

**PRE-ANNEXATION AGREEMENT**

This Pre-Annexation Agreement (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between Robert L. Smith and Jerry L. Smith, individual landowners of 70+/- acres (Parcel Numbers 319-240-01-046-000, 319-240-01-048-000, and 319-240-01-047-000) and Timothy Shelly, an individual landowner of 38+/- acres (Parcel Number 319-230-02-103-000) (hereinafter the "Landowners"), Pulte Homes of Ohio LLC, a Michigan Limited Liability Company, (hereinafter the "Developer") and the City of Powell, Ohio, an Ohio municipal corporation organized and existing under the Constitution and laws of the State of Ohio and its municipal charter (hereinafter the "City"), under the circumstances summarized in the following recitals.

**RECITALS:**

**WHEREAS**, Landowners collectively own approximately 108.851 +/- acres of land located on Steitz Road (which land is depicted on Exhibit A and referred to herein as the "Property") which is contiguous with the boundaries of the City and proposed for annexation; and

**WHEREAS**, Landowners are in contractual relationships with Developer, which plans to purchase, zone and develop the Property within the City of Powell; and

**WHEREAS**, the Property would benefit from certain City services, including in particular police protection and comprehensive planning and zoning services; and

**WHEREAS**, the City is capable of providing and hereby agrees to offer its municipal services to the Property if the Property is annexed to the City; and

WHEREAS, the Parties agree that it is in their mutual interest prior to the annexation process to enter into this Agreement for the development of the Property for the mutual benefit of Landowners, Developer and the City; and

NOW THEREFORE, in consideration of the covenants and agreements contained herein, Landowners, Developer and the City covenant and agree as follows:

**Section 1. Annexation Petitions and Related Approvals.**

A. **Petition(s) for Annexation; Annexation.** The Landowners or Developer shall prepare or has already prepared, an annexation petition, map, legal description and other related information, as may be required by the Ohio Revised Code ("ORC"), to annex the Property to the City. The annexation process shall be an "Expedited Type II" annexation as provided in ORC Section 709.023. Landowners and Developer agree that they will execute any necessary annexation petition, as appropriate, and will execute any other documents reasonably necessary to effectuate the annexation as may be required by law at their cost or expense. The annexation petition shall appoint Thomas L. Hart, Esquire, as the petitioners' agent and may be filed solely with the Property or may be filed as a joint annexation petition with other parcels so long as all other parcels so joined are supported by one hundred (100%) of the owners of each parcel and the joinder of any such additional parcels will in no way affect the agreements of the parties memorialized in this Agreement. The petition will be filed with the Delaware County Commissioners. The Landowners and Developer agree that all costs and expenses in petitioning for the annexation will be borne by the Landowner or Developer. Should the City desire for its own attorney to represent its interests with regard to the annexation petition, those costs will be borne by City. Landowners and Developer further agrees that they will continue to support the annexation to the City throughout the process, including any appeal or court action at no further

expense to City, unless the City desires to retain its own attorneys; provided, however, Landowner's and Developer's continued cooperation in the annexation of the Property shall be subject to and conditioned upon the City's performance of its duties and obligations as memorialized in this Agreement.

**B. City 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(s) with the Board of County Commissioners of Delaware County, Ohio (the "Commissioners"), the appropriate Service Resolution stating the services that 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.

**C. Development Considerations.**

**Zoning.** The property is currently zoned as agricultural in Liberty Township. Landowners' or Developer's intended use of the Property is that of a Planned Residential District (PRD) under the Powell Zoning Code to include a mix of detached traditional single-family homes, "empty nester" homes and estate lots and related residential housing uses. Landowner and Developer propose the Development Plan for the Property attached hereto as Exhibit B and incorporated herein by reference. It is specified and understood that Exhibit B shall include landowner Shelly's existing livestock fences as landowner Shelly and the developer intend that such fences are grandfathered as a use that shall continue as part of the proposed PRD rezoning in Powell.

