

TEMPORARY RESOLUTION NO. 104-12

PERMANENT RESOLUTION NO. 99-12

A RESOLUTION TO NEGOTIATION AND ENTER INTO AN EASEMENT AGREEMENT FROM THE LANCASTER BOARD OF EDUCATION

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

SECTION 1. That the Service-Safety Director is hereby authorized to negotiate and enter into a permanent easement from Lancaster Board of Education attached hereto as Exhibit A is hereby approved.

SECTION 2. The Easement 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 the City and which has been tentatively approved by the Mayor. The Mayor for and in the name of the City, is hereby authorized to execute the Final Easement in this matter, provided further that the approval of changes thereto by the Mayor, and 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 or changes to the Final Easement, which amendments are not inconsistent with this Resolution and not substantially adverse to the City.

SECTION 3. That this resolution shall take effect and be in force from and after the earliest period allowed by law.

Passed: 6/11/2012 after 2nd reading. Vote: Yeas 9 Nays 0

Date Approved: 6/11/2012

Clerk: Jeressa Lee Sandy

Offered by: [Signature]

Second by: Tom Smith

Requested by IT Telecom Committee

[Signature]
President of Council

[Signature]
Mayor

DEED OF PERMANENT EASEMENT
GENERAL UTILITY UNDERGROUND FACILITIES EASEMENT

The BOARD OF EDUCATION LANCASTER CITY SCHOOL DISTRICT having a mailing address of 345 East Mulberry Street, Lancaster, Ohio, 43130, hereinafter ("Grantor"), for valuable consideration received, does hereby grant, bargain, sell and convey to the CITY OF LANCASTER, OHIO, a municipal corporation, having a mailing address of 104 East Main Street, Lancaster, Ohio, 43130, its successors and assigns, hereinafter ("Grantee"), a permanent General Utility Underground Facilities Easement, hereinafter ("Easement") together with appurtenant rights in, under, along, over, across, and upon the real property (or a portion of the real property) owned by Grantor, located in the City of Lancaster, County of Fairfield and State of Ohio, and more fully described as Parcel No. 0534817000, 1450 Marietta Road, Lancaster, Ohio, 43130 being 9.26 acres recorded in Vol. 353, Page 178 (the "Real Property"). The exact location of the Easement consists of a 0.782 acre portion of the Real Property more specifically described as "Easement A" depicted in the legal description and survey attached hereto as Exhibit "A" and incorporated herein by reference, and which shall be referred to hereinafter as the ("Easement Premises").

By acceptance of this Easement, the parties mutually agree that it is in their best interest for the Grantor to grant and the Grantee to accept the following conditions and covenants to do the following:

1. Grantor hereby grants and conveys to Grantee a permanent Easement to survey, construct, operate, maintain, remove, replace and control General Utility Underground Facilities and associated equipment and appurtenances thereto, subject to the terms and conditions hereinafter set forth, in, under, along, over, across, and upon the Easement Premises together with all reasonable rights of ingress and egress across the Real Property owned by Grantor necessary for the exercise of the rights herein granted.
2. Grantee shall have the right to construct and maintain a permanent roadway up to fifteen (15) feet wide on the Easement Premises for ingress and egress to the General Utility Underground Facilities and associated equipment and appurtenances thereto located on the Easement Premises and ingress and egress to the Wireless Telecommunications Facility located on the adjacent premises described as "Easement B" depicted in the legal description and survey attached hereto as Exhibit "B."
3. Grantor shall permit Grantee's employees, agents, and contractors, to enter upon the Real Property for the purposes of constructing, maintaining, operating, and replacing the General Utility Underground Facilities and associated equipment and appurtenances thereto over and across the Easement Premises as well as ingress and egress to the Wireless Telecommunications Facility on the adjacent property, and shall not interfere with Grantee's use, access, ingress and egress to the Easement Premises. Grantee shall be permitted to construct roadways, signage, barriers, fencing, and landscaping as Grantee determines is necessary. The right to use the Easement Premises shall belong to the Grantee and its agents, employees, designees, contractors, guests, invitees, successors and assigns, and all those acting by or on behalf of it for the purposes of establishing, laying

construction, reconstruction, installing, realigning, modifying, replacing, improving, adding, altering, substituting, operating, maintaining, accessing, inspecting, patrolling, protecting, repairing, changing the size of, and relocating the General Utility Underground Facilities and associated equipment and appurtenances thereto within the Easement Premises and the Wireless Telecommunications Facility on the adjacent property, abandoning in place and removing at will, in whole or in part, the General Utility Underground Facilities and Wireless Telecommunications Facility, together with above- and below-ground appurtenances as may be necessary or desirable for the operation of the General Utility Underground Facilities and Wireless Telecommunications Facility, over, across, under and upon the Easement Premises.

