

DEVELOPMENT AND INCENTIVE AGREEMENT

THIS DEVELOPMENT AND INCENTIVE AGREEMENT (this "Agreement") is entered into so as to be effective on the last date of signature below by a party hereto, by and among the **Board of Commissioners of Delaware County, Ohio**, a body corporate and politic organized and existing under the laws of the State of Ohio ("County"), the **City of Powell**, an Ohio charter municipal corporation ("City"), and **The Ohio State University**, an instrumentality of the State of Ohio ("University"). County, University, and City may be referred to herein individually as a "Party" and collectively as the "Parties".

W I T N E S S E T H:

WHEREAS, University and its Wexner Medical Center desire to develop a medical campus consisting of one or more buildings and associated improvements from which an ambulatory care facility, medical offices, and other related uses will operate (the "Project"), to be located on certain real property which on the Effective Date is in the process of being annexed to the City, is generally located to the northeast of the intersection of Sawmill Parkway and Home Road, and is more particularly depicted in **Exhibit A**, which is attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, in connection with the development of the Project, University and City will be investing substantial funds to complete various public street improvements in the general vicinity of the Property; and

WHEREAS, confirmation of present and future availability of sanitary sewer service to the Property is of material importance to University's decision to construct the Project; and

WHEREAS, each of County and City has found and determined, and hereby finds and determines, that the commercial and economic welfare of the County and the City will be benefited by the development and operation of the Project, and that it is necessary and appropriate and in the best interest of County and City to take certain steps as described and provided for in this Agreement in order to create employment opportunities and improve the economic welfare of the County and the City.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, the Parties hereby agree as follows:

1. Definitions. Capitalized terms are defined throughout this Agreement for purposes of convenience and context. In addition, the capitalized terms below shall have the following meanings:

(a) "Abandoned Sanitary Line Easement Area" means that portion of the Property which is burdened by the Existing Internal Sanitary Line Easement and is located between the point where the Relocated Sanitary Line will connect to the Existing Sanitary Line on the south and the northern

boundary line of the Property on the north, depicted in **Exhibit B**, which is attached hereto and incorporated herein by reference.

(b) “Existing Internal Sanitary Line Easement” means an existing easement that is of record with the Recorder in Official Record 730, Page 2231, and pursuant to which the Existing Sanitary Line is located and operated by County.

(c) “Existing Sanitary Line” means an existing 8-inch sanitary line and related improvements which are located within the Existing Internal Sanitary Line Easement.

(d) “Project Phase 1” means the development and construction of at least 150,000 square feet of gross building square footage and associated site improvements within the portion of the Property that is labeled as “Project Phase 1” in **Exhibit A**, which is attached hereto and incorporated herein by reference.

(e) “Recorder” means the Office of the Recorder of Delaware County, Ohio.

(f) “Relocated Sanitary Line” means a to-be-constructed relocation of a portion of the Existing Sanitary Line within the Relocated Sanitary Line Easement Area.

(g) “Relocated Sanitary Line Easement” means a non-exclusive perpetual easement with a width of twenty (20) feet, within the portion of the Property which is generally identified as such in **Exhibit B** and to be specifically described in the Relocated Sanitary Line Easement Agreement or other instrument used to convey said easement, to be granted by the owner of the Property (as determined on the Effective Date) or University in favor of County to accommodate the construction, operation, repair, maintenance, and replacement of the Relocated Sanitary Line, as contemplated in this Agreement.

(h) “Relocated Sanitary Line Easement Agreement” means a written agreement pursuant to which University grants the Relocated Sanitary Line Easement to County, if necessary as contemplated in this Agreement.

(i) “Sanitary Line Extension” means a 12-inch sanitary sewer line to be constructed so that it is extended from its current terminus at the Liberty Sawmill Trunk Sewer generally located to the north of the Property for a distance of approximately 2,600 feet to the south along Sawmill Parkway to a location within the Property to the southeast of the intersection of Sawmill Parkway and Royal Belfast Boulevard so that University is able to tap into the line to serve Subsequent Project Phases.

(j) “Sanitary Line Extension Costs” means the actual costs of designing, engineering, and constructing the Sanitary Line Extension.