Upon filing of an application to rezone the Property under the Powell Zoning Code, Council intends to enact legislation formally referring such application to the Powell Planning and Zoning Commission for its review and consideration in accordance with the

applicable provisions of the Codified Ordinances. Such review and consideration shall occur during the pendency of the annexation process. The City planning staff and administration agree that, if the rezoning application and accompanying preliminary development plan are generally consistent with Exhibit B attached hereto, City staff and administration will professionally review and timely process the application to zone the property to a PRD Zoning District. The City understands it has between sixty (60) and one hundred twenty (120) days to accept the annexation after the annexation petition has been approved by the Commissioners and a copy of the record is filed with the Clerk of the City and laid before Council; (ORC Section 709.04). At the request of the Developer, the City agrees to delay acceptance of the annexation until legislative approval of the rezoning can be accomplished contemporaneously with the acceptance of the annexation. If, for some reason, the rezoning ordinance cannot be approved in a form or substance acceptable to the Developer, the City agrees, at the request of Developer, to permit Landowner to withdraw its request to annex the property to the City and/or to forbear from acceptance of the annexation by allowing the 120-day period to expire, thus effectively rejecting the annexation of the Property. If 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 Exhibit B (or as it may be modified acceptably to Developer) or is referred to a vote of the electorate or a building moratorium is enacted which would limit Landowners' or Developer's use of the Property, City agrees, at Landowners' or Developer's request: (i) to reconsider the ordinance accepting the annexation, and to rescind, repeal and reject the annexation approval within fourteen (14) days of the date of the disapproval of the rezoning or referral to a vote of the electorate or the enactment of the building moratorium,

or (ii) to detach/de-annex the Property from the City or not oppose any owner's petition to detach/de-annex its part of the Property from the City.

Sanitary Sewer Service. The Property will obtain sewer service from the Delaware County sewer system. Pursuant to the Second Amendment to the Amended and Restated Intergovernmental Cooperation Agreement by and between the Concord/Scioto Community Authority ("CSCA") and Delaware County, dated May 28, 2015 (the "IGA"), and as verified by the Delaware County Regional Sewer District, Sanitary Engineer, (see attached as Exhibit C, letter dated July 12, 2016) the Property is within the area designated as the Landowner's Choice Area and may receive service from either from the Lower Scioto Water Reclamation Facility or the Scioto Reserve Treatment Plant as determined by the County. Under the IGA, Delaware County has directed that sewer treatment services be provided from the Scioto Reserve Treatment Plant. The City of Powell hereby acknowledges that the Property will receive sewer service from the Delaware County sewer system as stated above or as finally directed by the Delaware County Regional Sewer District and Sanitary Engineer. This shall require the commitment of the development and lot owners to be part of the Concord/Scioto Community Authority (CSCA) and pay community authority assessments to support the Scioto Reserve Treatment Plant operations. As such, the Parties agree that it would be impractical for the lot owners to be required to join any other community authorities or be subject to other such similar or additional assessments.

**D. Approval and Permit Regulation.**

(i) Compliance Statement. Nothing in this Agreement shall exempt the parties hereto from the zoning, development plan and subdivision platting processes of the City. The execution and delivery of this Agreement shall not serve as a variance of

the zoning, development plan and platting processes mandated by the Codified Ordinances and the Subdivision Regulations of City, but will serve as a preliminary understanding and guide for the proposed zoning and development of the Property.

(ii) **Council Action.** The obligations of and agreements by the City contained herein shall be effective and enforceable upon, and subject to, the approval of all necessary legislation and/or motions by Council. It is acknowledged that the initial legislation approving this Agreement is merely the first in a series of legislative acts implementing this Agreement. All subsequent Council actions implementing this Agreement, whether legislative or administrative in nature, shall be considered to be in furtherance of this Council Action.

(iii) **Permits.** Landowner or Developer will obtain all necessary permits from all levels of government to allow Landowner or Developer to build and develop Property consistent with its intended use.

## **Section 2. Miscellaneous**

A. **Intent of Parties.** By execution hereof, all Parties represent that they are duly authorized to sign this Agreement. By passage of Ordinance No. \_\_\_\_\_ on \_\_\_\_\_, the City authorized the execution of this Agreement.

B. **Cancellation or Termination.** This Agreement may be cancelled or otherwise terminated by mutual written agreement of the Parties hereto or pursuant to the terms of this Agreement as to conflict in law, impracticality and/or acts of God.

C. **Remedies.** Except as otherwise limited by Chapter 2744 of the Ohio Revised Code as to action for or against the City, the Parties hereto shall be afforded and do possess the

right to seek every remedy available at law or in equity provided for under the laws of the State of Ohio as pertains to the terms and conditions, duties, obligations, privileges and rights of this Agreement and the enforcement thereof.

**D. Enforcement.** Unless this Agreement is cancelled or otherwise terminated, this Agreement will be enforceable against any Party hereto per the laws, ordinances, resolutions, regulations or policies in effect at the time of the execution of this Agreement.

