

**EASEMENT, MAINTENANCE AGREEMENT, AND ACKNOWLEDGMENT OF
APPROVAL OF VARIANCE**

**THIS EASEMENT, MAINTENANCE AGREEMENT, AND
ACKNOWLEDGMENT OF APPROVAL OF VARIANCE** (this “**Agreement**”) is entered into by and between **SWENSON’S DRIVE-IN RESTAURANT, LLC**, an Ohio limited liability company, its successors and assigns, hereinafter referred to as “**Swensons**”, and the **CITY OF AVON**, an Ohio Municipality, located in Lorain County, Ohio, hereinafter referred to as “**City**”, its Board of Zoning and Building Appeals, hereinafter referred to as the “**BZA**” and its Utilities Superintendent. The term “**Development**” shall refer to the Swenson’s drive-in restaurant Swensons intends to develop at the Swensons Parcel (defined below).

WHEREAS, Swenson’s owns certain land at the southeast corner of Main Street and Middle Road, commonly known as Lorain County PPN No. 04-00-016-101-200, being more particularly described on Exhibit A attached hereto and incorporated herein (the “**Swensons Parcel**”) and desires to construct the Development pursuant to plans and specifications prepared for and approved by the Avon Planning Commission on April 18, 2018 (collectively, the “**Plans**”); and

WHEREAS, the City of Avon has installed underground utilities within the utility easement area adjacent to Main Street (in the Swensons Parcel), and on Middle Road in the City Parcel (defined below), as the case may be, and directly in front of the proposed Swensons site (sanitary sewer and storm sewer), which sanitary and storm sewer are depicted on the survey attached hereto as Exhibit B and incorporated herein (together, the “**City Sanitary and Storm Lines**”); and

WHEREAS, the City of Avon owns that certain real property commonly known as Lorain County PPN No. 04-00-016-101-189, also referred to as Remainder Block “B” per Instrument No. 2003-0920467 of the Lorain, Ohio County Recorder, being more particularly described on Exhibit C attached hereto and incorporated herein (the “**City Parcel**”), through which a portion of the City Sanitary and Storm Lines is located.

WHEREAS, Swensons desires an easement to construct, use, maintain, repair, and replace (collectively, “**Maintain**” or “**Maintenance**”) utility lines (collectively, the “**Swensons Sanitary and Sewer Connections**”), to connect to the City Sanitary and Storm Lines located in the City Parcel, which easement is sought in, over, through, under, and across such portions of the City Parcel as may be reasonably necessary to Maintain the Swensons Sanitary and Sewer Connections.

WHEREAS, Swensons also desires an easement for pedestrian and vehicular ingress and egress over, upon and across that certain portion of the City Parcel (PP# 04-00-016-101-189) described on Exhibit D attached hereto and incorporated herein (the “**Middle Road Access Drive Easement Area**”) for access between the Swenson Parcel and Middle Road via the Access Drive Easement Area.

WHEREAS, further, Swensons also desires a license to permit it, if Swenson so elects, to mow and maintain lawn on the City Parcel (PP# 04-00-016-101-189), from time to time to facilitate uniformity between the lawn located on the City parcel and the lawn and landscaping located on the Swensons Parcel.

WHEREAS, the BZA, on March 7, 2018, granted Swensons a 14 foot front yard variance to allow Swensons to install parking spaces 21 feet back from the right-of-way on Main Street. (The parking setback under ACO §1270.06(a)(1) in C-4 is 35’); and

WHEREAS, the BZA conditioned the granting of the parking variance on Swensons obtaining the consent of the City’s Utilities Superintendent to allow for the parking lot to extend over a portion of the City Sanitary and Storm Lines located on the Swensons Parcel; and

WHEREAS, this Agreement embodies the Agreement of the City and Swensons, and the consent of the City’s Utilities Superintendent, subject to the conditions set forth herein and agreed to by the parties to this Agreement.

