

PRE-ANNEXATION AGREEMENT

This Pre-Annexation Agreement (this “Agreement”) is made and entered into so as to be effective on the last date that it is executed by a party hereto (the “Effective Date”), by and between **The Ohio State University**, an instrumentality of the State of Ohio (hereinafter, the “University”), 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, University is a party to a written agreement pursuant to which it has the right to purchase 29.56+/- acres of real property located to the northeast of and adjacent to the intersection of Sawmill Parkway and Home Road and presently located in Liberty Township (such real property is depicted on **Exhibit A** and referred to herein as the “Property”), which is contiguous with the boundaries of the City; and

WHEREAS, upon its purchase of the Property, University plans to zone and develop the Property within the City of Powell; and

WHEREAS, the owners of certain other real property adjacent to the Property (which such adjacent real property is identified as the “Adjacent Parcels” in **Exhibit A**) desire or may desire to annex their real property to and zone it within the City; and

WHEREAS, University and City desire that, in conjunction with the annexation of the Property and all or some of the Adjacent Parcels to the City, certain real property contained within the existing rights-of-way of Sawmill Parkway, Home Road, and Royal Belfast will be included in the annexation petition so that they also will be annexed to the City (such rights-of-way being generally identified as the “ROW” in **Exhibit A** and to be referred to as such in this Agreement); and

WHEREAS, the Property, the Adjacent Parcels, and the ROW would benefit from certain City services including (without limitation) police protection, street maintenance, and comprehensive planning and zoning services; and

WHEREAS, City is capable of providing and hereby agrees to offer its municipal services to the Property, the Adjacent Parcels, and the ROW if they are annexed to the City; and

WHEREAS, University and City (together, the “Parties”) agree that it is in their mutual interest prior to commencing the annexation process to enter into this Agreement in order to memorialize the Parties’ expectations with respect to the pursuit of the annexation of the Property, the Adjacent Parcels, and the ROW, the zoning of the Property and the Adjacent Parcels, and the eventual development thereof.

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

Section 1. Annexation Petition(s) and Related Approvals.

A. **Petition(s) for Annexation; Annexation.** The University shall prepare or has already prepared an annexation petition, map, legal description and other related information (collectively, the “Annexation Petition”), as may be required by the Ohio Revised Code (“ORC”), to annex the Property, the Adjacent Parcels, and the ROW to the City. The procedure to be utilized to annex the Property and the Adjacent Parcels to the City shall be an “Expedited Type II” annexation procedure as provided in ORC Section 709.023. University agrees that it will (i) be responsible for obtaining the signature of the current owner of the Property on the Annexation Petition at its cost or expense, and (ii) make commercially reasonable efforts to obtain signatures on the Annexation Petition from the owners of the Adjacent Parcels. The Annexation Petition shall appoint Aaron L. Underhill, Esq. and one or more other attorneys with the law firm of Underhill & Hodge LLC, 8000 Walton Parkway, Suite 260, New Albany, Ohio 43054, as the petitioners’ agent (the “Agent”).

The Adjacent Parcels include four individual tax parcels, two of which are owned by the current owner of the Property or its affiliated business entity and the two of which are owned by third parties. One of the two parcels owned by third parties is owned by a dog boarding facility and the owner is obligated by contract to sign the annexation petition. The other parcel owned by a third party contains an existing building and related improvements from which a retail bank presently operates. This third parcel is identified as the “Bank Parcel” in **Exhibit A** and shall be referred to as such in this Agreement. In the event that University is unable to obtain the signature of the owner of the Bank Parcel on the Annexation Petition then an annexation of the Property, the other Adjacent Parcels, and the ROW would create an unincorporated island of real property that would remain in Liberty Township, which such result is prohibited by applicable annexation law. In that circumstance, City and University agree that University shall cause the Annexation Petition to be prepared or revised to include the Property, the two parcels within the Adjacent Property which are located outside of the boundaries of the Bank Parcel, and that portion of the ROW which is generally identified as “Annexation ROW #1” in **Exhibit A**. Then, within a reasonable amount of time following the legally effective approval and acceptance of the Annexation Petition which excludes the Bank Parcel, University shall cause to be prepared a second annexation petition and associated required documents which shall include the portion of the ROW which is generally identified as “Annexation ROW #2” in **Exhibit A** and which shall appoint Agent as the

petitioners' agent thereunder. This second annexation petition and associated documents shall be referred to herein collectively as the "Second Annexation Petition".

