**CITY OF STRONGSVILLE, OHIO**

**ORDINANCE NO. 2019 – 125**

**By: Mayor Perciak and All Members of Council**

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AGREEMENT WITH SOUTHWEST GENERAL HEALTH CENTER FOR THE LEASE OF CERTAIN PORTIONS OF THE WALTER F. EHRNFELT RECREATION & SENIOR CENTER, AND DECLARING AN EMERGENCY.**

WHEREAS, the City of Strongsville (hereinafter "City") is the owner and operator of the Walter F. Ehrnfelt Recreation & Senior Center, located at 18100 Royalton Road, in the City of Strongsville; and

WHEREAS, Southwest General Health Center (hereinafter "Hospital") is a non-profit, community-based health care center principally located in the City of Middleburg Heights, Ohio; and

WHEREAS, pursuant to the Charter of the City of Strongsville, Chapter 264 of the Codified Ordinances of the City of Strongsville, Chapter 140 of the Ohio Revised Code and the Ohio Constitution, and in order to carry out the public purpose of providing for the health and welfare of the people in the State of Ohio and City of Strongsville, by enhancing the availability, efficiency and economy of Hospital Facilities (as defined in Section 140.01(E) of the Ohio Revised Code) and the services rendered thereby, available to the public without discrimination by reason of race, creed, color, or national origin, the City has determined to lease certain portions of the Center to Hospital for the purposes set forth in the Lease Agreement attached hereto as Exhibit A; and

WHEREAS, therefore, the City and Hospital are desirous of entering into such Lease Agreement on the terms and conditions set forth in the Agreement, and for a term of three (3) years commencing on September 1, 2019.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF STRONGSVILLE, COUNTY OF CUYAHOGA AND STATE OF OHIO BY TWO-THIRDS VOTE OF ITS MEMBERS:

**Section 1.** That this Council hereby finds and determines that leasing certain portions of the Walter F. Ehrnfelt Recreation & Senior Center, at 18100 Royalton Road, Strongsville, Ohio, to the Hospital, as set forth in the Lease Agreement attached hereto as Exhibit 1, is in furtherance of a public purpose and in the best interest of the City.

**Section 2.** That this Council hereby further finds and determines that certain portions of the Recreation Center are not needed entirely for municipal public use, and accordingly authorizes and directs the Mayor to enter into a three (3) year Lease Agreement with Southwest General Health Center, a non-profit, community-based health care center, substantially in accordance with the terms and conditions set forth in the Lease Agreement attached hereto.

**Section 3.** That any funds required for the implementation of this Ordinance will be paid from the Multi-Purpose Complex Fund.

**Section 4.** That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council; and that all deliberations of this Council, and any of its committees, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

**Section 5.** That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare of the City, and for the further reason that it is in the best interest of the City to enter into a Lease Agreement with the hospital for certain portions of the City's Recreation Center. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor.

President of Council

Approved: Thomas B. Burnside
Mayor

Date Passed: July 15, 2019

Date Approved: July 15, 2019

Attest: Aimee Pientka
Clerk of Council

| | Yea | Nay |
|---|---|---|
| Carbone | ✓ | |
| DeMio | ✓ | |
| Kosek | ✓ | |
| Patten | ✓ | |
| Roff | ✓ | |
| Schonhut | ✓ | |
| Short | Absent | |

ORD. No. 2019-125 Amended:
1st Rdg. 07/15/19 Ref:
2nd Rdg. Suspended Ref:
3rd Rdg. Suspended Ref:

Pub Hrg. Ref:
Adopted: 07/15/19 Defeated:

# LEASE AGREEMENT

**THIS LEASE AGREEMENT** is made this 15 day of July, 2019 by and between **THE CITY OF STRONGSVILLE, OHIO**, a municipal corporation located at 16099 Foltz Parkway, Strongsville, Ohio 44149, and organized and existing pursuant to law (hereinafter called "City") and **SOUTHWEST GENERAL HEALTH CENTER**, located at 18697 Bagley Road, Middleburg Heights, Ohio 44130, an Ohio non-profit corporation, (hereinafter called "Hospital").

