however, if such a challenge occurs, the Developers may, at their sole option, choose to terminate this Agreement within thirty (30) days of: (i) the denial of the annexation by the Commissioners; or (ii) the filing of an appeal of the decision of the Commissioners to approve the annexation or of any other legal or administrative action seeking to overturn the Commissioners' approval. Should the Developers elect to terminate this Agreement as set forth in this paragraph, this Agreement shall immediately become null and void and no party shall have any further obligations to the other.

4. **Services –**

- A. **Sanitary Sewer Services:** The City covenants and agrees that it has available capacity to provide up to five thousand (5,000) gallons per acre sanitary sewer service to the Property. It shall be the obligation of the Developers to construct or cause to be constructed the extensions and/or connections to the existing public sanitary sewer main at its sole expense. All sewer lines shall be installed pursuant to plans and specifications approved by the City Engineer in accordance with the City's usual and customary requirements. The City and the Developers will cooperate and work in good faith to secure any necessary easements for such extensions, including any necessary, off-site extensions. It is expressly acknowledged and understood that costs and fees for water connections, tap and capacity/user fees shall be borne by the Developers at applicable standard rates/schedules of the City.

- B. **Water Services:** The City covenants and agrees that it has available capacity to provide up to five thousand (5,000) gallons per acre potable water to the Property. It shall be the obligation of the Developers to construct or cause to be constructed extensions and/or connections to the existing public water lines at its sole expense. All water lines shall be installed pursuant to plans and specifications approved by the City Engineer in accordance with the City's usual and customary requirements.

The City and the Developers will cooperate and work in good faith to secure any necessary easements for such extensions, including any necessary, off-site extensions. It is expressly acknowledged and understood that costs and fees for water connections, tap and capacity/user fees shall be borne by the Developers at applicable standard rates/schedules of the City.

- C. Natural Gas Services:** The City covenants and agrees that it has available capacity and public natural gas service lines in proximity to the Property. City agrees to provide natural gas to the entire Property upon annexation in quantities to be determined. The alignment through the proposed development is undetermined at this time, but Developers and City shall work together, as the development progresses, to ensure proper looping and connectivity can be supplied to the Property. Upon review and approval by City of natural gas service, City agrees to determine and provide public natural gas line connection points for the Property. Depending on where those connections points are, the City will be able to provide a maximum capacity range between 42 MCF and 175 MCF. City shall be solely responsible for the cost and expense of the development, design, and construction of the public natural gas line system to provide natural gas service to the Property in compliance with Lancaster Codified Ordinance and City design standards. It is expressly understood that costs of connection and tap and capacity/user fees shall be borne by the Developers, at applicable standard rates/schedules of the City.
- D. Stormwater Services:** City is amenable to either a regional storm water facility or individual storm water control facilities within each particular development of the Property. Any proposed development will require retention/detention facilities that comply with City's detention policy. Due to the size of the Property, 143.319 acres, it will also have to comply with all of the requirements of the Ohio EPA Construction General Permit in effect at the time the Property is developed. Developers are solely responsible for the cost and expense of the development, design, and construction of the storm water facilities to provide storm water service to the Property in compliance with Lancaster Codified Ordinance and City design standards and OEPA permit requirements. The storm water system constructed by Developers will have sufficient capacity to serve the Property and its proposed development subject to the conditions stated above. It is expressly acknowledged and understood that costs and fees for storm water connections and infrastructure shall be borne by the Developers.
- E. Sanitation Services:** The City covenants and agrees that it will provide sanitation service to the Property upon Developers' request. It is anticipated that dumpsters will be placed at various locations within each designated area. Developers shall comply with Lancaster Codified Ordinance and City standards regarding dumpster locations. It is expressly understood that costs associated with sanitation services shall be borne by the Developers, at applicable standard rates/schedules of the City.
- F. Police Services:** The City covenants and agrees that it will provide Police services to the Property upon annexation. In order to provide necessary Police services, Developers shall construct sufficient entry points to facilitate emergency vehicle access and response.