The Annexation Petition (and, if necessary and at the appropriate time, the Second Annexation Petition) will be filed with the Board of County Commissioners of Delaware County, Ohio (the "Commissioners"). The Annexation Petition shall be filed with the Commissioners on a date that is determined by University in its sole discretion. University agrees that all costs and expenses in petitioning for the annexation of the Property, the Adjacent Parcels, and the ROW will be borne by the University. Should City desire its own attorney to represent its interests with regard to the Annexation Petition and/or the Second Annexation Petition, those costs will be borne by City. University further agrees that it will continue to diligently pursue the annexation of the Property, the relevant Adjacent Parcels, and the ROW to the City throughout the annexation process, including any appeal or court action at no further expense to City, unless the City desires to retain its own attorneys; provided, however, University'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. City agrees to enact, prior to twenty (20) days after the date of filing the Annexation Petition (and separately, if necessary, after the date of filing the Second Annexation Petition) with the Commissioners, the appropriate service resolution as required and contemplated in applicable provisions of the ORC when an Expedited Type 2 annexation procedure is used (a "Service Resolution") stating the services that will be provided by City to the property that is the subject of the relevant annexation petition upon annexation. The Service Resolution, once adopted, shall be immediately certified and filed with the Clerk of the Commissioners.

C. Approval of Annexation Petition; Acceptance of Annexation. Once the Service Resolution relating to the Annexation Petition has been filed with the Clerk of the Commissioners, University shall cause its Agent to diligently pursue the approval of the Annexation Petition by the Commissioners. Once the Annexation Petition is approved by the Commissioners, University and City shall work cooperatively to cause the Clerk of the Commissioners to deliver the Annexation Petition, a certified copy of the Commissioners' resolution to approve the Annexation Petition, and all other relevant documents as required by the ORC to the Clerk of the City Council. City shall then cause the Annexation Petition and other documents to be laid before the City Council for at least sixty (60) days before taking any action upon it, as required by the ORC. City agrees that it will cause its City Council to take appropriate action to accept the annexation of the real property identified in the Annexation Petition to the City at its next regularly scheduled or special meeting following the lapsing of the aforementioned 60-day

time period, or at such other meeting as mutually and reasonably agreed upon by University and City. The provisions of this subsection C shall apply to the same effect to the Second Annexation Petition if it is necessary to be filed and pursued.

Section 2. Zoning and Related Entitlements. The Property and the Adjacent Parcels are currently zoned pursuant to the Liberty Township zoning resolution, which zoning allows for retail, restaurant, office, and related uses and development. University's intended zoning of the Property within the City is a Planned Commercial District (PC) under the City's zoning code to facilitate and allow the development and operation of an ambulatory medical service facility, medical offices, a medical facility with uses that may include patient beds, urgent care, emergency department, and/or other patient facilities, and other similar, related, and/or accessory uses (together, the "University Intended Uses"). An illustration of the conceptual site plan for the development of improvements relating to the University's Intended Uses is attached hereto and incorporated herein by reference as **Exhibit B** (the "Development Plan Concept"). City acknowledges that the Adjacent Parcels are owned by parties other than the University and that said parcels are being annexed to the City in order to provide the requisite contiguity for the Property to the City's municipal boundaries to allow for the annexation of the Property to legally occur. Therefore, the owners of the Adjacent Parcels will require, as a condition of their commitment to include their real property in the Annexation Petition, that the City will zone the Adjacent Parcels to permit the development and operation of the same uses and the same or substantially similar improvements as are permitted on the Adjacent Parcels under their current zoning designation in Liberty Township. In addition, University desires to allow for the University Intended Uses to be developed and operated on the Adjacent Parcels should they be acquired by University in the future. Moreover, in addition to the zoning rights being sought by University for the Property, the current owners of the Property desire to retain the same or substantially similar zoning rights on the Property as apply to it in Liberty Township so that it may develop the Property in accordance with those rights should the University fail to close on its purchase of the Property for any reason.