NOW, THEREFORE, IT IS AGREED TO BY THE PARTIES HEREIN:

Section 1 - That Swensons, its successors and assigns, in exchange for the City’s consent to grant the variance for the front yard parking setback as set forth above, shall be responsible for the following:

a) The repair and replacement of any asphalt/concrete surface applied over the area depicted on Exhibit D as the “**Parking Disturbance Area**”. The City will have the right to remove the hard surface parking within the Parking Disturbance Area to facilitate any repairs, maintenance, replacement and the like, and, except as expressly provided in this Agreement, with

the only obligation, upon completion of any work disturbing the Parking Disturbance Area being to backfill the site with soil and stone upon completion of such work to the level necessary for Swensons to repave the Parking Disturbance Area, if Swensons so elects, at the level required to repave the Parking Disturbance Area to approximately the same level as the adjoining parking areas and drive aisles on the Swensons Parcel; and

b) If reasonably necessary to permit the City to perform work in the Parking Disturbance Area, removal and reinstallation of any light poles owned by Swensons that are located in Parking Disturbance Area or on land within the Swensons Parcel directly north of and adjoining the Parking Disturbance, together with the replacement of any landscaping within the Parking Disturbance Area, all at Swenson's cost; and

c) Swensons does hereby agree that it will pay to the City a one-time fee of up to 25% of the cost of installing signal pre-emptors on the traffic signal located on Main Street directly in front of their driveway (the "**Project**"), provided that in no event shall Swensons' share exceed Five Thousand Dollars (\$5,000.00) (such amount, "**Swensons' Share**"), payable within thirty (30) days after written receipt by Swensons of evidence, reasonably satisfactory to Swensons, that describes the costs of the Project. The City has the right to withhold a building permit for the Development until Swensons pays Swensons' Share.

d) Except in cases of emergencies, in which no advance notice shall be required, the City shall provide not less than thirty (30) days' written notice prior to performing any work on the Parking Disturbance Area. Moreover, access to the Parking Disturbance Area shall at all times be from Main Street and not on any part of Swensons Parcel other than over the Parking Disturbance Area and areas north of the Parking Disturbance Area.

Section 2 - The City hereby grants and conveys to Swensons a non-exclusive permanent easement to Maintain the Swensons Sanitary and Sewer Connections and to connect the Swensons Sanitary Sewer Connections to the City Sanitary and Storm Lines located in the City Parcel, in, over, under, through and across such portions of the City Parcel as may be reasonably necessary to Maintain the Swensons Sanitary and Sewer Connections.

Section 3 - The City hereby grants and conveys to Swensons an exclusive permanent easement to Maintain a driveway (the "**Middle Road Access Drive**") for the use and benefit of Swensons and Swensons employees, customers, agents, tenants, invitees and licensees, for purposes of pedestrian and vehicular ingress and egress to and from Middle Road and the Swensons Parcel, in, over, through, under, and across the Middle Road Access Drive Easement Area. In the event that the City widens Middle Road at some future date, Swensons agrees to forego any or all right to the Middle Road Access Drive Easement Area or such portion thereof as the City reasonably determines is necessary for such road widening, along with foregoing any possible

reimbursement to Swensons for which it may be eligible as a result of forgoing any real property interest in the Middle Road Access Drive Easement Area, provided that, at all times, the City shall continue to permit Swensons access Middle Road and the City will be responsible, at the City's sole cost and expense for any modification to the Middle Road Access Drive required as a result of the widening of Middle Road. During Maintenance of the Middle Road Access Drive, Swenson shall have the right to traverse and use all other portions of the City Parcel as Swensons determines are reasonably necessary for Maintenance of the Middle Road Access Drive or any replacement thereof.

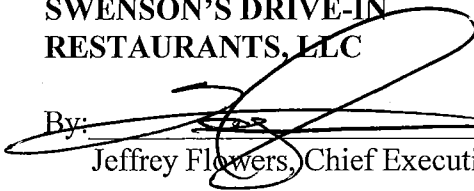
Section 4 -The City hereby grants and conveys to Swensons a non-exclusive license (but in no case shall Swensons be obligated) to mow, cut, and trim the grass and remove weeds, and otherwise maintain, the portion of the City Parcel directly west of the Swensons Parcel (PP# 04-00-016-101-189), in a manner that is consistent with Swensons' lawn mowing practice for the Swensons Parcel (the "Mowing License"). The City may terminate the Mowing License upon not less than ninety (90) days' prior written notice to Swensons of such termination.