**F. Assignment of Agreement.** Developer may assign this Agreement, or any part thereof or any duty, obligation, privilege or right granted under this Agreement to any newly formed entity of which Developer is a member, or to any affiliate entity of which Developer is a member. Developer will not otherwise assign the Agreement without the express written consent of the City, which shall not unreasonably be withheld.

**G. Relative Rights.** The rights and obligations of the parties hereunder shall be subject to the terms and conditions hereof, and will inure to the benefit of, and be binding on, the respective successors and assigns.

**H. Entire Agreement Merger Clause; Statement of Incorporation.** It is agreed that the Agreement merges all of the oral negotiations, representations, discussions and understandings between the Parties, their legal counsel, agents or representatives. This Agreement contains the entire Agreement of the Parties with respect to its subject matter. All documents related to this Agreement and/or attached hereto as exhibits or addendums shall be incorporated into this Agreement by reference as if fully set out at length herein.

**I. Severability.** If any clause, sentence, paragraph or part of this Agreement shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment

shall not affect, impair, or invalidate the remainder of this Agreement and the remainder of said Agreement shall continue in full force or effect.

**J. Cooperation.** The City will cooperate with Landowner and Developer to obtain any required and/or necessary permit from any government or governmental agency not a party to this Agreement.

**K. Modifications or Amendment of Agreement.** No modifications, amendments, alterations or additions shall be made to this Agreement except in a writing signed by all Parties hereto.

**L. Recitals.** The Parties acknowledge and agree that the facts and circumstances as described in the Recitals hereto are an integral part of this Agreement and as such are incorporated herein by reference.

**M. Executed Counterparts.** This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same agreement. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

**N. Captions.** The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

**O. Survival of Representations and Warranties.** All representations and warranties of Landowners, Developer and the City in this Agreement shall survive the execution and delivery of this Agreement.

**P. Effective Date.** This Agreement shall be effective when signed by all the Parties hereto.



**Q. Time.** Time shall be of the essence in doing and performing all things to be done under the terms of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives this \_\_\_\_ day of \_\_\_\_\_, 2016.

CITY OF POWELL, OHIO

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: City Manager

By: \_\_\_\_\_

Printed: Robert L. Smith, an individual

By: \_\_\_\_\_

Printed: Jerry L. Smith, an individual

By: \_\_\_\_\_

Printed: Timothy Shelly, an individual

PULTE HOMES OF OHIO LLC, A MICHIGAN  
LIMITED LIABILITY CORPORATION

By: \_\_\_\_\_

Printed: \_\_\_\_\_

**Title:** \_\_\_\_\_

## **INDEX OF EXHIBITS**

- A. Description of Property
- B. Development Plan
- C. July 12, 2016 Letter from the Delaware County Regional Sewer District

