

ORDINANCE NO. 41-25

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A SIXTY (60') FOOT TEMPORARY CONSTRUCTION EASEMENT AND A THIRTY (30') FOOT PERMANENT EASEMENT TO THE AVON LAKE MUNICIPAL UTILITIES BOARD FOR THE INSTALLATION OF WATER-RELATED IMPROVEMENTS AND INFRASTRUCTURE TO THE EXISTING REGIONAL WATER SYSTEM AND DECLARING AN EMERGENCY

WHEREAS, the City of Avon Lake by and through its Board of Municipal Utilities, dba., Avon Lake Regional Water, ("ALRW") is seeking to undertake the installation of water-related improvements and infrastructure to the existing regional water system ("Project"); and

WHEREAS, the Project will involve the installation of infrastructure on the City's property, (as well as the property of others), that is adjacent to the existing water line for which an easement already exists. The new infrastructure cannot physically fit within the existing easement area on the City's property; and

WHEREAS, it is necessary to convey to ALRW a sixty (60') foot wide temporary construction easement and a thirty (30') foot wide permanent easement along the north side of the project to facilitate work along the southside of the Norfolk Southern Railway on two parcels owned by the City of Avon; and

WHEREAS, Avon City Council finds that it is in the best interest of the health, safety, and welfare of the Community for the City of Avon to cooperate by granting temporary and permanent easements to the City of Avon Lake Municipal Utilities for the installation of infrastructure on the City's property that is adjacent to the existing water line for which an easement already exists.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON, COUNTY OF LORAIN AND STATE OF OHIO:

Section 1 - That the Mayor is hereby authorized to execute a sixty (60') foot temporary construction easement and a thirty (30) foot permanent easement to Avon Lake Municipal Utilities, dba., Avon Lake Regional Water, for the installation of infrastructure on the City's property that is adjacent to the existing water line for which an easement already exists. A copy of said easements, legal descriptions and survey maps for the Permanent and Temporary Easements are attached hereto as Exhibit A, and incorporated herein by this reference

Section 2 - That it is found and determined that all formal actions of the Council of the City of Avon concerning and relating to the adoption of this Ordinance were taken in an open meeting of the Council of the City of Avon and that all deliberations of this City's Council and any of its committees that resulted in those formal actions were in meetings open to the public, or otherwise in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3 - That this Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public health, safety, and welfare of the

citizens of the City of Avon, the immediate emergency being the necessity for the City to execute a sixty (60') foot temporary construction easement and a thirty (30) foot permanent easement to Avon Lake Regional Water for this project; therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: May 12, 2025 DATE SIGNED: May 12, 2025

By: Brian Fischer
Brian Fischer, Council President

DATE APPROVED BY THE MAYOR: May 13, 2025

Bryan K. Jensen
Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior
John A. Gasior, Law Director

ATTEST:

Barbara Brooks
Barbara Brooks, Clerk of Council

Posted: May 14, 2025
Electronically and at City Hall as
Provided by Council

Prepared By:
John A. Gasior, Esq.
Law Director, City of Avon

I, Barbara J. Brooks, Clerk of the Council of the City of Avon, Ohio, hereby certify this document to be a true and exact copy of Ordinance No. 41-25, passed by the Council of said City on May 12, 2025.

IN WITNESS WHEREOF, I have on this 13th day of May 2025, affixed my signature and official seal.

Barbara J. Brooks
Barbara J. Brooks, Clerk of the Council
of the City of Avon, Ohio

EXHIBIT A TO ORDINANCE NO. 41-25

NON-EXCLUSIVE RIGHT-OF-WAY AND UTILITY EASEMENT AGREEMENT **(Temporary Construction Easement [60 feet] and Permanent Easement [30 feet])**

THIS NON-EXCLUSIVE RIGHT-OF-WAY AND UTILITY EASEMENT AGREEMENT ("Agreement") is made and entered into by _____ (along with its heirs, successors and assigns, "Grantor") and the CITY OF AVON LAKE BY AND THROUGH ITS BOARD OF MUNICIPAL UTILITIES (along with its successors and assigns, "Grantee").