Section 5 - These conditions shall run with the land and be binding upon the City and Swensons and their respective successors and assigns. Furthermore, this instrument shall be recorded in the Office of the Lorain County Recorder for placement in the chain of title of the property(s) so affected. The City represents and warrants that the signature of the Chairman of the Avon Board of Zoning and Building Appeals and the Avon Utilities Superintendent, below, shall be sufficient evidence that the City authorized the variance set forth in the official minutes of the Avon Board of Zoning and Building Appeals dated March 7, 2018.

[Remainder of page left blank intentionally. Signature pages and acknowledgments to follow in counterparts.]

IN WITNESS WHEREOF, we have hereunto set our hands on the dates set forth below, the latest of the dates being the effective date of this document.

SWENSON'S DRIVE-IN
RESTAURANTS, LLC

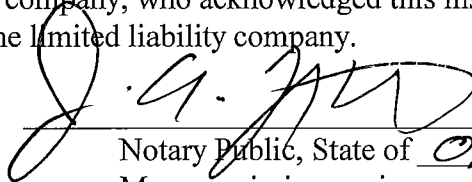
By: 

Jeffrey Flowers, Chief Executive Officer

Dated May 23, 2018

STATE OF OHIO)
)
COUNTY OF SUMMIT)

BEFORE ME, the undersigned authority, on this 23rd day of May, 2018, did personally appear Jeffrey, Flowers, the Chief Executive Officer of Swensons Drive-In Restaurants, LLC, an Ohio limited liability company, who acknowledged this instrument and stated that he executed same on behalf of the limited liability company.



Notary Public, State of Ohio

My commission expires no expiration



J.A. Nunez
Notary Public - State of Ohio
My Commission Has No Expiration Date

CITY OF AVON

BY: Bryan K. Jensen, Mayor

Dated: _____

STATE OF OHIO)
)
COUNTY OF LORAIN)

BEFORE ME, the undersigned authority, on this ____ day of _____, 2018, did personally appear Bryan K. Jensen, Mayor of the City of Avon, an Ohio municipal corporation, who acknowledged this instrument and stated that he executed same on behalf of the Ohio municipal corporation.

Notary Public, State of _____
My commission expires _____

CITY OF AVON
Board of Zoning and Building Appeals

BY: _____
Randy Fratianne, Chairman
Avon Board of Zoning & Building Appeals

STATE OF OHIO)
)
COUNTY OF LORAIN)

BEFORE ME, the undersigned authority, on this ____ day of _____, 2018, did personally appear Randy Fratianne, Chairman of the Board of Zoning and Building Appeals of the City of Avon, Ohio, an Ohio municipal corporation, who acknowledged this instrument and stated that he executed same on behalf of the Ohio municipal corporation.

Notary Public, State of _____
My commission expires _____

**CITY OF AVON
DEPARTMENT OF UTILITIES**

BY: Ed McCallie, Acting Superintendent of Utilities

STATE OF OHIO)
)
COUNTY OF LORAIN)

BEFORE ME, the undersigned authority, on this ____ day of _____, 2018, did personally appear Ed McCallie, Acting Superintendent of the City of Avon, Ohio, an Ohio municipal corporation, who acknowledged this instrument and stated that he executed same on behalf of the Ohio municipal corporation.

Notary Public, State of _____
My commission expires _____

This instrument prepared by:
John A. Gasior, Law Director
City of Avon, Ohio
36815 Detroit Road
Avon, Ohio 44011
(440) 934-7676

Exhibit A

The Swensons Parcel

Situated in the City of Avon, County of Lorain, State of Ohio, known as being part of Original Avon Township Section Number 16 and part of Sublot Number 1 in Main Street Subdivision as recorded in Plat Volume 92, Pages 1 - 3 of the Lorain County Plat Records, as described in a deed to Route 76 & Chester NW, LLC, recorded on April 26th, 2007, in Instrument No. 20070200979 of the Lorain County Deed Records, and further described as follows:

Commencing at a 5/8-inch iron rebar with cap stamped "BRAMHALL 8073" found in a monument box at the intersection of the centerline of Main Street (80 feet wide) and the centerline of State Route 83 (aka Avon-Belden Road) (width varies) as shown in said Main Street Subdivision;

Thence North $87^{\circ} 39' 26''$ West, along the centerline of said Main Street, a distance of 304.66 feet to a point;