4. All improvements on the Easement Premises shall be at the sole cost of the Grantee, and Grantee shall indemnify and hold harmless Grantor from any and all liens or causes of action arising out of construction, repair, maintenance or replacement of the General Utility Underground Facilities and associated equipment and appurtenances thereto undertaken by the Grantee.
5. Grantee agrees to comply in all material respects, at its sole cost, with all applicable federal, state and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including without limitation, the construction, use, operation, maintenance, repair and service of the General Utility Underground Facilities and associated equipment and appurtenances thereto.
6. Grantor owes no duty to keep the premises safe for entry, Grantor extends no assurance, through the act of conveying the Easement Premises, that the premises are safe for entry or use, and Grantor assumes no responsibility nor does Grantor incur liability for any injury to person or property caused by any act undertaken by Grantee in furtherance of the use of the Easement Premises.
7. Grantee shall be responsible for maintaining the Easement Premises in a clean and safe condition. Grantee will, insofar as reasonably practicable, level, re-grade, and reseed the ground disturbed by Grantee's use of the Easement Premises and will maintain the Easement Premises clean of all litter and trash during periods of construction, operation, maintenance, repair or removal. All construction debris shall be cleaned up and removed from Grantor's lands upon completion of installation and construction of the General Utility Underground Facilities and associated equipment and appurtenances thereto.
8. Grantee shall be responsible for tree planting on the Easement Premises to restrict visibility of the Wireless Telecommunications Facility located on the adjacent property.
9. Grantee shall have the right to prohibit public access to the Easement Premises.
10. Grantor may not erect new or additional power and transmission lines, water, sewer, or other utility lines, or wells within the Easement Premises, and Grantor may not grant any additional easement(s) within the Easement Premises for such or any other purposes. The Grantor reserves the right to utilize the Easement Premises to maintain and repair existing

telephone, electric, water, wells, or other utility lines or mains already serving the Real Property. If such repairs and maintenance are required, upon the completion of any necessary repairs and/or maintenance, Grantor shall restore the Easement Premises to its condition prior to such repair or maintenance.

11. No buildings or other structures shall be constructed in the Easement Premises by Grantor, nor shall Grantor cause any excavating or filling to be done which, in the reasonable judgment of Grantee, would impair Grantee's exercise of the rights granted hereunder or its ability to maintain its Easement.
12. Grantee has the right to mow the Easement Premises and to trim or cut down or eliminate trees or shrubbery, in the sole judgment of Grantee, its successors and assigns, as may be necessary to prevent possible interference with the operation of the General Utility Underground Facilities, associated equipment and appurtenances thereto, and the Wireless Telecommunications Facility and to remove possible hazard thereto, and the right to remove or prevent the construction of, any and all buildings, structures, reservoirs or other obstructions on the Easement Premises which, in the sole judgment of the Grantee, may endanger or interfere with the efficiency, safety, or convenient operation of the General Utility Underground Facilities, associated equipment and appurtenances thereto, and the Wireless Telecommunications Facility. All trees, brush and other debris caused by construction shall be burned and/or chipped and spread on the Easement Premises or removed to an authorized disposal site. The method of disposal shall be selected by Grantee.
13. Grantor hereby reserves the right to use the Easement Premises in any manner that will not prevent or interfere with the exercise by the Grantee of the rights granted hereunder; provided, however, that Grantor shall not obstruct, or permit to be obstructed, the Easement Premises at any time whatsoever without the express prior written consent of Grantee.
14. Grantee shall have the right to periodically inspect the Easement Premises for violations of the covenants and restrictions set forth herein. If Grantor or its successors and assigns violate any of these covenants and restrictions Grantor shall cure the violation(s) within sixty (60) days of receipt of notice thereof from Grantee. If Grantor fails to adequately cure or eliminate the violation(s) within the sixty (60) day time period, Grantee may cause the cure of the violation(s), and Grantor shall immediately reimburse Grantee for all costs and expenses incurred in curing the violation(s), in addition, Grantee shall also have the right to obtain injunctive relief for the enforcement of the covenants and restrictions from a court of competent jurisdiction.
15. Grantee shall have the right to post or clearly mark the boundaries of the Easement Premises.
16. Grantee shall have exclusive possession of the Easement Premises at all times.
17. This Easement, its terms and conditions contained herein and all rights, title and

privileges herein granted, including all benefits and burdens, shall run with the land and shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, successors, assigns and legal representatives.