City agrees that the Property will retain its Liberty Township zoning, including any development plan and development standards text approval, pursuant to Chapter 1141 of the Codified Ordinances of the City of Powell. Upon filing of an application to rezone and approve a final development plan (as such term is contemplated by the City's zoning code) for the Property and those Adjacent Parcels which are included in the Annexation Petition under the Powell Zoning Code (the "Zoning Application"), City 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 review, approval, and

acceptance of the Annexation Petition by the Commissioners and the City. The City planning staff and administration agree that, if the Zoning Application and accompanying preliminary development plan is generally consistent with **Exhibit B** attached hereto and the requirements of the immediately preceding paragraph, City's staff and administration will professionally review and timely process the application.

City understands it has 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 Council and laid before City Council (ORC Section 709.04). At the request of the University, City agrees to delay acceptance of the annexation until legislative approval of both the rezoning and approval of all City incentives (as contemplated in Section 3.C below) can be accomplished contemporaneously with the acceptance of the annexation pursuant to the Annexation Petition. If, for some reason, the rezoning ordinance and/or City incentives cannot be approved in a form or substance acceptable to University, then City agrees, at the request of University, to permit University to withdraw its request to annex the property that is the subject of the Annexation Petition 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. If said annexation approval occurs prior to or other than concurrently with the legislative approval of the rezoning and/or City incentives, and the rezoning and/or City incentives are subsequently not approved substantially in accordance with **Exhibit B** and the requirements of the immediately preceding paragraph (or as it may be modified in a manner that is acceptable to University) or does not become legally effective or a building moratorium is enacted which would limit University's use of the Property, City agrees, upon University's written request: (i) to reconsider the ordinance accepting the annexation of the real property that is the subject of the Annexation Petition and to rescind, repeal and reject the annexation approval within fourteen (14) days of the date that City receives the written request from University (but in no event more than thirty (30) days after City Council acts to accept the ordinance to accept the annexation), or (ii) to detach/de-annex said real property from the City and consent to such detachment/annexation. Upon delivery of the aforementioned written request to City, University's obligations to file and pursue approval of the Second Annexation Petition shall be of no further force and effect.

Section 3. Incentives.

A. University has requested that City provide certain financial incentives to it in order to enhance the economic viability of the development and operation of the University's Intended Uses on the Property. To this end, the City's administration has offered and indicated its support for, subject to

and conditioned upon the provision of all required approvals from the City's Community Improvement Corporation ("CIC") and City Council, the following incentives:

- (i) A job creation incentive payment to the University in the amount of fifty percent (50%) of the City income taxes paid by "permanent" employees of the University, its affiliates, or any other parties operating one of the University Intended Uses on the Property working at or on the Property for a period of fifteen (15) years calculated based on City's current local income tax rate of 0.75%, but not applicable to any income taxes paid by such employees to City at a higher rate (the "Permanent Jobs Incentive"); and
- (ii) For a period of eighteen (18) months commencing on the first date when City income taxes from such workers are collected, a job creation incentive payment to the University in the amount of one hundred percent (100%) of the City income taxes paid by "temporary" construction employees performing work on the Property calculated based on City's current local income tax rate of 0.75%, but not applicable to any income taxes paid by such employees to City at a higher rate (the "Temporary Jobs Incentive").

City agrees that it will support the application of the aforementioned incentives to the Adjacent Parcels in addition to the Property so as to allow current and future owners of the businesses located on the Adjacent Parcels to enjoy the same benefit of the incentives as the University. It is anticipated that the construction and development of improvements to the Property will be completed in two or more separate phases over a period of time, with the currently anticipated phasing being illustrated in **Exhibit B**. City agrees that each of the Permanent Jobs Incentive and the Temporary Jobs Incentive shall be applied separately to each of the phases of construction and development to allow for future phases of construction and development to have the benefit of the entire 15-year term of such incentives. The legislation to approve the Permanent Jobs Incentive and the Temporary Jobs Incentive and the associated written agreement(s) between City and University relating to these incentives shall identify the final locations of each of the phases and shall include provisions allowing the 15-year time period for providing the incentives to begin at different times. In addition, such legislation and written agreement(s) shall provide (i) that, unless otherwise elected by University, for the first phase of development on the Property, the period of time during which the Permanent Jobs Incentive will apply to each phase will not begin until the first year following the Effective Date when at least \$25 million in payroll from permanent jobs located on the Property is achieved, and (ii) a reasonable method for setting the threshold amount of payroll which will need to be achieved from permanent jobs in each subsequent phase before the

Permanent Jobs Incentive will begin for that phase. All terms and conditions concerning the Permanent Jobs Incentive and the Temporary Jobs Incentive shall be memorialized in a written agreement that is mutually acceptable to City and University (each as determined in its sole discretion) and which is approved in accordance with all required City procedures.