Grantor does hereby grant, bargain, sell, transfer and convey unto the Grantee, a perpetual non-exclusive, permanent right-of-way and easement ("Easement") for the right to erect, construct, install and lay, and thereafter, without restriction or limitation, use, operate, inspect, improve, test, maintain, repair, replace, and remove and relocate water lines (including pipeline connections, service connections, valves, and other appurtenances) on, over, under, across, within, and through certain lands of Grantor situated in the City of Avon Lake, County of Lorain and State of Ohio, and being described on Exhibit A, each of which are attached hereto and incorporated herein by reference (the "Easement Area"). This Easement shall include a temporary construction easement adjoining the Easement Area for the purpose of enabling Grantee to initially construct the improvements (including pipeline connections, service connections, valves, and other appurtenances) contemplated by this Easement and to later, without restriction or limitation, alter, maintain, repair, replace or relocate said pipeline(s) within the Easement Area and to conduct all activities incident thereto, together with the right of reasonable ingress and egress over the immediately adjacent lands of the Grantor, for the purpose of use of said Easement. The Grantee specifically covenants that said Easement shall not be used for public right-of-way purposes.

The Easement Area shall be thirty (30) feet in width as a perpetual non-exclusive easement for maintaining said water line as set forth in the plans dated December, 2023 by HDR Engineering, Inc., and further amended by Bramhall Engineering and Surveying Company April 2025, and submitted to Grantor by Grantee. The temporary construction easement shall be sixty (60) feet in width for construction purposes and runs adjacent to and overlaps the Easement Area. The Easement Area and the temporary construction easement are identified in the drawings attached hereto as Exhibit B.

As further consideration for the granting of this Easement, the Grantor and Grantee covenant and agree as follows and said covenants and agreements shall be considered to be covenants running with the land for the benefit of both the Grantee and Grantor, and their respective successors and assigns:

1. Grantee shall repair any and all damage arising from the installation or subsequent repair, maintenance or reconstruction of the water line, and restore the construction-related areas and the Easement Area as near as possible to their condition prior to construction.

2. Grantee shall replace any driveway, parking lot, lawn, shrubbery, or any other improvement in or about the Easement Area that may be damaged, altered, moved, relocated, undermined, destroyed, ruined, or otherwise disrupted, in any manner, as a result of construction by Grantee.

3. Grantee shall fill any and all voids in the ground in or about the Easement Area reasonably and proximately caused from said construction, operation or maintenance of said water line in the Easement property.

4. Grantee shall secure and use commercially reasonable methods to protect all permanent structures within the vicinity of the temporary construction easement.

5. Grantee shall repair any damage, alteration and /or restriction to drainage from the property, whether in pipe, ditch or swale, done directly relating to the work, and also shall maintain the drainage during the construction process. Grantee will control within statutory and regulatory limits any solids in any storm water runoff. Grantee will defend, indemnify and hold Grantor harmless from and against any fine, penalty interruption, action or other event of any nature whatsoever, including, without limitation, consequential and incidental damages whether foreseeable or unforeseen, arising by reason of solids contained in storm water runoff from the Easement property during construction and prior to completion of repair and reconstruction.

6. Grantee shall be liable for and pay all cost of surveying, recording of documents, filing and transfer fees, escrow costs and title expenses, if any.

7. The Grantor reserves for itself the right to use Grantor's parcel(s), subject to the Easement granted herein, and Grantee's right to inspect, operate, maintain, repair, replace, relocate, test, alter, modify, add to, or remove existing underground utilities currently serving Grantor's property or operations in general (or the property or operation of Grantor's successors and assigns), whether above or below ground. Except as described in the foregoing sentence, Grantor agrees not to install, erect, or maintain any structure, fencing or device upon the Easement Area, but shall have the right to any use, above or below ground, that does not otherwise damage, impair, impede, or unreasonably interfere with the water line(s) or Grantee's rights to same.