(k) “Sawmill Parkway Assessments” means roadway assessments imposed or previously imposed by County on the Property (and additional real property located between the Property and

the rights-of-way for Sawmill Parkway and/or Home Road) for all periods of time beginning on and following the first date when University obtains legal ownership of the Property.

(1) “Subsequent Project Phase” means any phase of development and operation of the Project which involves the construction and operation of new buildings and related improvements in addition to those constructed and operated as part of Project Phase 1.

2. County Agreement to Serve Phase 1 Project. County agrees that University shall be permitted to tap the Existing Sanitary Line at a point near the intersection of the private roads within the Property which are known on the Effective Date as Castleblaney Lane and Limerick Lane, which such intersection is generally illustrated in **Exhibit A**. University shall be permitted to relocate a portion of the Existing Sanitary Line into the Relocated Sanitary Line Easement Area, provided that such relocation (and the removal of the Existing Sanitary Line and related improvements from the Abandoned Sanitary Line Easement Area) shall be undertaken at University’s sole cost and expense including temporary service during construction to existing customers on the Existing Sanitary Line. University shall use commercially reasonable efforts to cause the Relocated Sanitary Line Easement to be granted by the entity that owns the Property on the Effective Date prior to University’s purchase of the Property. In the event that the granting of the Relocated Sanitary Line Easement does not occur prior to University’s purchase of the Property, University shall be permitted to commence and complete the relocation of the Existing Sanitary Line into the Relocated Sanitary Line Easement Area prior to the granting of the Relocated Sanitary Line Easement (as contemplated in Section 5(c) below), provided that the Relocated Sanitary Line Easement Agreement shall be recorded before a certificate of occupancy is issued by the City for Project Phase 1.

Upon the completion of construction of the Relocated Sanitary Line, County hereby consents to University’s construction of buildings and other private improvements within the portion of the Property which is burdened by the Existing Internal Sanitary Line Easement prior to such time as the easement rights in the Abandoned Sanitary Line Easement Area are vacated by County, it being acknowledged that such construction shall not be deemed to be a default under or breach of the Existing Internal Sanitary Line Easement. County shall take action to vacate its easement rights in the Abandoned Sanitary Line Easement Area once the Relocated Sanitary Line is operational and the Relocated Sanitary Line Easement Agreement has been recorded with the Recorder. University’s rights under this Section 2 shall be conditioned upon its filing of all necessary engineering and construction plans with County and receiving approval of all necessary permits. County represents and warrants to University that, on the Effective Date, the Existing Sanitary Line has the capacity to serve Project Phase 1 based on the proposed use and density as identified in this Agreement, and hereby agrees to reserve 61.5 ERUs of capacity from the Existing Sanitary Line for Project Phase 1.

3. County Agreement to Construct Sanitary Line Extension. County, University, and City acknowledge that the development and operation of any one or more Subsequent Project Phases will require the construction of the Sanitary Line Extension to provide adequate sanitary sewer service capacity to serve such Subsequent Project Phases. Subject to the provisions of Section 4 below, County agrees to complete construction of the Sanitary Line Extension within two (2) years after University delivers written notice to County and City (the “Subsequent Phase Notice”) that

University intends to commence construction of any one or more Subsequent Project Phases which University determines in its reasonable discretion will require use of the Sanitary Line Extension. County may request, at any time after the date that is six (6) calendar months following its receipt of the Subsequent Phase Notice but in no event more than twice annually or after construction of Project Phase 1 commences, written confirmation from University (the “University Confirmation”) indicating that University remains on schedule to commence construction of such Subsequent Phase(s). Should the University Confirmation indicate that commencement of construction of the Subsequent Phase(s) has been delayed, then the length of the delay shall be specified therein and the deadline by which County shall be required to complete installation of the Sanitary Line Extension may be extended for an amount of time equal to the length of the delay specification in the University Confirmation, as measured from the date that is two (2) years after County’s receipt of the Subsequent Phase Notice. Nothing shall prohibit County from commencing or completing the installation and construction of the Sanitary Line Extension at an earlier date than required as it determines to be necessary or desirable in its sole discretion. County shall be responsible for obtaining all easements and rights-of-way which are necessary to complete the Sanitary Line Extension, except that University shall grant any necessary easement(s) on the Property in favor of County which are necessary to complete construction of the Sanitary Line Extension, subject to Section 5(c) below and provided that such easements do not unreasonably interfere with any existing or planned improvements on the Property.