Thence South $02^{\circ} 20' 34''$ West, perpendicular to the centerline of said Main Street, a distance of 40.00 feet to a 5/8"-inch iron rebar with cap stamped "BRAMHALL 8073" set in the southerly right-of-way line of said Main Street, and the True Place of Beginning of land herein described;

COURSE 1: Thence continuing South $02^{\circ} 20' 34''$ West, perpendicular to the centerline of said Main Street, a distance of 235.02 feet to a 5/8-inch iron rebar with cap stamped "BRAMHALL 8073" set in the northerly line of a parcel of land described in a deed to Brady-Cam II, LLC, as recorded in Instrument No. 20030932973 of the Lorain County Deed Records;

COURSE 2: Thence North $87^{\circ} 39' 26''$ West, along the northerly line of said Brady-Cam II, LLC parcel, a distance of 214.27 feet to a point in the easterly line of a parcel of land described in a deed to the City of Avon as recorded in Instrument Number 20030920467 (Block "B") of the Lorain County Deed Records, said point being 1.05 feet westerly from and 0.30 feet northerly from a 5/8-inch iron rebar found;

COURSE 3: Thence North $01^{\circ} 51' 30''$ East, along the easterly line of said City of Avon parcel, a distance of 235.03 feet to a 5/8-inch iron rebar with cap stamped "BRAMHALL 8073" found in the southerly right-of-way line of said Main Street;

COURSE 4: Thence South $87^{\circ} 39' 26''$ East, along the southerly right-of-way line of said Main Street, a distance of 216.26 feet to a 5/8-inch iron rebar with cap stamped "BRAMHALL 8073" set in the southerly right-of-way line of said Main Street, and the True Place of Beginning;

Containing within said bounds 1.1614 acres of land, be the same more or less, but subject to all legal highways and easements of record as surveyed in May of 2003 and updated in August of 2009 by Michael C. Bramhall, P.E. P.S. 8073 for Bramhall Engineering & Surveying Company, Inc. All bearings are intended to describe angles only. The basis of bearings used was the centerline of Main Street, which was assumed to be North $87^{\circ} 39' 26''$ West as observed in the Main Street Subdivision as recorded in Plat Volume 92, Pages 1-3 of the Lorain County Plat Records.

Parcel No.: 04-00-016-101-200

Prior Instrument Reference: Instrument No. 2009-0316208 of the Lorain County Recorder

Exhibit B

Depiction of the City Sanitary and Storm Lines

[attached]

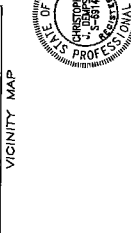
SURVEYOR'S CERTIFICATION

TO SWEDISH DRIVE-IN RESTAURANTS, LLC, as the United liability company: GUARDIAN TITLE & GUARANTY AGENCY, INC.; AND FIRST AMERICAN TITLE INSURANCE COMPANY.

Charles J. Dornsey

CORRESPONDENCE TO:
CHARLES J. DORNSEY
806 E. WASHINGTON AVE.
ANN ARBOR MI 48104-1979

RECEIVED DATE OF MAIL APRIL 5, 2018



Commencing at a 3/8-inch iron rebar with cap stamped "BPM4442 8073" found in a measurement box of the information

SCHEDULE BII EXCEPTIONS
FIRST AMERICAN TITLE INSURANCE COMPANY
COMMITMENT NO. 81318141
EFFECTIVE DATE: MARCH 2, 2018 AT 7:29 A. M.

(12) Not recorded in Volume 82 of Maps, Page 1, of Lenth Records shows the following:

FILE No. 91:
© 2018 COURTESY SLUICING

[illegible]

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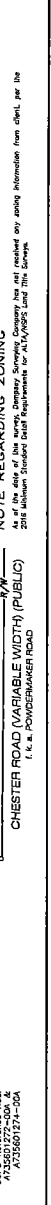


Exhibit C

The City Parcel

Situated in the City of Avon, Section 16, Town 7 North, Range 16 West, Avon Township, County of Lorain, State of Ohio, and more definitely described as follows:

Beginning at a 1-inch iron pin found in a monument box at the intersection of the centerline of State Route 83, a.k.a. Center Road, 60 feet wide, and the centerline of Chester Road, width varies;