8. No special assessment charges shall be levied for this water line against the Grantor.

9. Grantee further agrees it will at all times indemnify and save harmless Grantor, its successors and assigns, its agents, employees or lessees against all loss, damage, cost, claims, demands, actions, or causes of action, or expense (including reasonable attorneys' fees) arising out of loss of or damage to property or injury to or death of person or persons, resulting in any manner from the construction, installation, maintenance, laying, and thereafter, use, operation, inspection, maintenance, repair, replacement or removal of the water lines (including pipeline connections, service connections, valves, and other appurtenances) that are the subject of this Easement, and Grantee shall promptly pay to Grantor the full amount of any loss or damage which Grantor may

sustain, incur, or become liable for, and all sums which Grantor may pay or be compelled to pay in settlement of any claim on account thereof.

Grantee hereby further agrees to require its contractor(s), as a part of all contracts relating to the construction upon or repair or maintenance upon the temporary construction easement, Easement Area, and the easement interests conveyed in accord with this Easement, to indemnify, and save harmless the Grantor against all loss, liability, and damages that arise from the activities of Grantee's contractors) or any agents in the performance of the construction, repair, or maintenance work on the premises of the Grantor. Notwithstanding the foregoing, nothing herein contained is to be deemed or construed as indemnification against the sole negligence of Grantor, its employees, or agents. Further, Grantor shall notify Grantee of any claims, demands, actions or causes of actions arising or growing out of loss of or damage to property or injury to or death of person or persons, resulting in any manner from the construction, installation, maintenance, and thereafter use, operation, inspection, repair, replacement or removal of the water lines that are the subject of this Easement. Grantee shall have the right to assume defense of said claims, demands, actions, or causes of action at its expense.

10. Grantee shall carry and shall cause all its contractor(s) and subcontractor(s) while on the Grantor's premises to carry comprehensive general liability insurance of the type that normally provides coverage for general liability, automobile liability, or other liability insurance, in a minimum amount of \$1,000,000.00 combined single limits for bodily injury or death to person or persons and property damage per occurrence.

No deductible/self-retainage under said coverage shall exceed One Hundred Thousand and No/100 Dollars (\$100,000.00). Grantee may self-insure for the entire coverage amounts. Grantee agrees that in the construction, maintenance, repair, replacement, relocation, and use of the water lines, it will comply with all applicable laws, including, but not limited to, any laws, standards, regulation, or permit requirements relating to environmental pollution or contamination or to occupational health and safety; and Grantee agrees to indemnify and hold harmless the Grantor from any and all claims, demands, lawsuit, or liability for loss, fines, damage, injury, and death and all expenses and costs, including reasonable attorney's fees, clean-ups and remediations, resulting from or arising out of the construction, maintenance, or use of the water lines, including any discharge or emission therefrom or for the violation of any law, standard, regulation, or permit requirement relating to environmental pollution or contamination or to occupational health and safety.

11. Grantee shall require its contractor(s) to use all reasonable care to avoid accident or damage to Grantor's property or to delay to Grantor's operations. Grantee shall require its contractor(s) upon completion of the work to remove from Grantor's right-of-way and all machinery, equipment, temporary buildings, falsework, or rubbish left by virtue of Grantee's operations, and to leave the premises in a neat condition. All work herein provided to be done by the Grantee's contractor(s) on the Grantor's right-of-way shall be done under the supervision, inspection, and direction of the Grantee's personnel.

12. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Grantor and Grantee; and all references to "Grantor" herein shall be construed and considered to confer rights, including but not exclusive of the right to enforce any promise or covenant of Grantee.

13. Each of the parties hereto agree to execute and deliver to the other all such documents as may be necessary or appropriate for the effectuation of the provisions and intent of this Easement.

14. This Easement shall be filed and for record in the office of the Recorder of Lorain County, Ohio upon the execution and acknowledgement of the parties hereto.

15. The Easement granted is subject to all pre-existing easements and rights-of-way.

16. Grantor and Grantee agree that, except to the extent caused by the acts or omissions of Grantee or its representatives or contractors, Grantee shall not be liable for, and is hereby fully released from, any and all actual or threatened actions, claims, demands, damages, losses, expenses, judgments, suits, causes of action, fines, fees, penalties, and liabilities, whether arising during, prior to, or subsequent to the term of this Easement, that is directly or indirectly related to the presence of pollutants, contaminants, petroleum, hazardous substances, or endangerments in, on, beneath, or along the Easement Area.