18. Grantee shall have the right of first refusal in the event Grantor decides to sell Parcel No. 0534817000.
19. Grantor agrees that Grantee may assign the rights granted to it hereunder to any assignee who demonstrates sufficient competence and gives adequate assurances that any work to be performed pursuant to such assignment shall be conducted in a skillful manner, and that Grantor's interest in the Easement Premises shall be protected to the same extent as hereunder.
20. Said Easement may not be sold or transferred without Grantor's specific written authority regardless of whether such action is deemed to result in any additional burden or damage to Grantor's property.
21. Grantee, by its acceptance of the Easement Premises shall indemnify, defend and hold Grantor harmless against any claims, damages, losses or expenses, arising as a result of Grantee's exercise of the rights granted by this Easement, but excepting any claims, damages, losses or expenses caused by the negligence or wrongful actions of Grantor or Grantor's agents, employees or contractors, or others for whom Grantor is responsible.
22. If any damage to Grantor's Real Property is caused by Grantee's exercise of its rights hereunder, Grantee, at its expense, shall promptly restore any disturbed areas, including fences, trails, and field tiles, as nearly as possible to the condition existing prior to the occurrence of the damage.
23. Grantor hereby covenants with Grantee that it is the true and lawful owner of the Real Property inclusive of the Easement Premises and is lawfully seized of the same in fee simple and has good right and full power to grant this Easement. Grantor represents and warrants that he/she/it is the sole free owner(s) of the property herein described and the he/she/it has the authority to convey said rights and interests to the Grantee. Grantor represents and warrants that, except for easements, conditions, agreements, restrictions, reservations and covenants of record prior to the date of this Agreement, there are no liens, encumbrances or mortgages affecting the land underlying the Easements except: NONE.
24. Grantor agrees to defend, indemnify, and hold harmless the Grantee, its successors and assigns from any and all claims disputing Grantor's legal right to convey the Easement to the Grantee as well as all claims for payment or restitution made by a third party. Grantor agrees to reimburse Grantee for its costs, including attorney's fees, in asserting or defending all claims made which dispute the Grantor's legal rights to convey the Easements pursuant to this Agreement.

25. Any and all notices to which the parties shall be entitled hereunder or under any law, statute, rule, regulation, order, ordinance or policy of any governmental agency or entity having jurisdiction of the subject matter for which this Agreement is granted, shall be envelope or other appropriate mail container, addressed to the addressee shown above, bearing the adequate amount of postage to result in deliver of same to the address shown thereon, and sent by certified mail, retain receipt requested, to the party to whom such notice is given. In the alternative, either party may give such notice by United Parcel Service (UPS), Federal Express or other similar national expedited mail service guaranteeing not later than two (2) day delivery of any such letter or notice to the addresses provided for herein. Grantor and Grantee designate the following persons, addresses, telephone and facsimile numbers for all notices and information to be delivered hereunder:

GRANTOR

Board of Education Lancaster City School District
c/o Superintendent
345 East Mulberry Street
Lancaster, Ohio 43130
Telephone No.: (740) 687-7300
Fax No.: (740) 687-7303

GRANTEE

City of Lancaster, Ohio, a Municipal Corporation
c/o Mayor
104 E. Main Street
Lancaster, Ohio 43130
Telephone No.: (740) 687-6600
Fax No.: (740) 687-6698

Such persons, addresses, telephone and facsimile numbers may be changed by the respective party by delivering written notice of such change to the other party.

26. This Agreement shall be interpreted, enforcement and governed under the laws of the State of Ohio. If the Easements cover property located in more than one county, venue shall be in the county where the majority of the property geographically exists.
27. This Agreement embodies the entire agreement between the parties hereto with respect to the Easements and supersedes any and all agreements representations, warranties, or statements which may have been made between the parties prior to the date hereof, whether express, implied, written, or verbal, concerning the subject matter hereof and this Agreement shall not be modified or amended except by written instrument executed by each party hereto.

IN WITNESS WHEREOF, the parties have executed or have caused this instrument to be executed by their proper officers duly authorized to do so this _____ day of _____, 2012.