**WITNESSETH:**

WHEREAS, the City is the owner and operator of the Walter F. Ehrnfelt Recreation & Senior Center, located at 18100 Royalton Road, in the City of Strongsville, County of Cuyahoga and State of Ohio, hereinafter referred to as "Center"; and

WHEREAS, Hospital is a non-profit, community-based health care center principally located in the City of Middleburg Heights, County of Cuyahoga and State of Ohio; and

WHEREAS, pursuant to the Charter of the City of Strongsville, Chapter 264 of the Codified Ordinances of the City of Strongsville, Chapter 140 of the Ohio Revised Code and the Ohio Constitution, and in order to carry out the public purpose of providing for the health and welfare of the people in the State of Ohio and City of Strongsville, by enhancing the availability, efficiency and economy of Hospital Facilities (as defined in Section 140.01(E) of the Ohio Revised Code) and the services rendered thereby, available to the public without discrimination by reason of race, creed, color, or national origin, the City has determined to lease a portion of the Center described below to Hospital for the purposes set forth in this Lease Agreement; and

WHEREAS, the City and Hospital are desirous of entering into this Lease Agreement to provide for the lease and operation of a portion of the Center by the Hospital on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises, covenants, payments and agreements by each of the parties hereto, the City and Hospital do hereby mutually agree as follows:

## 1. DESCRIPTION AND LEASE OF PREMISES

The City hereby leases to Hospital, and Hospital hereby leases from City, certain areas of the Center identified as the area adjacent to the west end of the indoor track located on the second floor of the Center as set forth in Exhibit "A" which is attached hereto and incorporated herein (collectively the "Leased Premises").

## 2. TERM

### 2.1 Original Term

The term of this Lease shall be three (3) years, commencing on September 1, 2019 and ending on August 31, 2022.

### 2.2 Renewal

This Lease Agreement may be renewed for an additional three (3) year term upon the written election of the Hospital to renew and the written acceptance of the City. Said

Ex. 1

written election of the Hospital to renew and the written acceptance of the City, shall be made at least thirty (30) days before expiration of the initial term.

## 3. TERMINATION

### 3.1 Cancellation by the Hospital

The Hospital shall have the right, upon sixty (60) days prior written notice to the City, to cancel this Agreement in its entirety.

### 3.2 Cancellation by the City

The City shall have the right upon sixty (60) days prior written notice to the Hospital, to cancel this Agreement in its entirety.

In the event of the cancellation by either party to this Agreement, the Hospital shall quit and surrender the Leased Premises and the City may re-enter and repossess the Leased Premises on the effective date of cancellation, without further requirement of notice. In the alternative or in addition to the remedies specifically provided herein, the parties may pursue any remedy permitted by law for the enforcement of any of the provisions of this Lease.

## 4. RENT

### 4.1 Basic Rent

Hospital agrees to pay to the City as rental for the original term of this Lease the annual sum of Fifteen Thousand Dollars ($15,000.00), with payments of Three Thousand Seven Hundred Fifty Dollars ($3,750.00) due on the third business day of every third month. Time is of the essence as to the due date of the payments.

### 4.2 Method of Payment

All rent payments shall be made payable to the City of Strongsville, and shall be sent to the City of Strongsville, 16099 Foltz Parkway, Strongsville, Ohio 44149, Attention: Director of Finance, unless the City shall direct otherwise by notice to Hospital.

## 5. USE OF PREMISES

**5.1** The Leased Premises shall be for the exclusive use of the Hospital.

**5.2** Hospital shall be permitted non-exclusive use of the Aquatic Center for individual/group exercise and/or therapy sessions. Said use of the Aquatic Center shall be scheduled in advance with the Aquatic Supervisor for the Center. It is expressly understood and agreed that Hospital's non-exclusive use of the Aquatic Center shall not take place during any time that a Swim Meet is held.

**5.3** Hospital shall be permitted non-exclusive use of the indoor track, exercise areas and exercise equipment in the Center for clinical treatment of patients.