17. Grantor and Grantee that any damages to lawn, driveways, permitted shrubbery, drain tiles, crops or permitted fences on said premises, the amount of which cannot be mutually agreed upon, shall be determined by a panel of arbitrators composed of three (3) disinterested persons, of whom Grantor and Grantee shall appoint one each and the two arbitrators so appointed shall appoint the third, the award of any two of whom shall be final and a condition precedent to the institution of any legal proceedings hereunder.

[signature and notary pages follow]

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IN WITNESS WHEREOF, the Grantor and Grantee have executed this Easement as of the date(s) referenced below.

GRANTOR:

City of Avon

By: *[Signature]*

Its: *Mayor*

Print Name: *Bryank Jensen*

Date: *5/13/25*

GRANTEE:

The Board of Municipal Utilities

By: _____

Its: _____

Print Name: _____

Date: _____

ACKNOWLEDGED BY:

The City of Avon Lake

By: _____

Its: _____

Print Name: _____

Date: _____

ACKNOWLEDGEMENT

STATE OF OHIO)
) SS:
COUNTY OF LORAIN)

The foregoing instrument was acknowledged before me this _____ day of _____, 2025
by _____, the _____ of City of Avon Lake, an Ohio political
subdivision, who acknowledged that he did sign the foregoing instrument and that the same is his
free act and deed, both individually and on behalf of said City. The notarial act certified hereby is an
acknowledgement. No oath or affirmation was administered to signer.

NOTARY PUBLIC

My Commission Expires: _____

This instrument was prepared by:
Connie S. Carr, Esq.
Seeley, Savidge, Ebert & Gourash Co., LPA
26600 Detroit Rd., Suite 300
Westlake, OH 44145
(216) 566-8200

-D-R-A-F-T-

EXHIBIT A

Easement Area--Legal

Exhibit A**Permanent Easement P9****Parcel 04-00-016-102-032****January 2023****Legal Description****0.108 of an Acre**

Situated in the City of Avon, County of Lorain, State of Ohio, and known as part of Original Avon Township Section No. 16, and further known as being part of a parcel of land described in a deed to The City of Avon as recorded in Instrument No. 2003-0918937 of the Lorain County Records, and further described as follows:

Beginning at the intersection of the easterly line of said Original Avon Township Section No. 16 with the northerly line of a parcel of land described in a deed to Cleveland Electric Illuminating Company as recorded in Deed Volume 879, Page 260 of the Lorain County Records;

- Course 1:** Thence, leaving said easterly line, **South 83° 33' 22" West**, a distance of **417.19 feet** to a point;
- Course 2:** Thence **North 89° 30' 32" West**, a distance of **34.74 feet** to a point in the westerly line of said The City of Avon parcel;
- Course 3:** Thence **North 00° 01' 20" West** along the westerly line of said The City of Avon parcel, a distance of **3.50 feet** to a point;
- Course 4:** Thence, leaving said westerly line, **South 89° 52' 59" East**, a distance of **54.25 feet** to a point;
- Course 5:** Thence **North 78° 52' 11" East**, a distance of **237.60 feet** to a point;
- Course 6:** Thence **South 89° 52' 33" East**, a distance of **161.91 feet** to a point in the easterly line of said Original Avon Township Section No. 16;
- Course 7:** Thence **South 00° 01' 37" East** along said easterly line, a distance of **2.39 feet** to the **Point of Beginning**.

Exhibit A

Permanent Easement P9

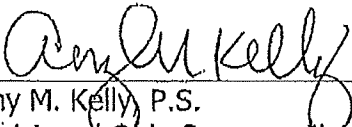
Parcel 04-00-016-102-032

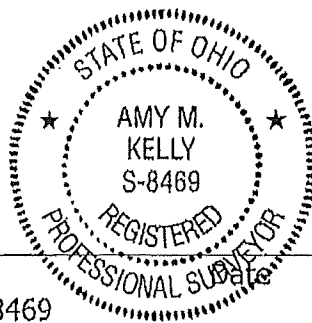
January 2023

Legal Description

0.108 of an Acre

Containing within said bounds **0.108 of an acre** of land, be the same more or less, but subject to all legal highways and easements of record as prepared from record by Amy M. Kelly, P.S. 8469 for Bramhall Engineering & Surveying Company in January 2023. All bearings are intended to describe angles only. The basis of bearings used is the Ohio State Plane, North Zone NAD83(2011) Grid North.