GRANTOR:
BOARD OF EDUCATION
LANCASTER CITY SCHOOL DISTRICT

GRANTEE:
CITY OF LANCASTER, OHIO
Ohio Municipal Corporation

By: _____
Printed Name
Title: _____

DAVID S. SMITH, MAYOR

State of Ohio:
County of Fairfield:

BEFORE ME, a Notary Public in and for said county and state, personally appeared _____, on behalf of the Board of Education Lancaster City School District, who represented that he/she is duly authorized in the premises, and who acknowledges that he/she did sign the foregoing instrument and that the same is his/her free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Lancaster, Ohio, this ____ day of _____, 2012.

Notary Public, State of Ohio

State of Ohio:
County of Fairfield:

BEFORE ME, a Notary Public in and for said county and state, personally appeared the above named **David S. Smith**, Mayor of the City of Lancaster, Ohio, an Ohio Municipal Corporation, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed on behalf of said Municipal Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Lancaster, Ohio, this ____ day of _____, 2012.

Notary Public, State of Ohio

PLEASE RETURN RECORDED ORIGINAL TO:
City of Lancaster, Ohio

c/o Mayor's Office
104 E. Main Street
Lancaster, OH 43130

This instrument prepared by:
Randall T. Ullom
Law Director & City Prosecutor's Office
City of Lancaster, Ohio
123 East Chestnut Street
P.O. Box 1008
Lancaster, Ohio 43130



TOBIN-McFARLAND SURVEYING, INC.

Professional Land Surveyors

111 West Wheeling Street
Lancaster, Ohio 43130
Phone (740) 687-1710
Fax. (740) 687-0877

Description of Easement A

Situated in the State of Ohio, County of Fairfield, City of Lancaster, Township 15, Range 18, Section 33.

Beginning at a 5/8 inch rebar set on the south line of Section 33 and at the southeast corner of a 9.26 acre tract described in deed volume 353, page 178, said rebar is located North 89°32'36" West a distance of 64.27 feet from a 5/8 inch rebar previously set and a total of 177.00 feet (by deed) from the southeast corner of the southwest quarter of Section 33;

thence with the south line of Section 33 and the south line of the aforementioned 9.26 acre tract North 89°32'36" West a distance of 203.50 feet to a 5/8 inch rebar set;

thence North 00°25'04" West a distance of 50.00 feet to a 5/8 inch rebar set;

thence South 89°32'36" East a distance of 129.77 feet to a 5/8 inch rebar set;

thence North 24°09'07" East a distance of 33.00 feet to a 5/8 inch rebar set;

thence North 00°25'04" West, passing a 5/8 inch rebar set at 310.82 feet, a total distance of 358.09 feet to a point in Marietta Road and on a north line of the 9.26 acre tract;

thence with Marietta Road North 77°40'14" East a distance of 61.32 feet to a point being the northeast corner of the 9.26 acre tract;

thence South 00°25'04" East, passing 5/8 inch rebars set at 47.28 feet and at 280.00 feet and passing a 3/4 inch iron pipe found at 450.07 feet, a total distance of 451.89 feet to the point of beginning, containing **0.782 acres**.

Bearings are based on the survey filed in Survey Book 26, Page 8602. Rebars set are 5/8 inch by 30 inches and have a yellow plastic identification cap stamped "Tobin-McFarland". For additional information see plat of survey made in conjunction with and considered an integral part of this description.

This description is based on a survey made in May of 2012, by Tobin-McFarland Surveying, Inc., and was prepared by Rodney McFarland, Registered Professional Surveyor No. 6416.



Rodney McFarland 5/1/12
Rodney McFarland, P.S. Date
May 1, 2012 originals are signed in blue ink



Gary R. Lucas
Sharon D. Lucas
OR 1491, Page 2456
1.001 ac.
Survey Book 26, Page 8602

3/8" iron pipe

MARIETTA ROAD

City of Lancaster Corp. Line

PLAT OF EASEMENTS
STATE OF OHIO
FAIRFIELD COUNTY
CITY OF LANCASTER
T-15 R-18
SECTION 33
T-14 R-18
SECTION 4

Bearings are based on the survey filed in Survey Book 26, Page 8602.