36008743521450,1-2 : 01731 00023 4814-4157-2396, v. 1



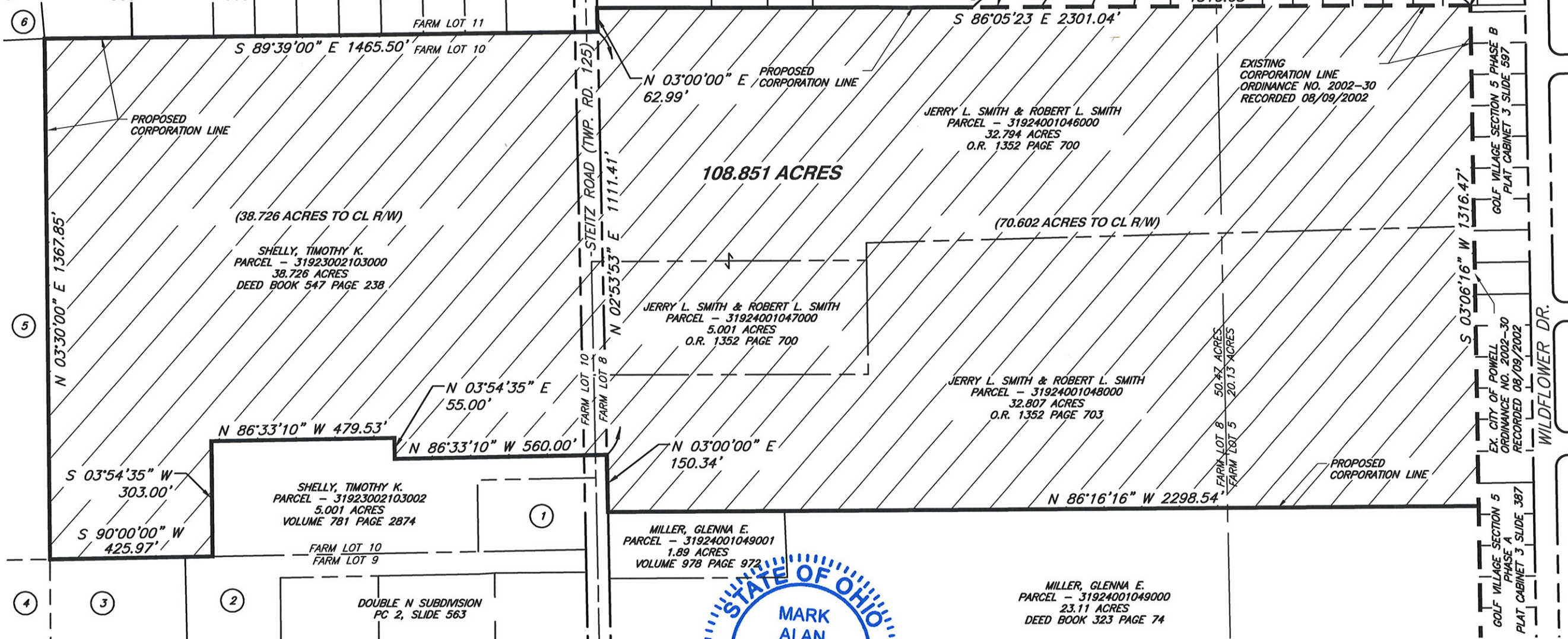
P:\2015\152-227\Survey\Draw\152227-SV03-ANNEX.dwg[Layout1] LS:10/12/2016 -- jcoffin -- LP: 10/12/2016 11:36 AM

# MAP OF TERRITORY TO BE ANNEXED FROM LIBERTY TOWNSHIP TO CITY OF POWELL

SITUATED IN THE STATE OF OHIO, COUNTY OF DELAWARE, TOWNSHIP OF LIBERTY  
PART OF FARM LOTS 5, 8, & 10, TOWNSHIP 3, SECTION 2, RANGE 19 OF THE UNITED STATES MILITARY LANDS



NORTH  
SCALE IN FEET



## LEGEND

- EXISTING CORPORATION LINE
- PROPOSED CORPORATION LINE
- EXISTING RIGHT-OF-WAY
- PROPOSED CORPORATION AREA

## CONTIGUITY CALCULATION

2629 LINEAL FEET OF PERIMETER IS CONTIGUOUS WITH THE EXISTING CORPORATION LINE OF THE CITY OF POWELL.

A TOTAL OF 10,772 LINEAL FEET OF ANNEXED PERIMETER.

24.4% OF THE PERIMETER OF THE ANNEXED AREA IS CONTIGUOUS TO THE EXISTING CITY OF POWELL CORPORATION LINE.

NO ISLAND OF UNINCORPORATED AREA IS BEING CREATED WITH THIS ANNEXATION.

THIS ANNEXATION PLAT IS A GENERAL DESCRIPTION OF THE LOCATION OF PROPERTY TO BE ANNEXED AND IS NOT A BOUNDARY SURVEY AS DEFINED IN THE O.A.C. CHAPTER 4733-37.

MARK ALAN SMITH, P.S.  
PROFESSIONAL SURVEYOR 8232



- 1 SHELLY, TIMOTHY K.  
PARCEL - 31923002103001  
1.173 ACRES  
VOLUME 600, PAGE 208
- 2 ALLDRITT, LAWRENCE R & BETHANY D  
PARCEL - 31923002099003  
LOT 3631  
VOLUME 873, PAGE 2579
- 3 CLARK, GARY M & TAMARA  
PARCEL - 31923002089000  
5.001 ACRES  
VOLUME 1135, PAGE 2770
- 4 IMAR, TERRY R & PATI ALEXIS  
PARCEL - 31923002085000  
7.81 ACRES  
VOLUME 591, PAGE 15
- 5 IMAR, TERRY R & PATI ALEXIS  
PARCEL - 31923002086000  
12.483 ACRES  
VOLUME 591, PAGE 15
- 6 7TH AMEND, VILLAGE AT SCIOTO  
RESERVE CONDOMINIUM  
PARCEL - 31923002106562  
1.888 ACRES  
VOLUME 594, PAGE 2168
- 7 ACKERS, GREGORY K.  
PARCEL - 31924001045001  
1.138 ACRES  
VOLUME 38, PG. 2226

County Engineer  
Delaware County, Ohio  
I hereby certify the within to be a true copy of  
the document that is on file in the Map  
Department.  
CHRIS E. BAUSERMAN, P.E., P.S.  
County Engineer  
By:   
Date: 10-17-16

## SURVEYOR'S NOTE:

ALL BEARINGS AND DISTANCES SHOWN ON THIS SURVEY ARE PER DEED OF RECORD AND NOT THE RESULT OF AN ACTUAL BOUNDARY SURVEY.