B. University also has requested that Delaware County ("County") provide certain financial assistance relating to public street infrastructure costs relating to Sawmill Parkway and/or Home Road as well as a commitment to ensure that sanitary sewer infrastructure is available to serve University's proposed improvements to the Property. In addition, University will require adequate water service infrastructure to serve the University's proposed improvements to the Property. City agrees to work cooperatively with University, County, and DelCo Water to facilitate the County's assistance in this regard, provided, however, that such assistance from City shall not be in the form of a monetary contribution from the City's general fund.

C. City agrees to work with the County to waive the entirety of the outstanding special assessment imposed for Sawmill Parkway by County Resolution 06-1207 for all properties to be annexed to the City as contemplated in this Agreement. To the extent that such waiver is not obtained on or before November 16, 2018, City agrees that it shall pay fifty percent (50%) of such assessments as they apply to the Property and the Adjacent Parcels in each year that they are due and payable, up to a maximum aggregate amount of Eighty-Five Thousand Dollars (\$85,000.00). The method for payment of these assessments by the City will be set forth in the written agreement between University and City which concerns the Permanent Jobs Incentive and the Temporary Jobs Incentive as contemplated earlier in this Agreement.

Section 4. Conditions.

It is acknowledged by City that University may determine (in its sole and absolute discretion) that it will not close on the purchase of the Property or improve or develop the Property with University's Intended Uses unless all of the following have been satisfied:

A. The Annexation Petition shall have been approved by the Commissioners;

B. All relevant legislative and administrative actions shall have been taken by City to approve the acceptance of the Annexation Petition, to approve the Zoning Application, to grant the

Permanent Jobs Incentive and the Temporary Jobs Incentive and to permit the City to execute any related agreement(s), and to allow a final plat to be recorded with the Office of the Delaware County Recorder in accordance with the approved final development plan for the Property and Adjacent Parcels, and all such actions shall be legally effective.

C. Based on a traffic and signal warrant study submitted by the University, a traffic light shall have been approved by City (and other relevant governmental authorities having jurisdiction, if any) for installation and operation at a location that is located approximately halfway between the intersection of Sawmill Parkway and Home Road on the south and the intersection of Royal Belfast Boulevard and Sawmill Parkway on the north, and City shall have committed to allow full access vehicular turn movements at the southern entry into the Property from Home Road.

D. University shall be satisfied in its sole discretion and no later than November 16, 2018 with the amount and timing of the financial assistance to be provided by the County for public street infrastructure costs relating to Sawmill Parkway and/or Home Road, as well as County's commitment to ensure that sanitary sewer infrastructure is available and DelCo Water's commitment to ensure that water service infrastructure is available to serve University's proposed improvements to the Property in a manner that meets University's anticipated timing for developing the Property, as contemplated in Section 3.B above. University's failure to deliver written notification to City on or before November 16, 2018 that the condition set forth in this paragraph has not been satisfied shall be deemed to be a waiver of this condition.

E. University shall have purchased the Property from the entity that is the owner of the Property on the Effective Date.

F. Powell agrees to use the Delaware County Engineer's design standards for review of future engineering plans submitted for all properties to be annexed hereunder as shown on **Exhibit A** and will not require changes to any infrastructure previously approved by the Delaware County Engineer.

Section 5. Miscellaneous.

A. Approval and Permit Regulations.

(i) **Compliance Statement.** Nothing in this Agreement shall exempt the parties hereto from the annexation, zoning, development plan and subdivision platting processes of City. The execution and delivery of this Agreement shall not serve as a variance of the zoning, development plan and platting process mandated by state law or 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 and the Adjacent Parcels.

(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 shall be considered to be in furtherance of this Council Action.

(iii) **Permits.** University shall be responsible for obtaining all necessary permits from all levels of government to allow University to build and develop the Property consistent with its intended use.

(iv) **Replatting.** City will cooperate with University to cause the Property and the Adjacent Parcels to be replatted from the currently effective plat to permit the development of the Property and Adjacent Parcels generally in accordance with the Development Plan Concept.