G. Fire/EMS Services: The City covenants and agrees that it will provide Fire/EMS services to the Property upon annexation. In order to provide necessary Fire/EMS services, Developers shall construct sufficient entry points to facilitate emergency vehicle access and response.

5. **Zoning** - The Developers' intended use of the Property is for an industrial development site, for possible combination with adjoining Lancaster Port Authority property, as shown on the GIS map of the area attached hereto as Exhibit _____ (the "Development Concept"). The Developers have determined to submit and seek the zoning designation of **Advanced Manufacturing** (pursuant to the Lancaster Zoning Code) for the Property (all parcels), consistent with the planned intended use.

The City agrees that, upon filing of the annexation petition for the Property, it will expeditiously process contemporaneously filed applications for rezoning the Property and for the Preliminary Develop Plan. The City's planning staff and administration agree to actively support the rezoning application and the Preliminary Develop Plan so long as it is consistent with the Development Concept attached hereto in order that such documents may be presented to City Council for final approval, immediately following approval of the annexation petition by the Commissioners and acceptance thereof by the City Council, so that the rezoning can be effective at the earliest time permitted by law. Upon the written request of the Developers on behalf of the petitioners, the City shall delay acceptance of the annexation until legislative approval of the rezoning is accomplished or can be accomplished contemporaneously with the acceptance of the annexation. If, for any reason, the rezoning cannot be accomplished substantially in accordance with the provisions of this paragraph (or as it may be modified in a manner acceptable to the Developers) and/or the rezoning is referred or defeated for any reason, and/or a building moratorium or other ordinance, resolution or rule is enacted by the City that would, in the opinion of the Developers, adversely affect Developers' intended use of the Property, the City agrees, at the Developers' request, not to accept the annexation by allowing the 120-day acceptance period to expire, and thus, rejecting the annexation of the Property and Developer may, at its option, terminate this Agreement. If (i) the annexation approval occurs prior to or other than concurrently with the legislative approval of the rezoning and the rezoning is subsequently not approved substantially in accordance with this paragraph (or as it may be modified in a manner acceptable to the Developers), (ii) the annexation approval is referred to a vote of the electorate, or (iii) a building moratorium or any other ordinance, resolution or rule is enacted or adopted by the City that would, in the opinion of the Developers, adversely affect Developers' intended use of the Property, the City agrees, at the request of the Developers: (a) to reconsider the ordinance accepting the annexation and rescind, repeal and reject the annexation approval within twenty five (25) days of the date of the disapproval of the rezoning, referral to a vote of the electorate, or the enactment of the building moratorium or other ordinance, resolution or rule; or (b) to detach/de-annex from the City all or part of the Property or not oppose any petition to detach/de-annex all or party of the Property and the Developers may, at their option, terminate this Agreement.

6. **Traffic Improvements** - Developers shall have a Traffic Impact Study performed to evaluate the impacts of the proposed development of the Property to the roadway

system. City will establish the scope and requirements of the Traffic Impact Study and the study area. Developers must construct, at Developers' expense, all public infrastructure traffic improvements recommended as a result of said study. Any public infrastructure traffic improvements shall be built to City guidelines and standards.

7. INTENTIONALLY LEFT BLANK

- 8. Notices** - Notices under this Agreement shall be in writing to the Developers and their attorney and to the City via the City Law Director at the addresses listed below.