4. Cost-Sharing – Sanitary Line Extension. County, University, and City agree that the Sanitary Line Extension Costs shall be paid as follows:

(a) University Contribution. Within a reasonable amount of time after County awards a bid to a contractor for the construction of the Sanitary Line Extension, it shall deliver written notice of the amount of the winning bid (the “Winning Bid Amount”) to University and City. If the product of (i) the Winning Bid Amount and (ii) 33.3% (such product being referred to herein as the “University Percentage Share”) is less than \$250,000.00, then, no later than forty-five (45) days after County delivers the aforementioned written notice to University and City, University shall pay the University Percentage Share to County. If the University Percentage Share is equal to or greater than \$250,000.00, then University shall pay the sum of \$250,000.00 to County no later than forty-five (45) days after County delivers the aforementioned written notice to University and City, and University shall have no obligation to make any additional contributions, payments, or reimbursements toward the Sanitary Line Extension Costs. The payment that is required to be made by University to County as contemplated in and calculated pursuant to this paragraph shall be referred to herein as the “University Contribution”.

(b) City Contribution. No later than forty-five (45) days after County has delivered written notice of the Winning Bid Amount to City and University, City shall pay to County, as a contribution toward the Sanitary Line Extension Costs, an amount equal to 50% of the difference between the Winning Bid Amount and the University Contribution (such difference being referred to herein as the “City Contribution”), provided, however, that the City Contribution shall in no event exceed \$300,000.00 (the “City Contribution Cap”). City may pay the City Contribution to County using any funding source that it deems to be lawful and prudent including, without limitation, funds collected from City initiated and controlled tax increment financing districts.

(c) County Contribution. County shall be responsible for the payment of all of the Sanitary Line Extension Costs which exceed the sum of (i) the University Contribution and (ii) the City Contribution (County's share of the Sanitary Line Extension Costs being referred to herein as the "County Contribution"). No later than the earlier of (A) the date that is sixty (60) days following County's action to award the bid for the construction of the Sanitary Line Extension or (B) the date that is ten (10) days prior to commencement of construction of the Sanitary Line Extension, County shall either take action to appropriate funds to cover the costs of the County Contribution or obtain a line of credit in the amount of the County Contribution to cover such costs, which such line of credit shall remain effective until the County has appropriated funds to cover the County Contribution or completed the construction of the Sanitary Line Extension. County promptly shall provide University and City with written confirmation once one of the aforementioned actions is taken.

5. Easements. Subject to subsection (c) below, University agrees that it shall make reasonable efforts to grant or cause the grant of the Relocated Sanitary Line Easement and the following easements over, under, across, and through the Property in favor of County at no charge:

(a) Sawmill Sanitary Line Easement. A non-exclusive perpetual sanitary sewer line easement with a width of twenty (20) feet running generally parallel to the right-of-way of Sawmill Parkway (a "Sawmill Sanitary Line Easement"), which shall provide County with the ability to construct a further extension of the Sanitary Line Extension (once built) southward. The Sawmill Sanitary Line Easement shall be located as generally shown in **Exhibit B**. The terms of the Sawmill Sanitary Line Easement shall be memorialized in a written easement agreement between County and City (the "Sawmill Sanitary Line Easement Agreement").

(b) Northern Sanitary Line Easement. A non-exclusive perpetual sanitary sewer line easement with a width of twenty (20) feet in the location shown as the "Northern Sanitary Line Easement" in **Exhibit B**. The terms of the Northern Sanitary Line Easement shall be memorialized in a written easement agreement between County and City (a "Northern Sanitary Line Easement Agreement").