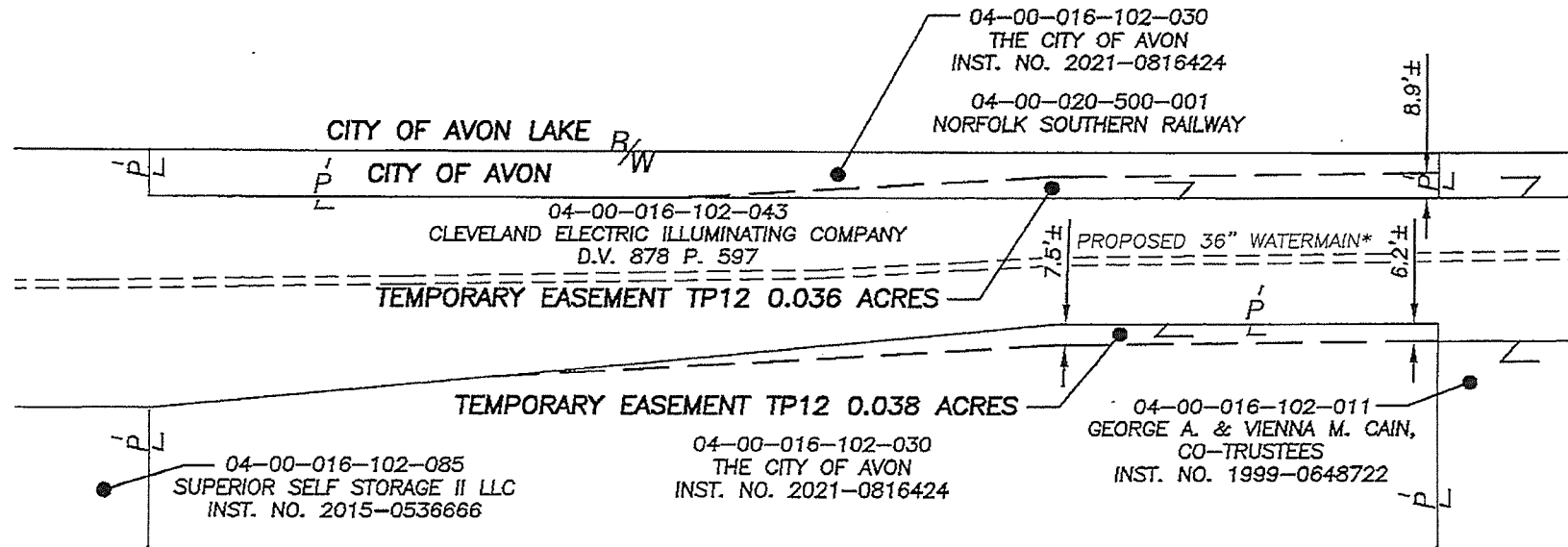

Amy M. Kelly, P.S.
Registered Ohio Surveyor No. 8469



1/25/2023

EXHIBIT A
TEMPORARY CONSTRUCTION EASEMENT TP12

ACROSS PARCEL NO. 04-00-016-102-030
CITY OF AVON, COUNTY OF LORAIN, STATE OF OHIO



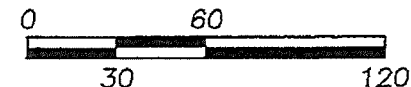
NOTE

1. TOTAL TEMPORARY EASEMENT TP12 = 0.074 ACRE.
2. PROPERTY LINES AND RIGHTS OF WAY SHOWN HEREON ARE FROM LORAIN COUNTY AUDITOR RECORDS.

*SEE ETL IMPROVEMENTS PROJECT EASTERN TRANSMISSION LINE 1 MOORE ROAD PUMP STATION TO KREBS ROAD PLANS PREPARED BY HDR DATED 09-09-2022 FOR MORE INFORMATION.