Civil & Environmental Consultants, Inc.

250 Old Wilson Bridge Road · Suite 250 · Worthington, OH 43085

614-540-6633 · 888-598-6808

www.cecinc.com

PULTE GROUP  
STEITZ ROAD  
LIBERTY TOWNSHIP  
DELAWARE COUNTY, OHIO

ANNEXATION PLAT

DRAWN BY:	JEC	CHECKED BY:	JWC	APPROVED BY:	MAS	DRAWING NO.:
DATE:	OCTOBER 2016	DWG SCALE:	1"=300'	PROJECT NO:	152-227	1 OF 1





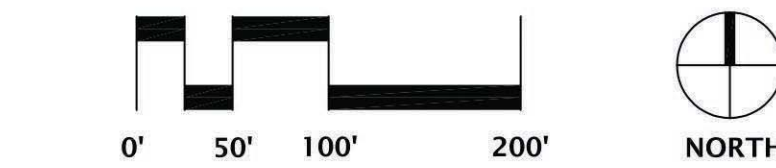
DEVELOPMENT DATA					
<b>SHELLY PROPERTY</b>		<b>SMITH PROPERTY</b>	<b>OVERALL DEVELOPMENT</b>		
Total Area:	+/-38.82 AC.	Total Area:	+/-70.6 AC.	Total Area:	+/-109.42 AC.
Total Units	72	Total Units	111	Total Units	183
	67 - 70'X120' LOTS		49 - 85'X130' LOTS		67 - 70'X120' LOTS
	5 - ESTATE LOTS		31 - 90'X130' LOTS		49 - 85'X130' LOTS
Gross Density:	1.85 DU/AC.		4 - 95'X130' LOTS		31 - 90'X130' LOTS
			27 - 100'X140' LOTS		4 - 95'X130' LOTS
Open Space Provided:	+/- 7.38 AC. (19%)	Gross Density:	1.57 DU/AC.		27 - 100'X140' LOTS
		Open Space Provided:	+/- 18.47 AC. (26%)	Gross Density:	1.67 DU/AC.
				Open Space Provided:	+/- 25.85 AC. (24%)

Preliminary Site Plan

**SHELLY/SMITH PROPERTY - STEITZ ROAD**

POWELL, OHIO

Prepared by EDGE  
November 03, 2016







## DELAWARE COUNTY REGIONAL SEWER DISTRICT

MICHAEL A. FROMMER, P.E., EXECUTIVE DIRECTOR

July 12, 2016

Civil & Environmental Consultants, Inc.  
Michael C. Reeves, P.E.  
250 Old Wilson Bridge Road, Suite 250  
Worthington, OH 43085

Re: **Request for Sewer Capacity**  
Smith & Shelly Properties  
Parcels: 31923002103000, 31924001046000, 31924001047000, 31924001048000

Dear Mr. Reeves:

The Delaware County Regional Sewer District (the "County") has considered your request for approval to discharge sanitary sewage into the Delaware County Sanitary Sewer System from the above referenced location, representing 183 Equivalent Residential Unit(s) (ERU).

It is our understanding that a single pump station will be constructed, which will convey all flows from the development to an existing sanitary outlet. Capacity is conditionally available at two existing outlet locations to serve the proposed project provided that the following conditions are met:

**Option 1:** Outlet to manhole 8 in Liberty Village Section 1 along Wolf Path Drive. This option will require an upgrade or parallel to 250 feet of 8" sanitary between manholes 6 and 7 in Scioto Reserve Section 1, Phase 4 along Maple Run Lane to the corner of Maple Run Lane/Stone View Court and Tree Lake Boulevard.

**Option 2:** Outlet to manhole 7 in Scioto Reserve Section 1, Phase 7 along Tree Lake Boulevard. This option will not require additional downstream upgrades.