**5.4** Hospital's use and occupancy of the Leased Premises and all other areas and equipment of the City and the Center shall be done in a safe, careful and proper manner in accordance with all laws, rules and regulations of the City and the Center.

## 6. CONDITION OF PREMISES, REPAIRS, ALTERATIONS AND MAINTENANCE

### 6.1 Condition of Leased Premises at Commencement of Term

Hospital has examined the Leased Premises, knows their condition and accepts the Leased Premises in their present condition. Hospital acknowledges that the City has made no representations to Hospital as to the condition of the Leased Premises prior to or at the execution of this Lease, and has promised no repairs or alterations thereto.

**6.2 Required Repairs and Maintenance by Hospital**

(a) Hospital shall have sole responsibility to maintain and keep the Leased Premises in good condition and repair.

(b) Hospital shall perform such repairs and maintenance thereon as may be necessary to maintain such areas in a clean, safe, serviceable and sound condition, and to comply with the laws, ordinances and regulations of all authorities which have jurisdiction over the Leased Premises.

**6.3 Condition of Leased Premises at Termination of Lease**

(a) Upon the expiration or other termination of this Lease, Hospital shall remove its goods, equipment and effects and those of all persons claiming under it from the Leased Premises, and shall deliver and yield the Leased Premises to the City in as good repair and condition as the Leased Premises were at the commencement of the term of this Lease, reasonable wear and tear excepted.

(b) All improvements constructed or installed on the Leased Premises by Hospital shall become the property of the City. Hospital may be required to remove any or all improvements installed on the Leased Premises upon the termination of this Lease, and shall repair to the City's satisfaction or reimburse the City for any damage resulting from such removal. All improvements affixed to the Leased Premises with the intention to make them permanent installations, whether installed by Hospital or by the City, shall be the sole property of the City, and Hospital shall have no right to remove same.

## 7. UTILITIES

Rental payments shall include all utility services.

## 8. INSURANCE

**Public Liability Insurance.** Hospital shall obtain, at its expense, effective as of the commencement of its right to occupy the Leased Premises, and will maintain so long as Hospital continues to occupy or lease any part of the Leased Premises, complete comprehensive liability insurance, under which the City will be named as an additional insured, the policy or policies to be in such form and issued by such company or companies as are satisfactory to the City, in the sum of One Million Dollars ($1,000,000.00) in the event of injury to one person or damage to property and Two Million Dollars ($2,000,000.00) in the event of injuries to more than one person or damage to property arising out of each occurrence for which a claim for damages may result. A certificate or certificates thereof, will be deposited with the City within thirty (30) days after their issuance. The foregoing policies shall contain a special provision which establishes that the insurance company agrees that thirty (30) days prior to cancellation of the insurance afforded by the policy, written notice of the action to be taken will be mailed to the City of Strongsville.

## 9. ALTERATIONS AND IMPROVEMENTS

**9.1** Upon obtaining the City's prior written consent, Hospital may, at its expense, make such alterations and improvements to the Leased Premises as shall be necessary for its use of the Leased Premises consistent with the Lease, provided that no such alterations will materially decrease the value or marketability of the Leased Premises. The City may withhold such consent, if (i) the proposed alterations or additions materially decrease the value or marketability of the Leased Premises, (ii) the proposed alterations or additions, in the view of the City, interfere with its future plans for the Leased Premises, (iii) Hospital fails to provide the City with reasonably sufficient drawings and specifications of work to be done and materials to be used, (iv) Hospital fails to provide the City with sufficient security to assure that proper insurance and workers' compensation coverage are in effect during the performance of any work and that the work will be completed free of liens against the Leased Premises, and (v) the proposed alterations and additions are not approved by the City Planning Commission. Such alterations and improvements shall be done in a good, workmanlike manner and in accordance with all applicable laws, ordinances, rules and regulations.

**9.2** The City at its sole expense may make such alterations and additions affecting the Leased Premises as it might desire provided that the same shall not materially impair Hospital's use of the Leased Premises consistent with this Lease.