B. General Terms. This Agreement shall be binding upon the parties hereto and their respective successors and assigns, and by execution hereof, both parties represent that they are duly authorized to sign it. By passage of Ordinance No. ____ on _____, the City authorized the execution of this Agreement.

(i) **Cancellation or Termination.** This Agreement may be cancelled or otherwise terminated only 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.

(ii) **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.

(iii) **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.

(iv) **Assignment of Agreement.** University 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 University, as set forth in its Policy on Affiliated Entities, as may be amended, or to any affiliate entity of which University is a member or owner. University or Developer will not otherwise assign the Agreement without the express written consent of the City, which shall not be unreasonably withheld.

(v) **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.

(vi) **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.

(vii) **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.

(viii) **Cooperation.** City will cooperate with University to obtain any required and/or necessary permits from any government or governmental agency not a party to this Agreement.

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

(x) **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.

(xi) **Executed Counterparts.** This Agreement may be executed in 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.

(xii) **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.

(xiii) **Survival of Representations and Warranties.** All representations and warranties of University and City in this Agreement shall survive the execution and delivery of this Agreement.

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

(xv) **Applicable Law.** This Agreement will be governed by the laws of the State of Ohio without regard to conflicts of laws principles.

(xvi) **Public Records Acknowledgement.** City acknowledges that, (i) as an instrumentality of the State of Ohio, University is subject to the Ohio Public Records Act (Section 149.43 of the Ohio Revised Code, as amended) and (ii) University has a statutory obligation to provide all public records upon request, unless such records are specifically exempted from disclosure pursuant to the Ohio Public Records Act.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives on the dates set forth below.

City:

CITY OF POWELL, OHIO,
an Ohio municipal corporation

By: _____

Printed: _____

Title: City Manager

Date: _____

Approved as to Form:

By: _____

Eugene L. Hollins, Law Director

University:

THE OHIO STATE UNIVERSITY,
an instrumentality of the State of Ohio

By: _____

Michael Papadakis
Interim Senior Vice President for
Business and Finance & Chief Financial Officer

Accepted By:

The Ohio State University, on behalf of its Wexner Medical Center

By: _____
David P. McQuaid, FACHE, CEO of The OSU Health System,
and COO OSU Wexner Medical Center

[Exhibits to be attached to final form of Agreement]