Thence North $89^{\circ} 37' 47''$ West, along the centerline of said Chester Road, a distance of 515.46 feet to a P-K nail set in the northeasterly corner of State of Ohio Parcel No. 129-WL (Highway) as Recorded in Volume 999, Page 136 of the Lorain County Deed Records, said point also being 100.19 feet easterly of and at right angles to Station 1000 plus 93.31 in the centerline of survey made by the Department of Highways for Relocated State Route 76, now known as Relocated State Route 83;

Thence North $01^{\circ} 51' 30''$ East, a distance of 65.02 feet to a point, said point being 0.02 feet northerly and 0.16 feet westerly from a 5/8-inch rebar found, said point also being 100.76 feet easterly of and at right angles to Relocated State Route 83 centerline Station 1001 plus 58.33; Thence continuing North $01^{\circ} 51' 30''$ East, along the westerly line of a parcel of land described in a deed to The City of Avon as recorded in Document Number 19970486519 of the Lorain County Deed Records, a distance of 280.86 feet to a point, said point being 1.04 feet northerly and 0.05 feet westerly from a 5/8-inch iron rebar with cap stamped "BRAMHALL" found, said point also being 103.18 feet easterly of and at right angles to Relocated State Route 83 centerline Station 1004 plus 39.18, and the True Place of Beginning of land described herein;

Course 1: Thence North $87^{\circ} 30' 23''$ West, a distance of 31.05 feet to a 5/8-inch iron rebar with cap stamped "BRAMHALL" set, said point also being 72.14 feet easterly of and at right angles to Relocated State Route 83 centerline Station 1004 plus 39.79;

Course 2: Thence North $01^{\circ} 46' 22''$ East, a distance of 1168.45 feet to a 5/8-inch iron rebar with cap stamped "BRAMHALL" set, said point also being 80.49 feet easterly of and at right angles to Relocated State Route 83 centerline Station 1016 plus 8.21;

Course 3: Thence South $88^{\circ} 13' 38''$ East, a distance of 32.80 feet to a 5/8-inch iron rebar with cap stamped "BRAMHALL" set, said point also being 113.29 feet easterly of and at right angles to Relocated State Route 83 centerline Station 1016 plus 7.98;

Course 4: Thence South $01^{\circ} 51' 30''$ West, along the westerly line of a parcel of land described in a deed to Kahn Partners III and Victor J. Cohn as recorded in Document Number

19980581402 of the Lorain County Deed Records, a distance of 769.71 feet to a point, said point being 0.26 feet northerly from and 1.06 feet westerly from a 5/8-inch iron pin found, said point also being 106.63 feet easterly of and at right angles to Relocated State Route 83 centerline Station 1008 plus 38.30;

Course 5: Thence continuing South $01^{\circ} 51' 30''$ West, along the westerly line of a parcel of land described in a deed to Stella Moga as recorded in O.R. Volume 1221, Pages 155-157 of the Lorain County Deed Records, a distance of 399.13 feet to a point, said point being 1.04 feet northerly and 0.05 feet westerly from a 5/8-inch iron rebar with cap stamped "BRAMHALL" found, said point also being 103.18 feet easterly of and at right angles to Relocated State Route 83 centerline Station 1004 plus 39.18, and the True Place of Beginning;

Containing within said bounds 0.8565 of an acre of land, be the same more or less, but subject to all legal highways and easements, as surveyed by Bramhall Engineering and Surveying Company, Inc. in October of 2002. All bearings are to an assumed meridian and are intended to describe angles only. The basis for bearings used was the centerline of said Chester Road, which was assumed to be North $89^{\circ} 37' 47''$ West.

Prior Instrument Reference: Instrument No. 2003-0920467 of the Lorain County Recorder
PPN: 01-00-016-101-189

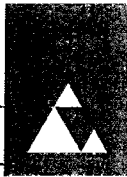
Exhibit D

Middle Road Access Drive Easement Area

and

Parking Disturbance Area

[attached]



LEGAL DESCRIPTION
Middle Road Access Drive Easement

Situated in the City of Avon, County of Lorain, State of Ohio, known as being part of Original Avon Township Section Number 16, further known as being a part of Remainder Block "B" conveyed to the City of Avon by deed recorded in Instrument No. 2003-0920467 of Lorain County Records, said premises being more particularly bounded and described as follows:

Beginning at the southwesterly corner of Sublot 1 in Main Street Subdivision recorded in Plat Volume 92, Pages 1-3 of the Lorain County Records; thence North 01 degree 51 minutes 30 seconds East along the westerly line of said Sublot 1, a distance of 27.00 feet to the PRINCIPAL PLACE OF BEGINNING of the premises herein described;

Course 1: Thence North 87 degrees 39 minutes 26 seconds West, a distance of 31.69 feet to a point on a westerly line of the aforementioned Remainder Block "B", also being an easterly line of Middle Road, also known as Relocated State Route 83, as dedicated in Plat Volume 98, Pages 54 and 55 of Lorain County Records;

Course 2: Thence North 01 degree 46 minutes 22 seconds East along the westerly line of said Remainder Block "B" and the easterly line of said Middle Road, a distance of 28.00 feet to a point;

Course 3: Thence South 87 degrees 39 minutes 26 seconds East, a distance of 31.73 feet to a point on the westerly line of the aforementioned Sublot 1;

Course 4: thence South 01 degree 51 minutes 30 seconds West along the westerly line of said Sublot 1, a distance of 28.00 feet to the principal place of beginning, as described by Christopher J. Dempsey, Professional Surveyor No. 6914 of Dempsey Surveying Company on May 21, 2018.

The basis of bearings for this survey is South 87 degrees 39 minutes 26 seconds East as the centerline of Main Street, as evidenced by monuments found, and is the same bearing as found in Main Street Subdivision recorded in Plat Volume 92, Pages 1-3 of Lorain County Records.

MAP TO ACCOMPANY LEGAL DESCRIPTION MIDDLE ROAD ACCESS DRIVE EASEMENT

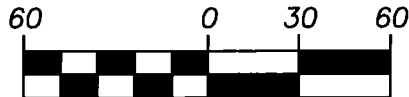
www.dempseysurvey.com

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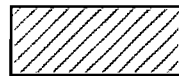


DEMPSEY / SURVEYING / COMPANY

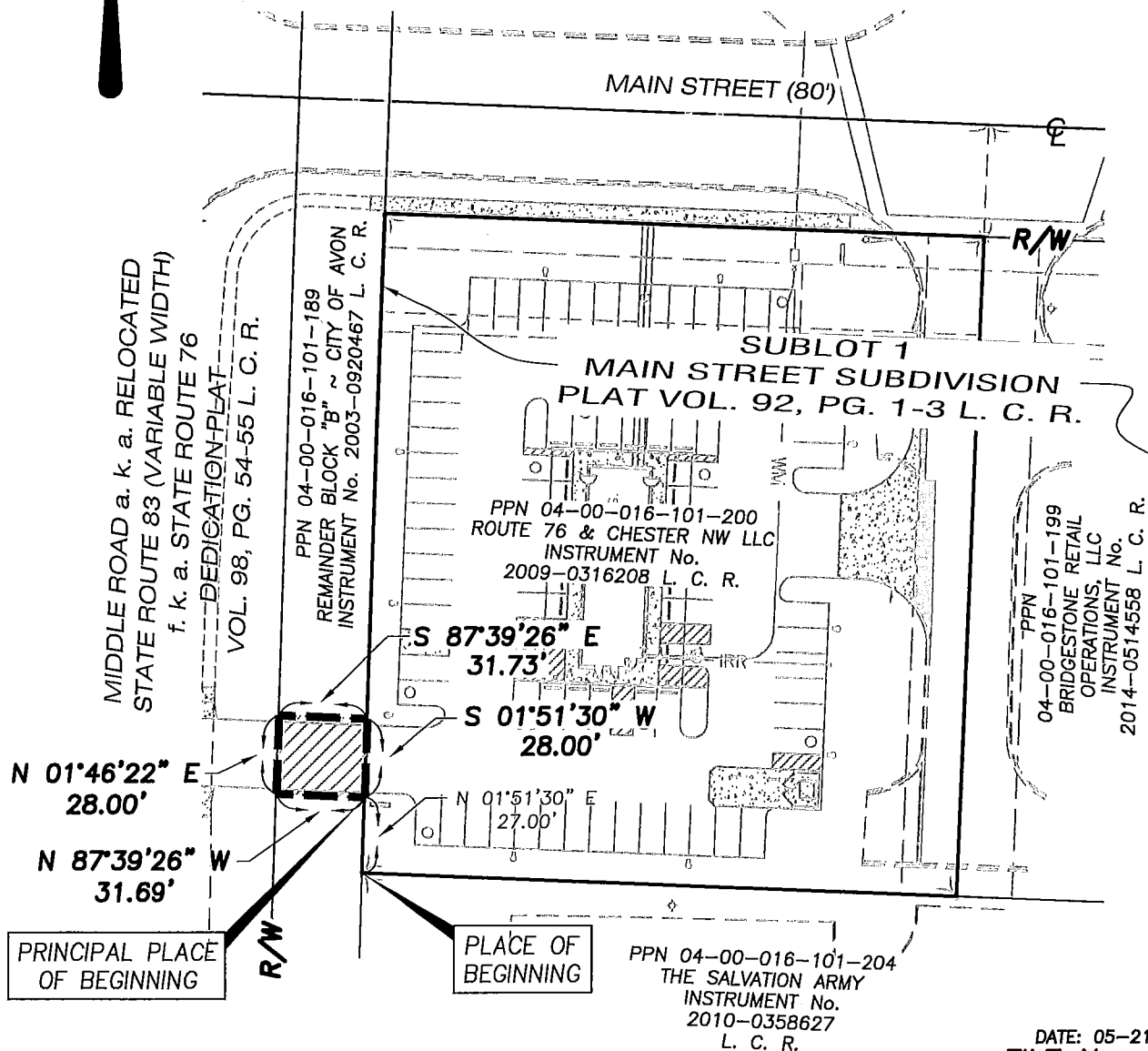
P 216/226/1130 12815 DETROIT AVENUE
F 216/226/1131 CLEVELAND, OH 44107-2835