## 10. DEFAULT

### 10.1 Events Constituting Default

For the purpose of this Lease, "default" shall mean any of the following events: (a) Abandonment of the Leased Premises by Hospital, or (b) Failure by Hospital to pay any installment of rent or other money obligations within ten (10) days after the City shall have given Hospital written notice that such rent or other obligation is past due, or (c) Failure by Hospital to perform or observe any other covenant or agreement under this Lease, which failure shall continue uncured for a period of thirty (30) days after delivery to Hospital of written notice thereof.

### 10.2 Effect of Default

In the event of default, the City may at its option (a) terminate this Lease, or, without terminating this Lease, terminate Hospital's right to possession of the Leased Premises under this Lease, (b) re-enter the Leased Premises with or without process of law, using such force as may be necessary and remove all persons and chattels therefrom, and the City shall not be liable for damages or otherwise by reason of such re-entry, (c) cure any default relating to the condition of the Leased Premises and obtain reimbursement of expenses therefor from Hospital, or (d) employ any other remedy provided by law. The foregoing remedies may be exercised individually or cumulatively at the option of the City, and the exercise of any one shall not be deemed a waiver of the City's right to exercise one or more additional remedies. Except as provided in this Lease, Hospital waives the necessity of demand for rent and any other demand or notice that may now or thereafter be required by any statute, regulation or decision for the maintenance of any action in forcible entry and detainer. The commencement of such an action by the City shall for the purpose of this Lease be equivalent to the City's exercise of its right to re-enter the Leased Premises.

### 10.3 Waiver of Default

No waiver of any condition or covenant of this Lease by the City or Hospital shall be construed as constituting a waiver of any subsequent breach of any such condition or

covenant or as justification or authorization for the breach or any other covenant or condition of this Lease, nor shall the acceptance of rent by the City at a time when Hospital is in default under any covenant or condition of this Lease be construed as a waiver of such default or any of the City's rights, including, but not limited to, the right to terminate this Lease on account of such default or as an estoppel against the City or be construed as an amendment to this Lease or as a waiver by the City of any other right created herein or by law in favor of the City and against Hospital on account of such default.

## 11. MECHANICS' LIENS

The Hospital shall not permit any mechanics', laborers', materialmens' or other liens to stand against the Leased Premises for any labor, machinery or material furnished or claimed to have been furnished in connection with the work of any character performed or claimed to have been performed on, or pertaining to the Leased Premises solely for Hospital or under Hospital's control, whether such work was performed or materials furnished prior to or subsequent to the commencement of the term of this Lease. If any such lien shall be filed or shall attach, the Hospital shall promptly either pay the same or procure the discharge thereof by giving security or in such other manner as is required or permitted by law. If Hospital fails to do so within thirty (30) days after receiving written notice from the City so to do, the City may procure the discharge of such lien, by payment or otherwise, and may recover all costs and expenses of so doing from Hospital. Moreover, Hospital shall indemnify and defend the City from and against all claims, demands and legal proceedings on account of such furnishing or claimed furnishing of labor, machinery, material and fuel, and shall directly pay or reimburse the City for all costs and expenses thereof, including, but not limited to, attorneys' fees (to the extent permitted by law), bond premiums and court costs.

## 12. QUIET ENJOYMENT

Upon Hospital's paying the rent and performing and observing the agreements and conditions on its part to be performed and observed, Hospital shall and may peaceably and quietly have, hold, and enjoy the Leased Premises during the term of this Lease without interference by the City or anyone claiming by, through or under the City. However, the City shall not be liable for any damage or interference with use occasioned by or from (a) any gas, water, or other pipes bursting or leaking, or (b) water, snow or ice on the Leased Premises.

## 13. RIGHT OF ENTRY

The City, its agents and employees shall have the right, at all reasonable times during the term of this Lease, to enter the Leased Premises to view and inspect the same and to perform any work therein which may be required or permitted of the City hereunder; provided, however, that the City, its agents and employees shall in exercising such right not unreasonably interfere with Hospital's use of the Leased Premises.