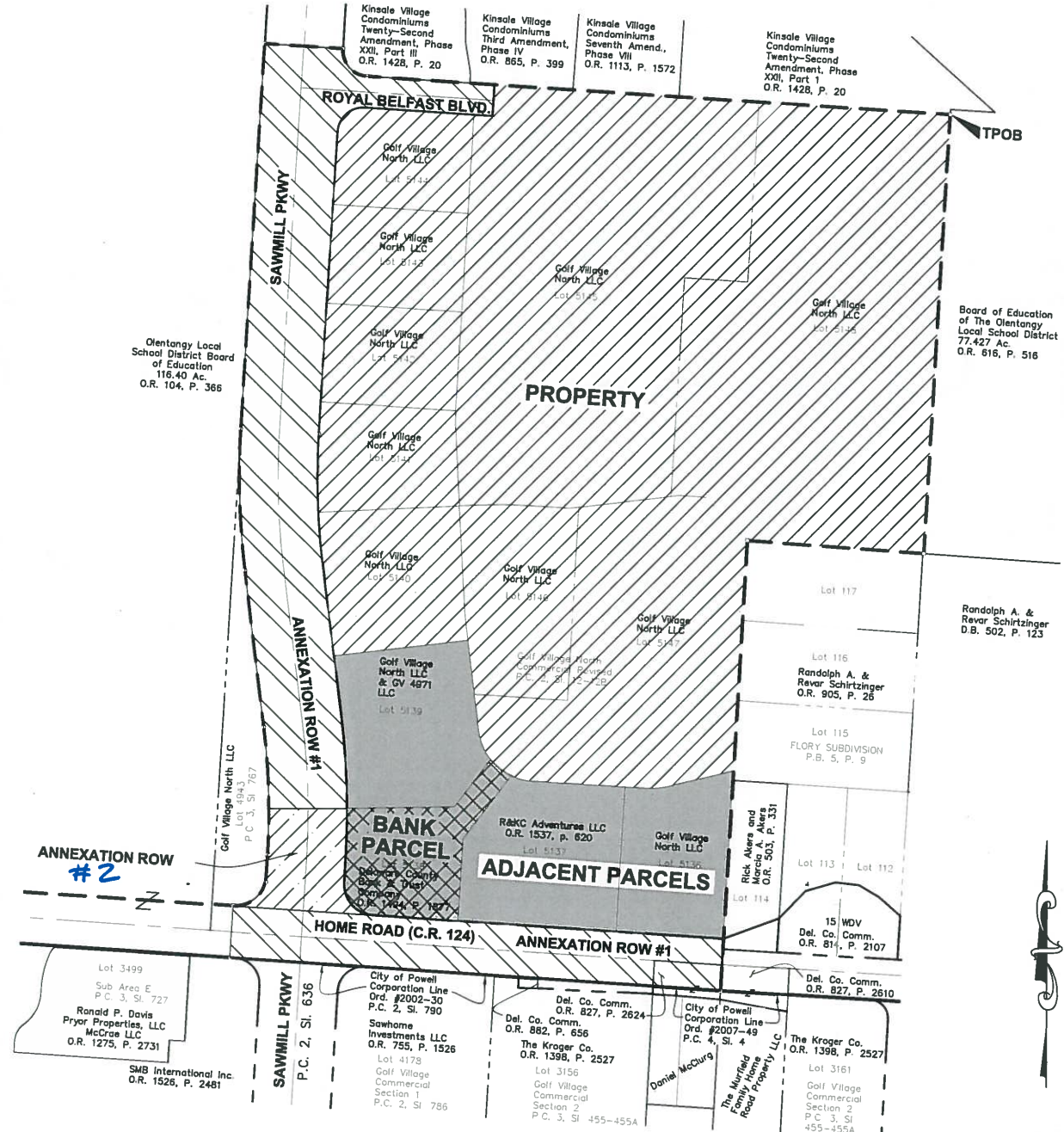
Location Map - NTS

EXHIBIT "A"

Township of Liberty, Delaware County, Ohio
Farm Lots 3, 24 & 25, Section 2,
Township 3, Range 19,
United States Military District