(c) Further Approvals. University discloses to County and City that University is a party to a written agreement pursuant to which it has the right to purchase the Property. Once University obtains ownership of the Property, pursuant to applicable law it must obtain the prior approval of the State of Ohio Department of Administrative Services ("DAS") and the University's Board of Trustees (the "BOT") before it may convey any easement or other interests in the Property to a third party, with easements permitted to be granted for a period of up to twenty-five (25) years without the requirement to obtain legislative approval from the State of Ohio's General Assembly. Such approvals of easements of up to twenty-five (25) years in length may take up to an estimated eighteen (18) months following the first date when University both owns the Property and makes a formal request of DAS to approve the granting of an easement, while legislation to approve permanent easements may take up to twenty-four (24) months to obtain approval. University agrees that it shall, no later than forty-five (45) days after it obtains ownership of the Property, submit all necessary applications and documentation to DAS which are required in order to request approval of a right or

rights for University to grant all easements rights to County as contemplated in this Agreement for a period of up to twenty-five (25) years, and that it shall make a formal request to the BOT relating to the same by a date that will allow for the BOT's approval of the granting of the easements no later than the date that is eighteen (18) calendar months after University has submitted necessary applications and materials to DAS. University further agrees that it shall make reasonable efforts to pursue legislative approval to make permanent all easements which it is to grant in favor of County pursuant to this Agreement so that such approval may be obtained no later than the third (3rd) anniversary of the Effective Date, provided, however, that if such legislation is not approved prior to such time as easements which have been approved by DAS and the BOT are to expire, University shall make reasonable good faith efforts to obtain additional approvals from DAS and the BOT to extend the terms of the easements as necessary. University shall diligently pursue all approvals contemplated in this paragraph and shall make reasonable good faith efforts to obtain the same as soon as reasonably practicable and legally permitted. The failure of DAS and/or the BOT to provide such approvals or the failure of the State of Ohio's General Assembly to approve legislation to make easements in favor of County permanent shall not be deemed to be a default under or breach of this Agreement by University.

(d) Improvements Within Easement Areas. County acknowledges that, should it undertake installation, construction, maintenance, repair, or replacement of sanitary sewer lines and related customary improvements after such time as construction of the Project has commenced or been completed within the Sawmill Sanitary Line Easement, the Northern Sanitary Line Easement, and/or any other easement existing of record in favor of County on the Effective Date or granted in favor of County in furtherance of the terms of this Agreement, such actions may cause disruptions to the efficient operation of the Project. Therefore, each instrument which grants an easement contemplated hereunder shall include a provision which requires County to provide University with at least thirty (30) days' prior written notice of its intent to begin such installation and construction, requiring representatives of County to meet with University as needed in order to identify and coordinate the installation and construction in a manner that minimizes interference with the operation of the Project, and providing University with the right to review and approve the specifications for and timing of such installation and construction, which such approval shall not be unreasonably withheld, conditioned, or delayed. In addition, each such instrument shall require County to promptly restore any portions of the Property and improvements which are damaged, destroyed, or otherwise altered through the exercise of County's rights thereunder at County's sole cost and expense to the same condition as existed prior to the occurrence of the damage, destruction, or alteration.

6. Waiver of Remaining Sawmill Parkway Assessments. In partial consideration for the covenants, agreements, and commitments of University and City hereunder, County agrees that it shall waive, and hereby does waive, the requirement of University and other relevant property owners to pay the Sawmill Parkway Assessments. University, County, and (if necessary) City agree to cooperate to execute any documentation which is necessary in order to finalize the completion of the waiver contemplated in this paragraph.

7. Contingencies to Performance. The respective obligations of County, University, and City hereunder shall be expressly conditioned upon the occurrence of all of the following:

(a) County shall have taken all required actions to approve this Agreement and shall have executed the same on or before November 12, 2018;

(b) Powell City Council shall have taken all required actions to approve this Agreement and shall have executed the same on or before November 12, 2018;

(c) Powell City Council shall have taken all required actions to (1) accept the annexation of the Property to the City and (2) approve the zoning of the Property upon terms that are acceptable to University in its sole discretion, so that all such actions are legally effective on or before April 1, 2019, unless such date is extended by University at its request or such an extension is requested by City and agreed upon by University in its sole discretion, with any such extension to be evidenced by an e-mail or other written communication delivered by an authorized representative of University to the County Administrator and the City Manager. The terms of the approved zoning of the Property shall be deemed to be acceptable to University if it has been provided a written notice of the date, time, and place for the meeting where Powell City Council will take action to zone such real property and University has not entered an oral or written objection to City Council's action into the record of the City Council's proceedings before such action is taken; and

(d) University, or one of its affiliated entities, shall have been given authorization to purchase the Property by the BOT or the board of trustees or similar board of the affiliated entity, and any other required state governmental board or agency and such purchase shall have closed on or before June 30, 2019. University is in contract to purchase the Property but its failure to do so shall not be deemed to be a default under or breach of this Agreement.