GRAPHIC SCALE



(IN FEET)

SCALE: 1" = 60'

DATE PREPARED: 7-27-2023
JOB NO. 21-5525A

BRAMHALL
ENGINEERING AND SURVEYING COMPANY
801 MOORE ROAD AVON, OHIO 44011
(440) 934 - 7878 (440) 934 - 7879 FAX

-D-R-A-F-T-

EXHIBIT B
Easement Area—Drawing

J:\215525A ALRW ETL Easements\DRAWINGS\21-5525A_P9_Ease.dwg, Plotted: Jan 25, 2023 - 3:28pm

EXHIBIT B
PERMANENT WATER MAIN EASEMENT P9 &
TEMPORARY CONSTRUCTION EASEMENT TP9

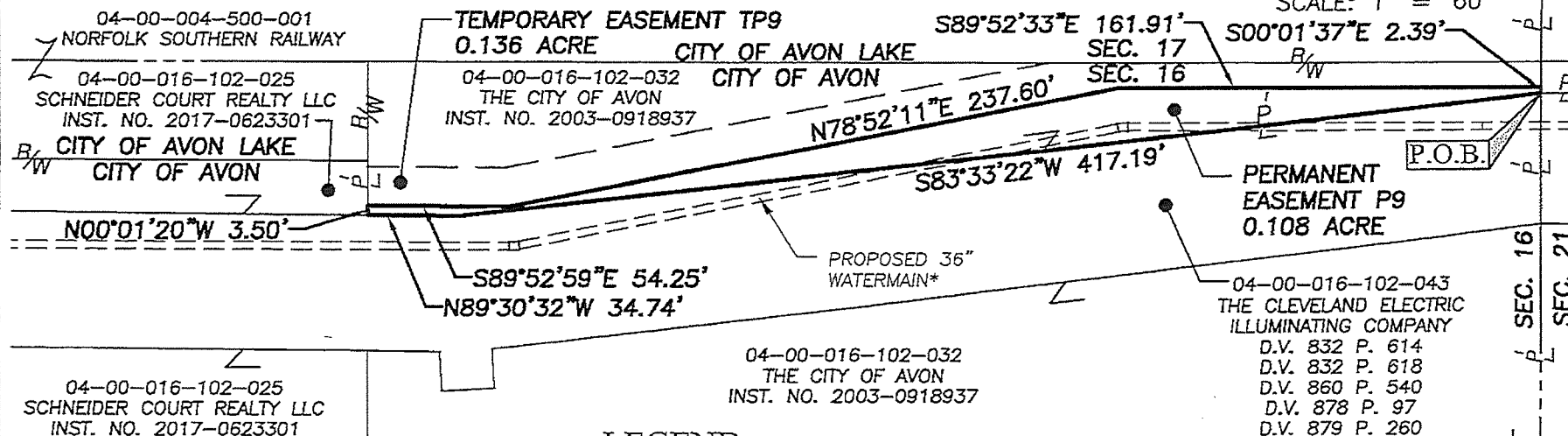
ACROSS PARCEL NO. 04-00-016-102-032
CITY OF AVON, COUNTY OF LORAIN, STATE OF OHIO

GRAPHIC SCALE



(IN FEET)

SCALE: 1" = 60'



LEGEND

R/W
I
P
L

RIGHT-OF-WAY LINE

PROPERTY LINE

D.V.	DEED VOLUME
INST.	INSTRUMENT
NO.	NUMBER
P.	PAGE
P.O.B.	POINT OF BEGINNING
SEC.	SECTION

NOTE

PROPERTY LINES AND RIGHTS OF WAY SHOWN HEREON
ARE FROM LORAIN COUNTY AUDITOR RECORDS.

*SEE ETL IMPROVEMENTS PROJECT EASTERN
TRANSMISSION LINE 1 MOORE ROAD PUMP STATION TO
KREBS ROAD PLANS PREPARED BY HDR DATED
09-09-2022 FOR MORE INFORMATION.

AMY M. KELLY, P.S.
REGISTERED OHIO SURVEYOR No. 8469

DATE



DATE PREPARED: 1-25-2023
JOB NO. 21-5525A

BRAMHALL
ENGINEERING AND SURVEYING COMPANY
801 MOORE ROAD AVON, OHIO 44011
(440) 934 - 7878 (440) 934 - 7879 FAX