## 14. INDEMNITY

**14.1** Hospital, its agents, successors, assigns, and transferees agree to indemnify, provide the defense of, reimburse and hold harmless City, its officers, directors, members, managers, affiliates, officials, employees, servants, agents, and contractors from and against all costs, claims, actions, liabilities, damages, expenses, medical expenses, causes of actions, suits, or judgments by or on behalf of any person or persons, firm or firms, corporation or corporations, or any other business entity, or any governmental authority arising from any loss, injury or damage of any kind, to persons or property, from whatever cause, arising out of

Hospital's use of the Leased Premises and Center, or any act or omission of Hospital, or any of its successors, assigns, transferees, employees, licensees or invitees arising out of or relating to their use of the Leased Premises or Center.

**14.2** City, its agents, successors, assigns, and transferees agree to indemnify, provide the defense of, reimburse and hold harmless Hospital, its officers, directors, members, managers, affiliates, officials, employees, servants, agents, and contractors from and against all costs, claims, actions, liabilities, damages, expenses, medical expenses, causes of actions, suits, or judgments by or on behalf of any person or persons, firm or firms, corporation or corporations, or any other business entity, or any governmental authority arising from any loss, injury or damage of any kind, to persons or property, from whatever cause, arising out of any intentional act or omission on the part of the City, its employees or agents, or by anyone for whose acts or omissions any of them may be liable.

## 15. ASSIGNMENT OR SUBLEASE

Hospital shall not assign, transfer, convey, or dispose of this Lease or any of its benefits or burdens under this Lease, or sublet all or any part of the Leased Premises, or permit all or any part of the Leased Premises to be used or occupied by others unless Hospital first obtains the City's prior written consent appropriately authorized by law. The City may, in its discretion, withhold such consent.

## 16. NOTICES

All notices to the City shall be sent to:

The City of Strongsville
16099 Foltz Parkway
Strongsville, Ohio 44149
Attention: Mayor

*With a copy to the Law Director*

All notices to Hospital shall be sent to:

Southwest General Health Center
18697 Bagley Road
Middleburg Heights, OH 44130
Attention: Albert Matyas, Vice-President

Either party may at any time change the address to which notice shall be sent by advising the other party in writing of such a change. Notice shall be deemed given if sent by certified mail, postage prepaid, return receipt requested, and any such notice shall be deemed given when mailed as provided in this Section.

## 17. PARTIES BOUND AND BENEFITTED

This Lease shall bind and benefit the parties hereto, their successors and permitted assigns. The words "City" and "Hospital" in this Lease shall be construed to include the corporations named herein as City and Hospital, respectively, and their respective successors and permitted assigns.

This Section shall not be construed to abridge, modify or remove the prohibitions or restrictions on assignment, subleasing, permission to occupy or similar acts contained elsewhere in this Lease.

## 18. NONDISCRIMINATION

Hospital agrees to comply with all applicable federal, state, county and local laws regarding nondiscrimination, and specifically agrees not to discriminate against any employee or applicant for employment or otherwise in connection with its activities because of race, color, religion, creed, gender, national origin, sexual preference, or disability.

## 19. RELATIONSHIP OF THE PARTIES

Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, or any relationship between the parties hereto other than that of City and Hospital.

## 20. ONLY AGREEMENT

This instrument contains the entire and only agreement between the parties concerning this subject matter, and neither party has made any representations or warranties other than those contained herein. It shall not be modified in any way except by a writing signed by both parties.

## 21. CAPTIONS

The captions used as headings for the various articles and sections of this Lease are used only as a matter of convenience for reference, and are not to be considered a part of this Lease nor to be used in determining the intent of the parties to this Lease.

## 22. GOVERNING LAW

The validity and construction of this Lease shall be governed by the law of the State of Ohio, where the Premises are located.

## 23. COUNTERPARTS

This Lease may be executed in multiple counterparts, each of which shall be deemed to be an original.

**IN WITNESS WHEREOF**, the City and Hospital have caused this Lease to be executed by their duly authorized officers as of the day and year first above written.