Please be aware that downstream improvements to the Scioto Reserve pump station and tributary sewer are necessary to serve the proposed development regardless of which option is used. These downstream improvements are planned to be completed by Village Communities concurrent to the proposed development and construction sequencing might be necessary between the two developments.

The current assessment of capacity availability is subject to periodic reevaluation by the County and shall not be valid after 18 months from the date of this letter.

If you have any questions, please feel free to contact me.

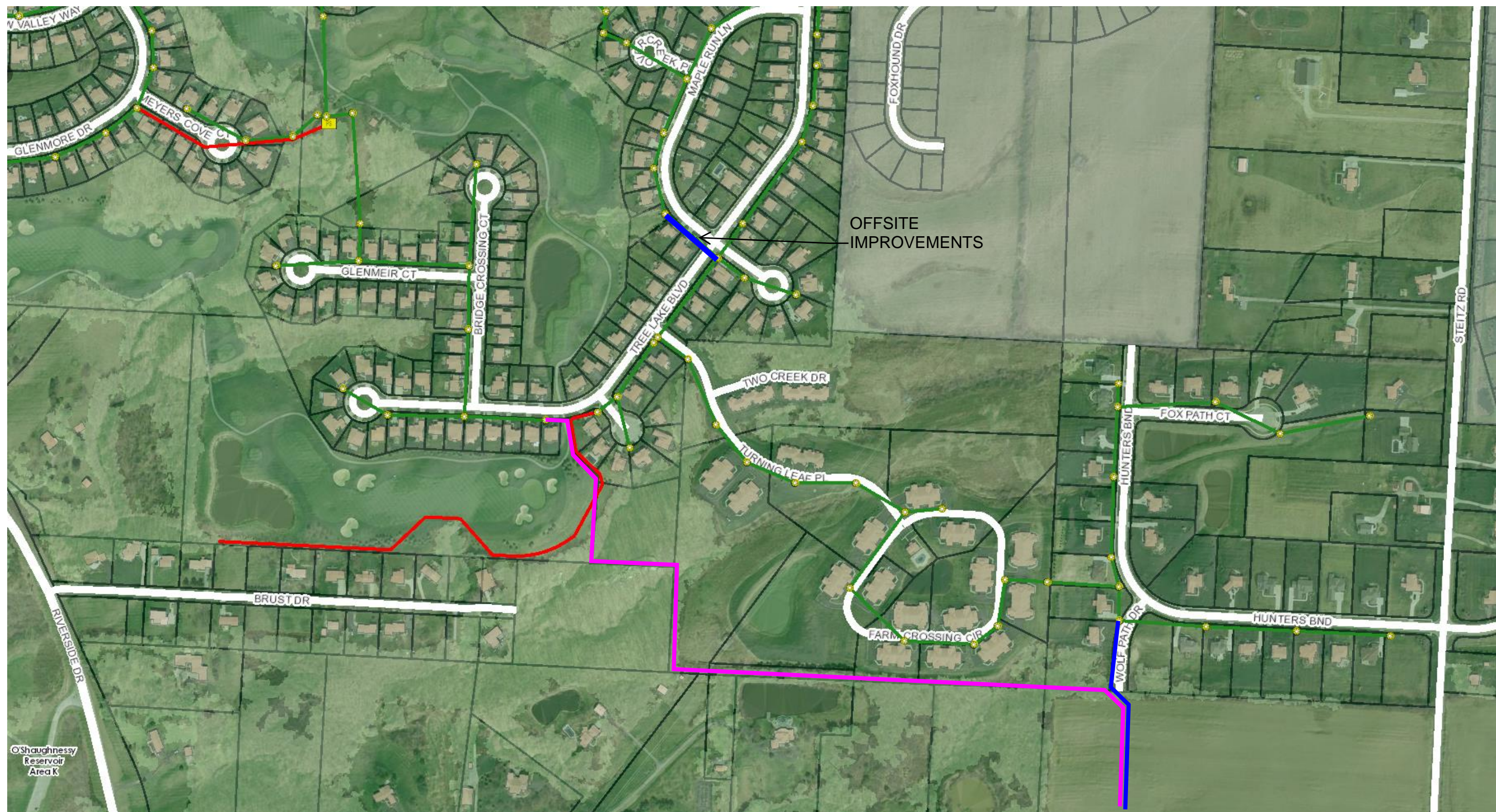
Sincerely,



Kelly Thiel  
Staff Engineer II  
Delaware County Regional Sewer District

cc: Mike Frommer  
Project File  
Correspondence File





- Option A
- Option B