SCALE: 1" = 60'



MIDDLE ROAD ACCESS
DRIVE EASEMENT



Drawing File: W:\9100-9199\9171\9171.dwg May 22, 2018 - 4:34pm

DATE: 05-21-2018
FILE No. 9171
© 2018 DEMPSEY SURVEYING CO.



LEGAL DESCRIPTION
Parking Disturbance Area

Situated in the City of Avon, County of Lorain, State of Ohio, known as being part of Original Avon Township Section Number 16, further known as being a part of Sublot 1 in Main Street Subdivision recorded in Plat Volume 92, Pages 1-3 of the Lorain County Records, said premises being more particularly bounded and described as follows:

Beginning on the southerly line of Main Street, 80 feet wide, at the northwesterly corner of said Sublot 1; thence South 01 degree 51 minutes 30 seconds West along the westerly line of Sublot 1, a distance of 42.00 feet to a point; thence South 87 Degrees 39 minutes 26 seconds East, a distance of 10.00 feet to the PRINCIPAL PLACE OF BEGINNING of the premises herein described;

Course 1: Thence North 02 degrees 20 minutes 34 seconds East, a distance of 30.00 feet to a point;

Course 2: Thence South 87 degrees 39 minutes 26 seconds East, a distance of 164.00 feet to a point;

Course 3: Thence South 02 degrees 20 minutes 34 seconds West, a distance of 30.00 feet to a point;

Course 4: thence North 87 degrees 39 minutes 26 seconds West, a distance of 164.00 feet to the principal place of beginning, as described by Christopher J. Dempsey, Professional Surveyor No. 6914 of Dempsey Surveying Company on May 21, 2018.

The basis of bearings for this survey is South 87 degrees 39 minutes 26 seconds East as the centerline of Main Street, as evidenced by monuments found, and is the same bearing as found in Main Street Subdivision recorded in Plat Volume 92, Pages 1-3 of Lorain County Records.