Witnesses:

Aimee Pientka

Nancy M. Sikorski

**"CITY"**
**CITY OF STRONGSVILLE**

By: Thomas P. Perciak

Thomas P. Perciak

Its: Mayor

**"HOSPITAL"**
**SOUTHWEST GENERAL HEALTH CENTER**

_____ By:_____

_____ Its:_____

STATE OF OHIO )
) ss
COUNTY OF CUYAHOGA )

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named **CITY OF STRONGSVILLE**, by Thomas P. Perciak, its Mayor, who acknowledged that he did sign the foregoing instrument and that the same is the free and voluntary act and deed of said municipal corporation, and his free act and deed in such capacity.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Strongsville, Ohio, this 15th day of July, 2019.

NOTARIAL SEAL STATE OF OHIO

NANCY M. SIKORSKI
NOTARY PUBLIC - OHIO
MY COMMISSION EXPIRES
03-14-2024

Nancy M. Sikorski
Notary Public

*Approved as to legal form only by the*
*Law Department of the City of Strongsville*

*By:*_____
*Law Director*

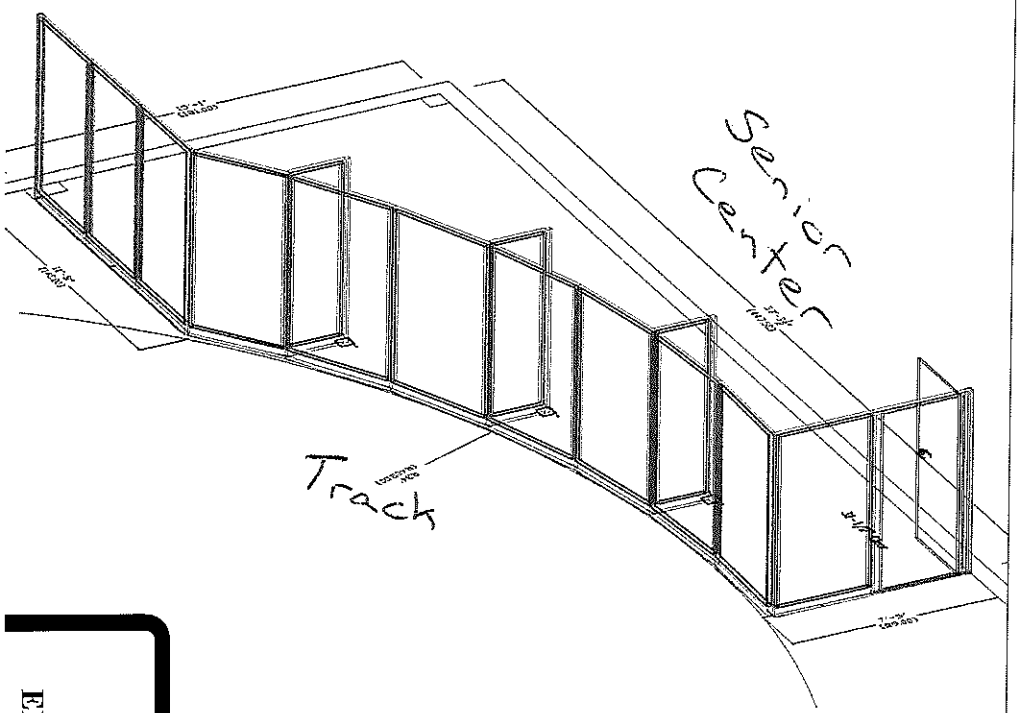
*Date:* 7-16-19

STATE OF OHIO )
) ss
COUNTY OF CUYAHOGA )

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named, **SOUTHWEST GENERAL HEALTH CENTER,** by _____, its _____, who acknowledged that he/she did sign the foregoing instrument and that the same is the free act and deed of said non-profit corporation, and is his/her free act and deed personally and as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Strongsville, Ohio, this ____ day of_____, 2019.