DEED REFERENCE:
The Board of Education of the Lancaster City School District
Vol. 353, Page 178
9.26 ac.
PIN: 053-48170-00

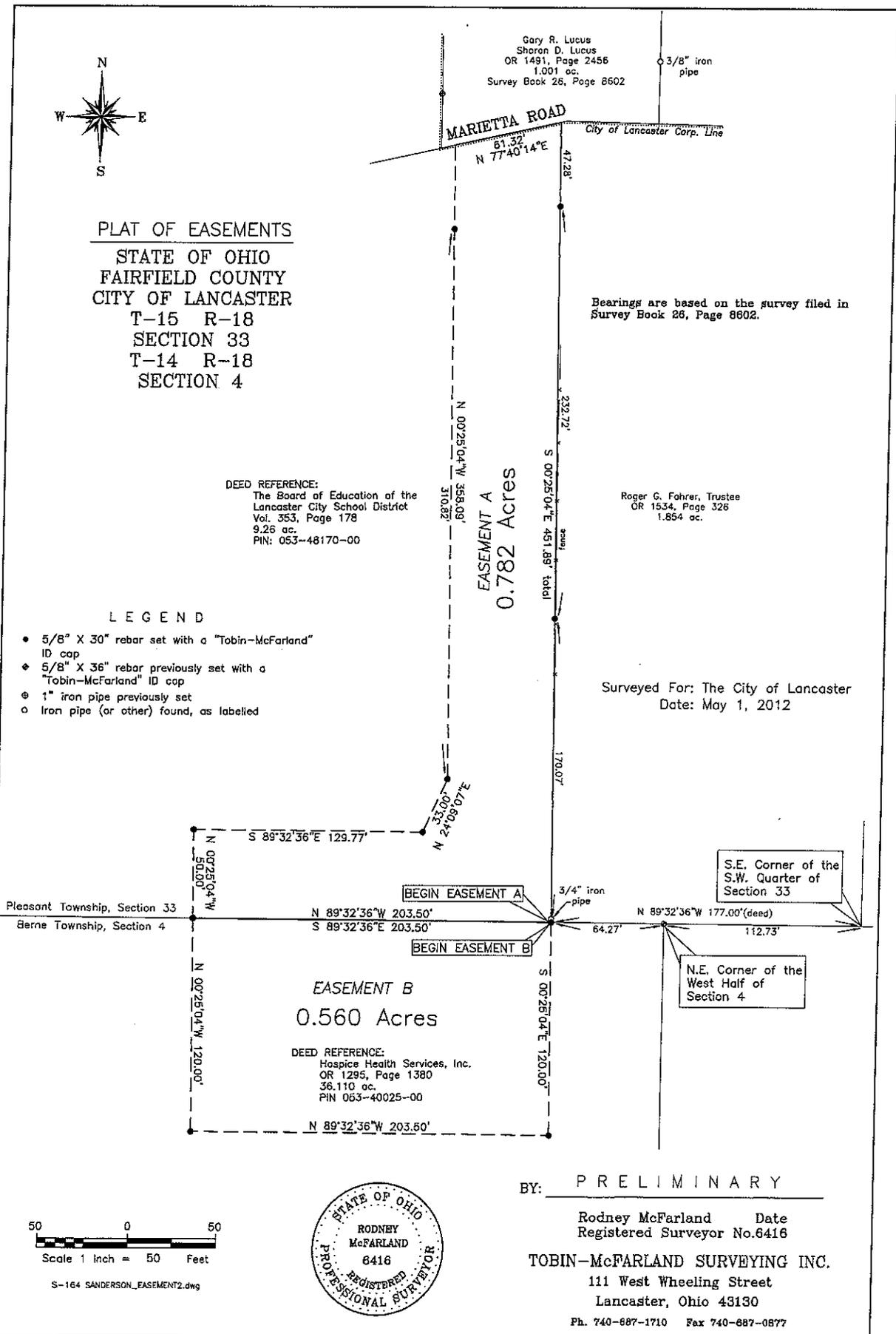
Roger G. Fahrer, Trustee
OR 1534, Page 326
1.854 ac.

EASEMENT A
0.782 Acres

LEGEND

- 5/8" X 30" rebar set with a "Tobin-McFarland" ID cap
- ◆ 5/8" X 36" rebar previously set with a "Tobin-McFarland" ID cap
- ⊕ 1" iron pipe previously set
- Iron pipe (or other) found, as labelled

Surveyed For: The City of Lancaster
Date: May 1, 2012



S.E. Corner of the S.W. Quarter of Section 33

N.E. Corner of the West Half of Section 4

EASEMENT B
0.560 Acres

DEED REFERENCE:
Hospice Health Services, Inc.
OR 1295, Page 1380
36.110 ac.
PIN 063-40025-00

BY: PRELIMINARY

Rodney McFarland Date
Registered Surveyor No.6416

TOBIN-McFARLAND SURVEYING INC.
111 West Wheeling Street
Lancaster, Ohio 43130

Ph. 740-687-1710 Fax 740-687-0877



Scale 1 inch = 50 Feet

S-164 SANDERSON_EASEMENT2.dwg