MAP TO ACCOMPANY LEGAL DESCRIPTION PARKING DISTURBANCE AREA

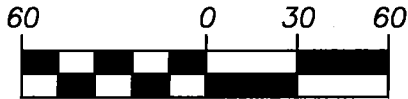
www.dempseysurvey.com

est 62

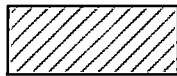


DEMPSEY / SURVEYING / COMPANY

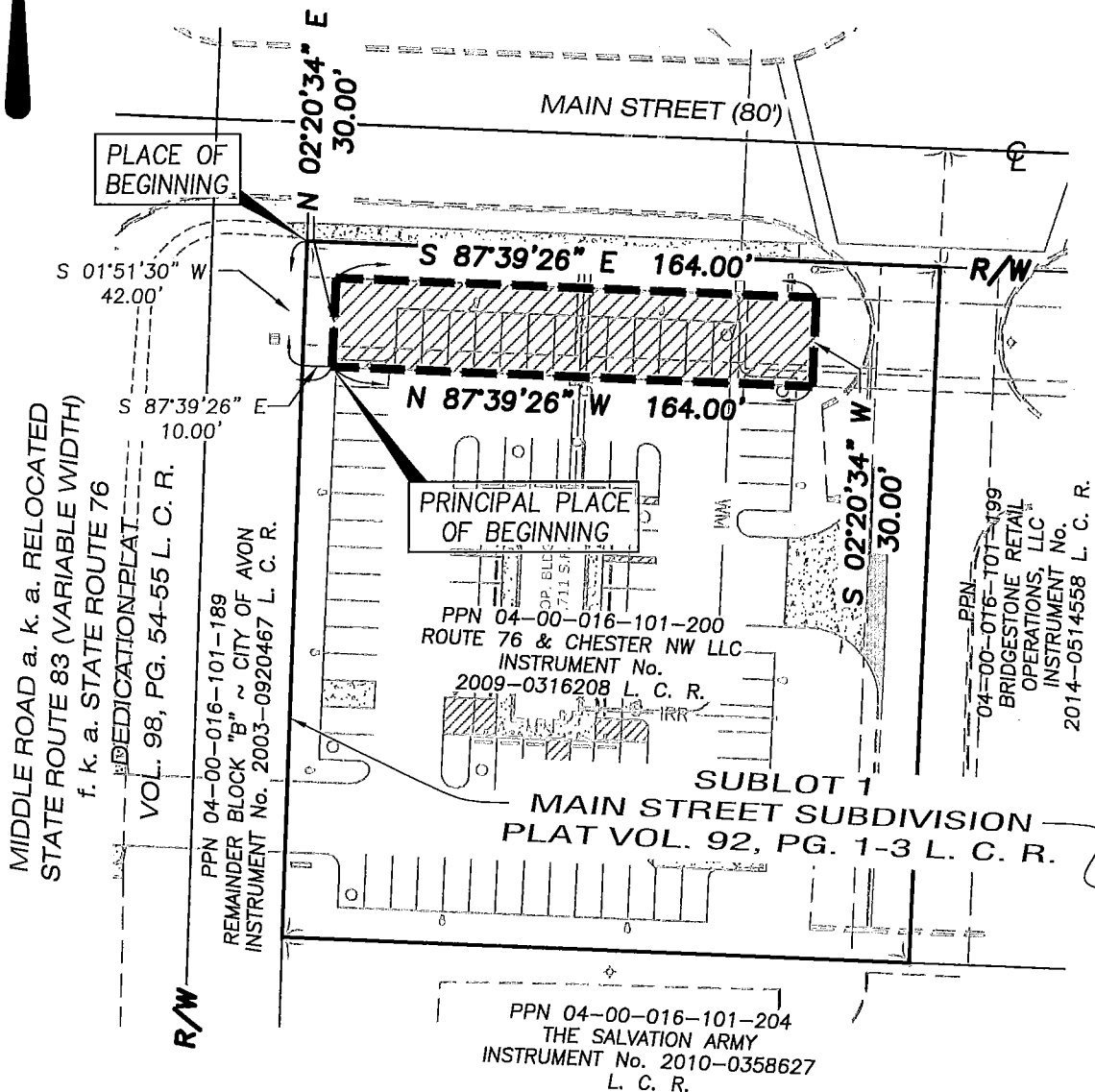
P 216/226/1130 12815 DETROIT AVENUE
F 216/226/1131 CLEVELAND, OH 44107-2835



SCALE: 1" = 60'



PARKING
DISTURBANCE AREA



Drawing File: W:\9100-9199\9171\9171.dwg May 22, 2018 - 4:34pm

DATE: 05-21-2018
FILE No. 9171
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