_____
Notary Public



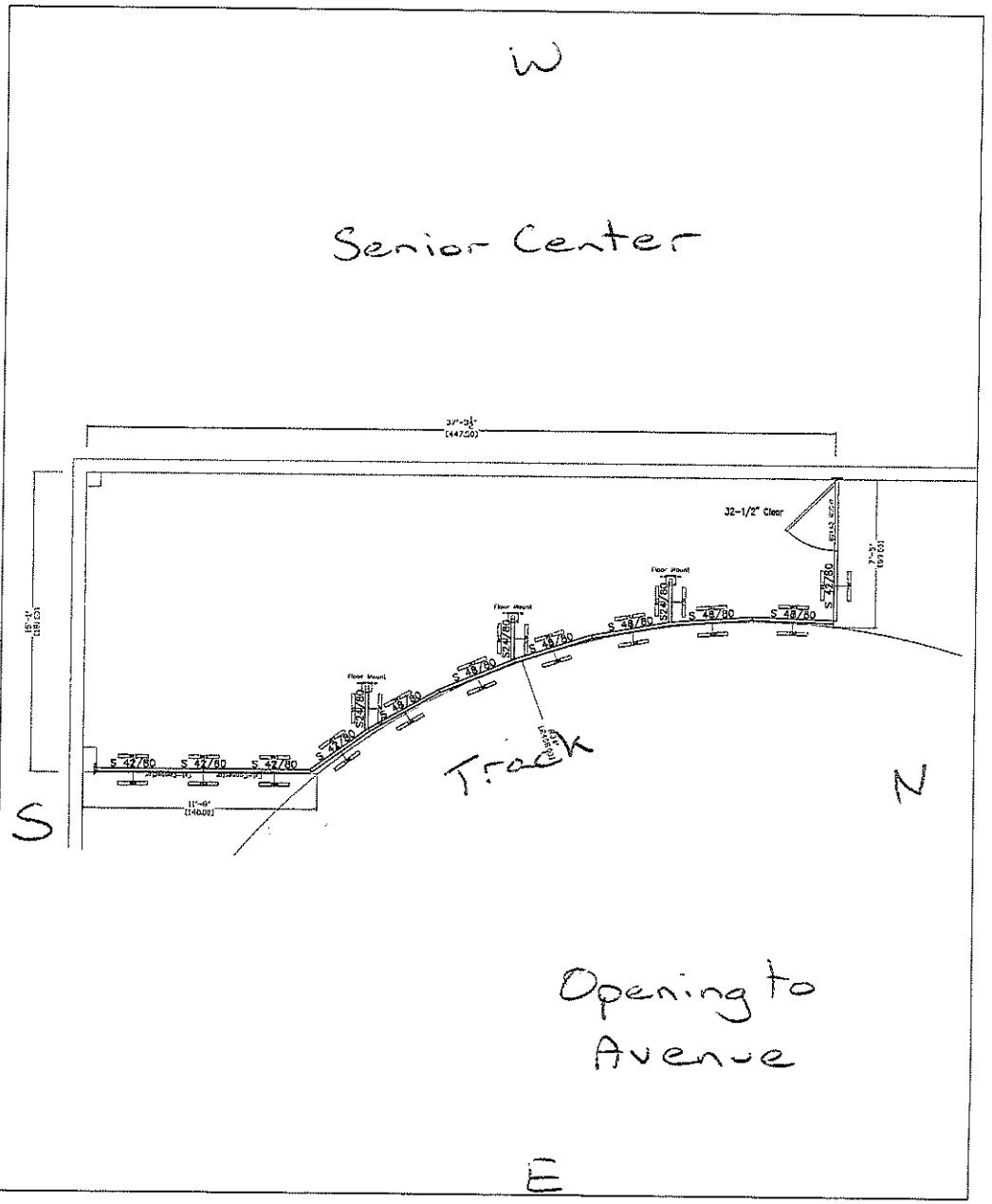




**EXHIBIT A**

nspire
workplace interiors

92 West 9th Street Cleveland, Ohio 44113
Showroom Phone 216 / 367 / 8520

STRONGSVILLE RECREATION-TRACK SIDE REHAB-RV.DWG

Design Laptop &

INFORMATION INCLUDED ON THIS DOCUMENT IS SOLELY THE PROPERTY OF INSPIRE WORKPLACE INTERIORS. THIS DOCUMENT MAY NOT BE USED OR COPIED WITHOUT WRITTEN CONSENT FROM INSPIRE WORKPLACE INTERIORS.

4/16/2019 9:24 AM Approval / Date