8. Miscellaneous.

(a) Amendment; Waiver. No amendment or waiver of any provision of this Agreement shall be effective against any party hereto unless in writing and signed by that party.

(b) Enforceability. If any provision of this Agreement is or becomes invalid, illegal or unenforceable for any reason, such invalidity, illegality or unenforceability shall not effect the remainder of this Agreement and the remainder of this Agreement shall be construed and enforced as if such invalid, illegal or unenforceable portion were not contained herein, provided and to the extent such construction would not materially and adversely frustrate the original intent of the parties hereto as expressed herein.

(c) Successors and Assigns. This Agreement shall inure to the benefit of, and be binding upon, each of County, University, and City and their respective successors and assigns. This Agreement shall be assignable by University to an affiliated public or private entity of the University without the express written approval of County and City.

(d) Warranties and Representations. Each party to this Agreement represents and warrants to each other party as follows:

(i) It has the full right, power and authority to enter into this Agreement and to carry out its obligations hereunder, and the execution and delivery of this Agreement and the performance of its obligations hereunder have been duly and validly authorized by all necessary action.

(ii) This Agreement has been duly executed and delivered by it, and it constitutes a valid and binding obligation, enforceable against it in accordance with its terms.

(e) Notices. All notices and other communications hereunder shall be sufficiently given and shall be deemed given when personally delivered or when mailed by registered or certified mail, postage prepaid, addressed the appropriate party at its address indicated as follows:

If to County: Board of Commissioners
Delaware County, Ohio
101 North Sandusky Street
Delaware, Ohio 43015
Attn: County Administrator

If to University: The Ohio State University
Planning and Real Estate
1534 North High Street
Columbus, OH 43201
Attn: Director of Real Estate

If to City: City of Powell
47 Hall Street
Powell, Ohio 43081
Attn: City Manager

or such different address of which notice shall have been given in accordance with this Agreement.

(f) This Agreement will be governed by the laws of the State of Ohio without regard to conflicts of laws principles.

(g) County and City acknowledge 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.

[No further text on this page; signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the dates written below.

County:

**Board of Commissioners of Delaware County,
Ohio**

By: _____

Gary Merrell, Commissioner
Pursuant to Resolution No. 11-137 and
Resolution No. 18-_____

Approved at to Form:

By: _____

Carol Hamilton O'Brien
Prosecuting Attorney

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

City:

CITY OF POWELL, OHIO,
an Ohio municipal corporation

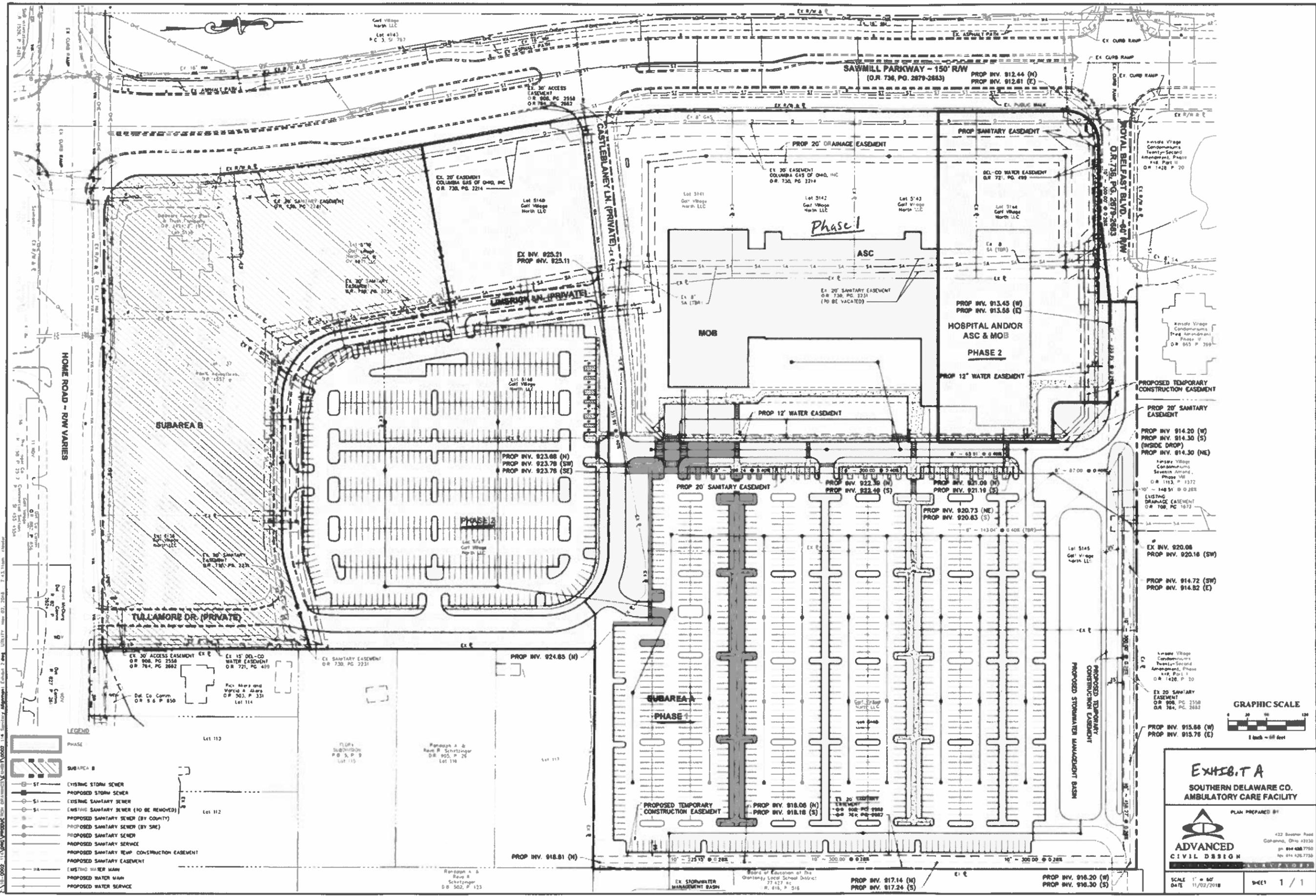
By: _____
Steve Lutz, City Manager

Date: _____

Approved as to Form:

By: _____
Eugene L. Hollins, Law Director

[Exhibits to be attached to final form of Agreement]



- LEGEND**
- PHASE
 - SUBAREA B
 - ST - EXISTING STORM SEWER
 - ST - PROPOSED STORM SEWER
 - SA - EXISTING SANITARY SEWER
 - SA - EXISTING SANITARY SEWER (TO BE REMOVED)
 - SA - PROPOSED SANITARY SEWER (BY COUNTY)
 - SA - PROPOSED SANITARY SEWER (BY SRE)
 - SA - PROPOSED SANITARY SEWER
 - SA - PROPOSED SANITARY SERVICE
 - SA - PROPOSED SANITARY TEMP. CONSTRUCTION EASEMENT
 - SA - PROPOSED SANITARY EASEMENT
 - WA - EXISTING WATER MAIN
 - WA - PROPOSED WATER MAIN
 - WA - PROPOSED WATER SERVICE