To Developers:

Mark A. & Beth Powers
8360 Sugar Grove Road SE
Sugar Grove, Ohio 43155

With a copy to:

Jeffrey K. Vandervoort
Sitterley, Vandervoort & Nixon Ltd
123 S. Broad Street, Suite 211
Lancaster, Ohio 43130
Email: jkv@sitvanlaw.com

To the City:

Law Director & City Prosecutor
City of Lancaster
136 W. Main Street
PO Box 1008
Lancaster, Ohio 43130
Email: slhall@ci.lancaster.oh.us

9. Miscellaneous -

- A.** The Developers agree to provide City with a minimum of 90 feet of dedicated roadway/right of way from the centerline along existing Wilson Road upon successful annexation and establishment of zoning with the City.
- B.** The City agrees to process the contemplated establishment of zoning for the proposed development on a parallel time frame with the planned annexation, within the statutory time frame provided by Ohio law for such annexation. The parties specifically contemplate the passage of the Ordinance to establish zoning within the same session as the City's Council meeting to finally accept annexation of the Property, so long as the Developers promptly file their application to establish zoning with the City in compliance with all public notice deadlines.

- C. This Agreement represents the entire agreement between the parties. If a dispute arises, the Courts of Fairfield County, Ohio shall have jurisdiction to resolve any dispute unless both parties expressly agree otherwise in writing.
- D. No modifications, discussions or alterations from the terms included herein shall be considered effective unless made in writing and signed by all parties.
- E. This Agreement shall be binding upon the parties hereto and their respective transferee, heirs and/or assigns.
- F. It is expressly understood that time is of the essence in doing and performing all things to be done under the terms of this Agreement.

10. Representations and Warranties - The parties make each of the following representations and warranties as of the effective date of this Agreement. These representations and warranties are given as partial consideration for and as a material inducement to the execution of this Agreement and each shall survive the execution, delivery and performance of this Agreement.

- A. Developers' Warranty regarding Power and Authority. Developers warrant and represent that they have the capacity to enter into this Agreement. Each person executing this Agreement on Developers' behalf represents and warrants that he or she has full power and authority to do so and to deliver and perform this Agreement and all transactions contemplated by this Agreement without the consent of any additional persons or entities.
- B. City's Warranty regarding Power and Authority. The City warrants that it has the power, authority and capacity to enter into, and to deliver and perform this Agreement and all transactions contemplated by this Agreement. Each person executing this Agreement on behalf of the City represents and warrants that he or she has full power and has been authorized to do so by appropriate actions by the governing body of the City. However, Developers are entering into this Agreement with the full understanding, recognition and acknowledgement that the City is comprised of several autonomous entities including City Council, Planning Commission and the Board of Zoning Appeals which have statutory duties, plenary powers, autonomy and discretion they cannot be deprived of. Developers further acknowledges and agrees that any exercise of the plenary powers of these City entities does not violate or breach the terms of this Agreement or entitle Developers to performance or relief other than termination of this Agreement.
- C. Valid and Binding. Each party represents and warrants that this Agreement creates a valid, binding and enforceable obligation and that this Agreement is enforceable against the warranting party in accordance with its terms.

[SIGNATURES TO FOLLOW; REMAINDER OF PAGE BLANK.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by

their duly authorized representatives this _____ day of _____, 2025.

CITY OF LANCASTER, OHIO:

APPROVED AS TO FORM FOR THE CITY:

By: _____

By: _____

Printed: _____

Printed: _____

Title: Mayor

Title: Law Director

DEVELOPERS:

Signed: _____

Printed: Mark A. and Beth A. Powers

Title: Property Owners

STATE OF OHIO,
COUNTY OF FAIRFIELD SS:

On this _____ day of _____, 2025, before me, a Notary Public for the State of Ohio, personally appeared **Mayor Don McDaniel**, the authorized representative of the **City of Lancaster, Ohio**, a municipal corporation organized under the laws of the State of Ohio, and acknowledged the execution of the foregoing Agreement, and that the same is his voluntary act and deed on behalf of the City of Lancaster, Ohio.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the date and year aforesaid.

Notary Public

STATE OF OHIO,
COUNTY OF FAIRFIELD SS:

On this _____ day of _____, 2025, before me, a Notary Public for the State of Ohio, personally appeared **Mark A. and Beth A. Powers**, husband and wife, acknowledged the execution of the foregoing Agreement, and that the same is their voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the date and year aforesaid.

Notary Public