LEGEND

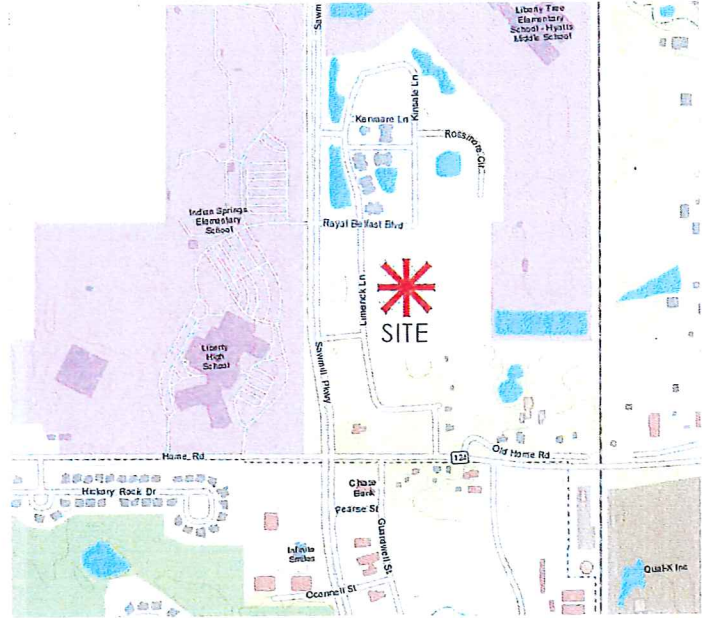
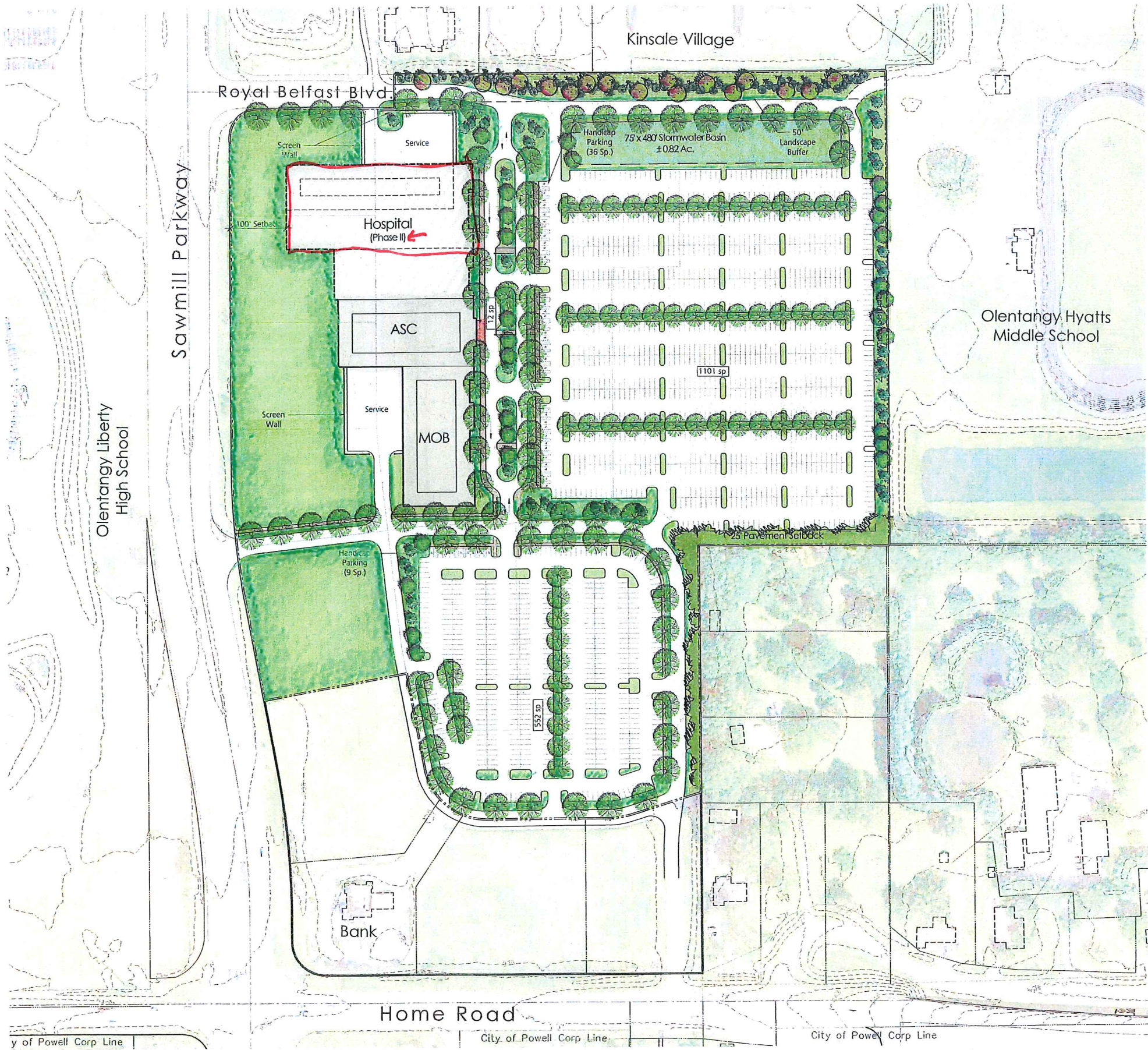
-  PROPERTY
-  ADJACENT PARCELS
-  BANK PARCEL
-  ANNEXATION ROW #1
-  ANNEXATION ROW #2



GRAPHIC SCALE



1 inch = 200 feet



Vicinity Map

Site Data:

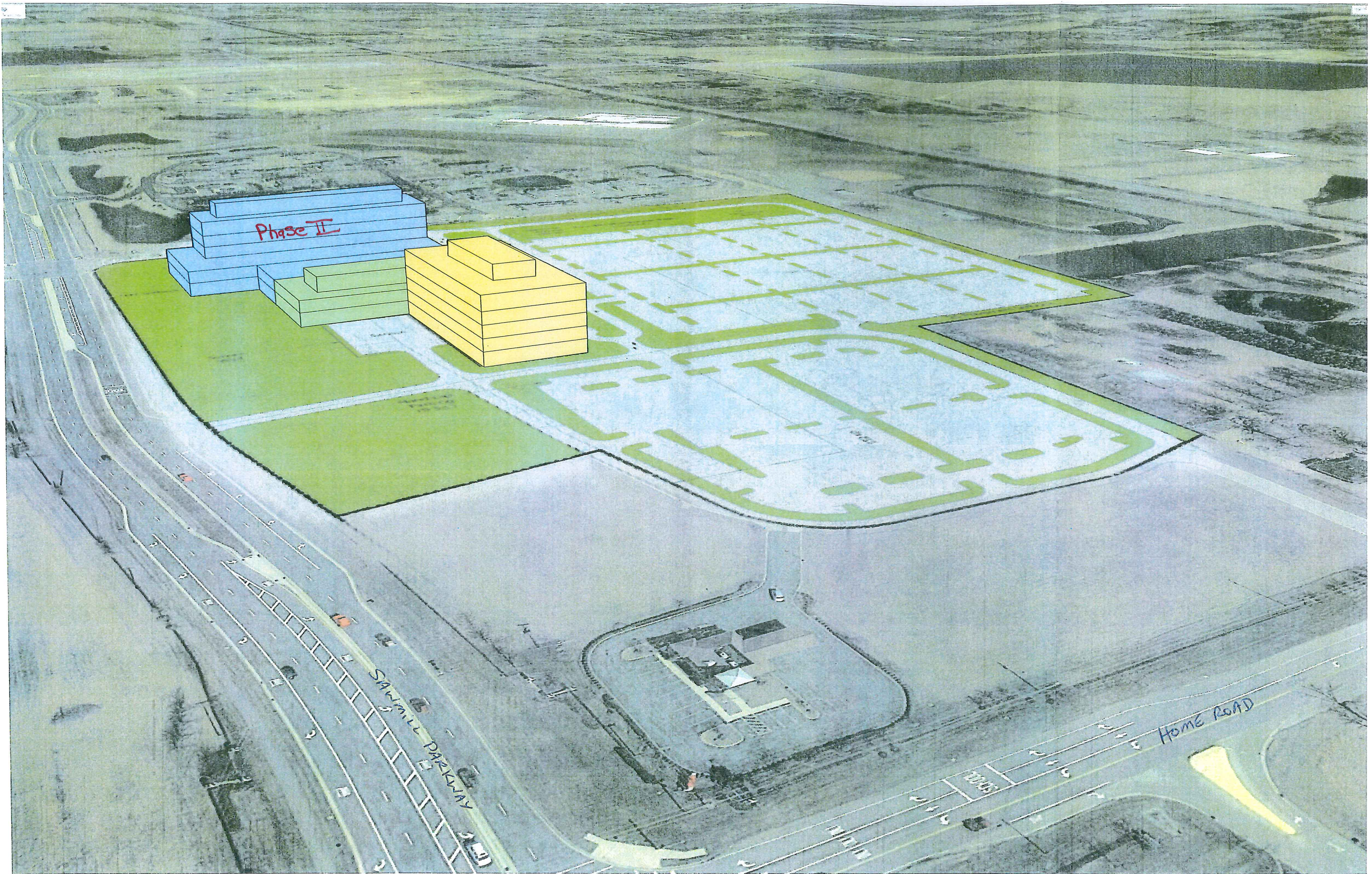
Stats	MOB	ASC, UC, Imaging	90 Beds Hospital	Totals	Comment
Program					
Total Area	150,000	58,000	216,000	424,000	
No. of Occupied Floors	5	2	5		
Contact Surface on Ground	30,000	29,000	72,000	131,000	
Dimension	250 x 120	243 x 120	90 x 250		ASC Exp
			150 x 335		Hosp Podium
			80 x 300		Bed Floors
Total Height of building	77.5	52	81		
Parking					
Required by Program	645	249	756	1,650	
Total No. of Spaces indicated				1,665	
In Parking Deck					not required
Powell Zoning	1500*	580**	235***	2315	
Surface Parking					
Lot Coverage					

* 1 space per 100 SF
** ??? 1 space per 100 SF
*** 1.5 spaces per bed + .5 space per employee

Conceptual Site Plan 'Exhibit B'

Southern Delaware Co Ambulatory Care Facility

City of Powell, Ohio June 25, 2018



Phase II

Sawmill Parkway

Home Road