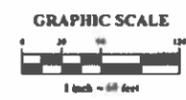


EXHIBIT A
SOUTHERN DELAWARE CO.
AMBULATORY CARE FACILITY

PLAN PREPARED BY

ADVANCED CIVIL DESIGN

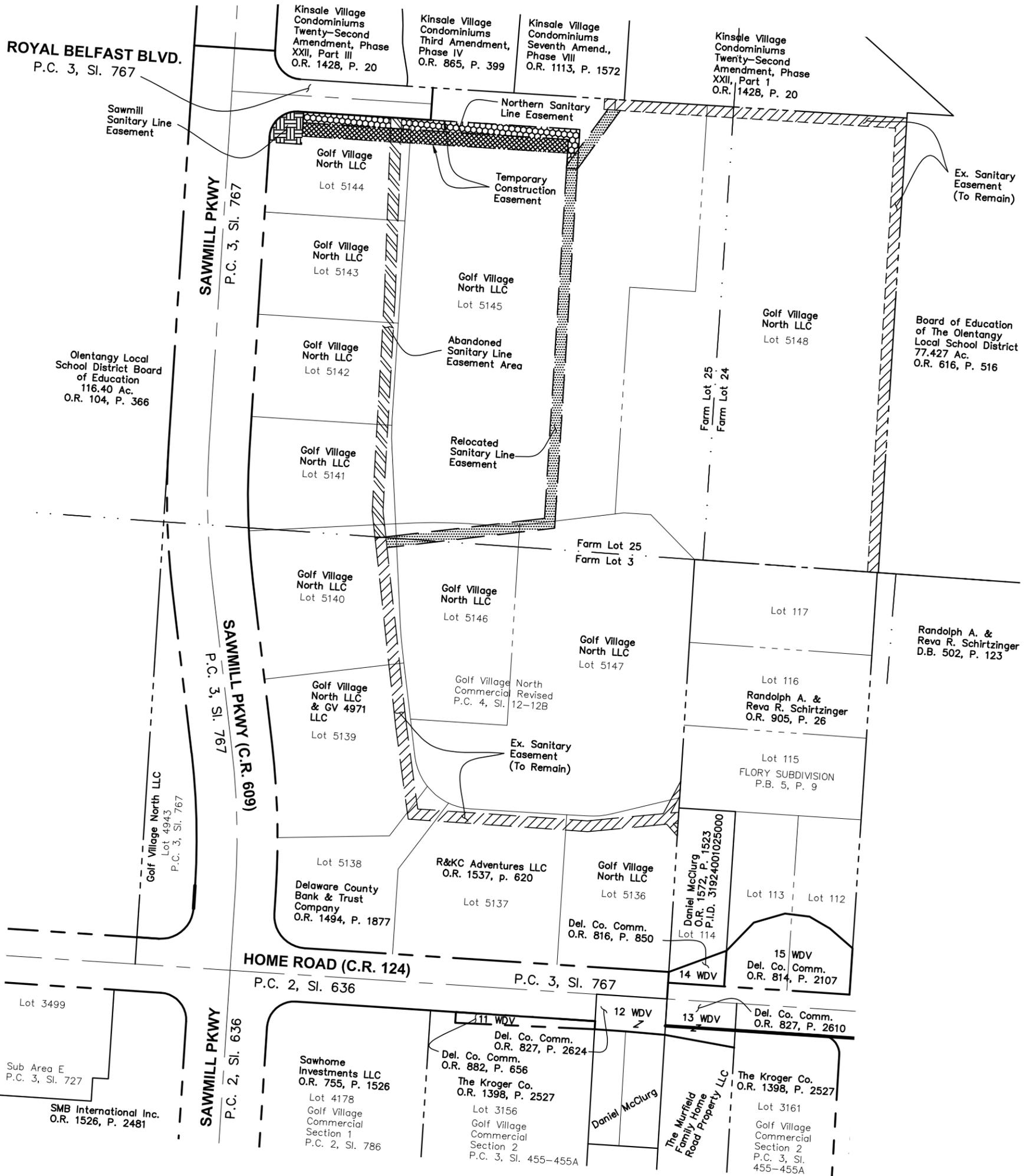
422 Beaver Road
Columbus, Ohio 43230
ph 614 426 7750
fx 614 426 7750

SCALE 1" = 50'
DATE 11/02/2018

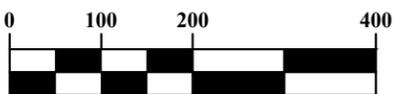
SHEET 1 / 1

Sanitary Easement Exhibit "B"

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

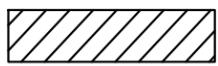
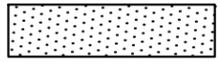
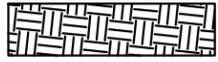


GRAPHIC SCALE



1 inch = 200 feet

LEGEND

-  = Ex. Sanitary Easement (To Remain)
-  = Abandoned Sanitary Line Easement Area
-  = Relocated Sanitary Line Easement
-  = Sawmill Sanitary Line Easement
-  = Northern Sanitary Line Easement
-  = Temporary Construction Easement

DRAWN BY: BCK JOB NO.: 18-0002-114
 DATE: 11/5/18 CHECKED BY:



422 Beecher Road
 Gahanna, Ohio 43230
 ph 614.428.7750
 fax 614.428.7755

ENGINEERS SURVEYORS