

Tabled  
3/19/15

VILLAGE OF SOUTHLEBANON, OHIO  
RESOLUTION NO. 2015- 10

**A RESOLUTION DETERMINING THE PURPOSE OF AND NECESSITY OF THE LITTLE MIAMI RIVER WATERLINE CROSSING PROJECT FOR PUBLIC USE, AND AUTHORIZING THE MAYOR TO GIVE NOTICE OF INTENT TO ACQUIRE, IF NECESSARY, AND DECLARING AN EMERGENCY**

WHEREAS, Ohio Rev. Code §§719.01 (M) provides that a municipal corporation may appropriate, enter upon and hold interests in real estate within its corporate limits, for providing, inter alia, a water supply for itself and its inhabitants by construction of water pipes and water works facilities, etc., and for the protection thereof; and,

WHEREAS, in accordance with Ohio Rev. Code §719.04, the legislative authority of a municipal corporation shall, whenever it is deemed necessary to appropriate property, pass a resolution declaring such intent, defining the purpose of the appropriation, and setting forth a pertinent description of the land and the estate or interest therein desired to be appropriated; and,

WHEREAS, in accordance with Ohio Rev. Code §719.05, immediately upon the passage of a resolution under section 719.04 of the Ohio Revised Code, the Mayor of a municipal corporation, after one reading, shall cause written notice to be given to the owner of, person in possession of, or person having an interest of record in, the property (or interests therein) sought to be appropriated, or to his authorized agent in accordance with said statute; and,

WHEREAS, Ohio Rev. Code § 163.021(A) provides as a prerequisite that no public agency shall appropriate real property except as necessary and for a public use; and,

WHEREAS, Ohio Rev. Code § 163.021(A) places the initial burden on the public agency to show by a preponderance of the evidence that the taking of private property and/or any interest therein is necessary and for a public use; however, in accordance with Ohio Rev. Code § 163.09 (B)(1)(a), a resolution of the public agency declaring the necessity for the appropriation creates a rebuttable presumption of the necessity for the appropriation if the public agency is not appropriating the property

because it is a blighted parcel or part of a blighted area or sum; and,

**WHEREAS**, the acquisition and/or appropriation of the property and/or interest therein for the said Little Miami River Waterline Crossing Project is for the purpose of upsizing the water main to provide an adequate connection in order to supply the same level of potable drinking water, adequate pressure and water supply services to the residents on the south side of the Little Miami River in the Village of South Lebanon, thereby protecting the public health, safety and welfare of such residents; and,

**WHEREAS**, the Council intends to appropriate any needed property interests to complete the said Project in the Village of South Lebanon, unless the Village is able to agree with the Owners as to an amount of reasonable compensation for such interests, the pertinent description of which, and the estate or interest in such, are identified in the attachments hereto and incorporated by reference herein.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the Village of South Lebanon, Ohio, at least two-thirds of all members elected thereto concurring:

**Section 1.** The Council does hereby determine the purpose of and necessity for the public health, safety and general welfare of the general public, to obtain or acquire a permanent utility easement as described in Exhibits A & B attached hereto, and a temporary construction easement as identified in Exhibits A & B attached hereto, for the following project that does not include a blighted parcel or part of a blighted area or slum:

**Little Miami River Waterline Crossing Project**

**Section 2.** The Council does hereby declare the intent to acquire through appropriation, if necessary, the property interests in the Village of South Lebanon, the pertinent description of which, and the estate or interest in such, are identified as a permanent utility easement as described in Exhibits A & B attached hereto, and a temporary construction easement as identified in Exhibits A & B attached hereto.

**Section 3.** Upon the passage of this Resolution, the Mayor shall cause

written notice to be given to the owner of, person in possession of, or person having an interest of record in, the property sought to be appropriated, or to his authorized agent, in accordance with law, should the Village and the Owners be unable to agree upon a reasonable compensation for the acquisition by the Village of such interests.

**Section 4.** That the Council is acting in its administrative capacity in passing this Resolution.

**Section 5.** That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

**Section 6.** That this Resolution is hereby declared to be an emergency measure in accordance with Ohio Rev. Code §731.30 for the immediate preservation of the public health, safety and/or general welfare.

**Section 7.** That it is found and determined that all formal actions of the Council concerning and relating to the adoption of this Resolution were passed in an open meeting of Council in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Adopted this 19th day of March, 2015.

Attest: \_\_\_\_\_  
Sharon Louallen, Fiscal Officer/Clerk      Lionel Harold Lawhorn, Mayor

Rules Suspended:	(if applicable)	Effective Date-
Vote -      Yeas		
___ Nays		
First Reading - / /2015		Effective Date- / /2015
Second Reading - / /2015		
Third Reading - / /2015		
Vote -      Yeas		
___ Nays		

Prepared by and approved as to form:

BRUCE A. McGARY  
VILLAGE SOLICITOR  
SOUTH LEBANON, OHIO

By: \_\_\_\_\_

Date: \_\_\_/\_\_\_/2015

### CERTIFICATE

The undersigned hereby certifies the foregoing is a true and correct copy of the foregoing Resolution adopted by the South Lebanon Village Council at a meeting held on the 19th day March, 2015, together with a true and correct copy of the minutes of said meeting to the extent pertinent to the consideration and adoption of said Resolution.

SIGNATURE: \_\_\_\_\_

NAME: Sharon Louallen

TITLE: Fiscal Officer

DATE: \_\_\_\_\_

[attach] Exhibits "A" & "B" – Permanent Utility Easement

[attach] Exhibits "A" & "B" – Temporary Construction Easement

**LEGAL DESCRIPTION  
EXHIBIT A**

BEING A PERMANENT UTILITY EASEMENT OVER, THROUGH, AND ACROSS A TRACT OF LAND OWNED BY GEORGE P. AND DOROTHY FINN AS DESCRIBED IN OFFICIAL RECORD 1188, PAGE 399 OF THE WARREN COUNTY DEED RECORDS, SITUATE IN SECTION 1, TOWN 4, RANGE 3, VILLAGE OF SOUTH LEBANON, WARREN COUNTY, OHIO AND BEING MORE FULLY DESCRIBED AS FOLLOWS:

Commencing for reference on the west right-of-way line of South Main Street and the north line of a tract of land owned by George P. & Dorothy Finn as describe in Official Record 1188, Page 399;

thence, South 05°-58'-21" West, 65.00 feet, along the west right-of-way line of South Main Street to a point;

thence, South 05°-59'-40" West, 3.80 feet, along the west right-of-way line of South Main Street to a point and being the principal place of beginning of the easement herein conveyed;

thence, South 05°-59'-40" West, 51.68 feet, along the west right-of-way line of South Main Street to a point;

thence, South 10°-26'-36" West, 33.72 feet, along the west right-of-way line of South Main Street to a point;

thence, South 51°-56'-58" West, 17.38 feet, along the west right-of-way line of South Main Street to a point;

thence, South 19°-59'-01" West, 16.44 feet, along the west right-of-way line of South Main Street to a point on the north line of the Little Miami River;

thence, North 68°-52'-27" West, 6.00 feet, along the north line of said Little Miami River to a point;

thence, North 18°-32'-32" East, 114.49 feet, to the principal place of beginning.

thence, South 18°-57'-42" West, 20.41 feet, along the west right-of-way line of South Main Street to the principal place of beginning.

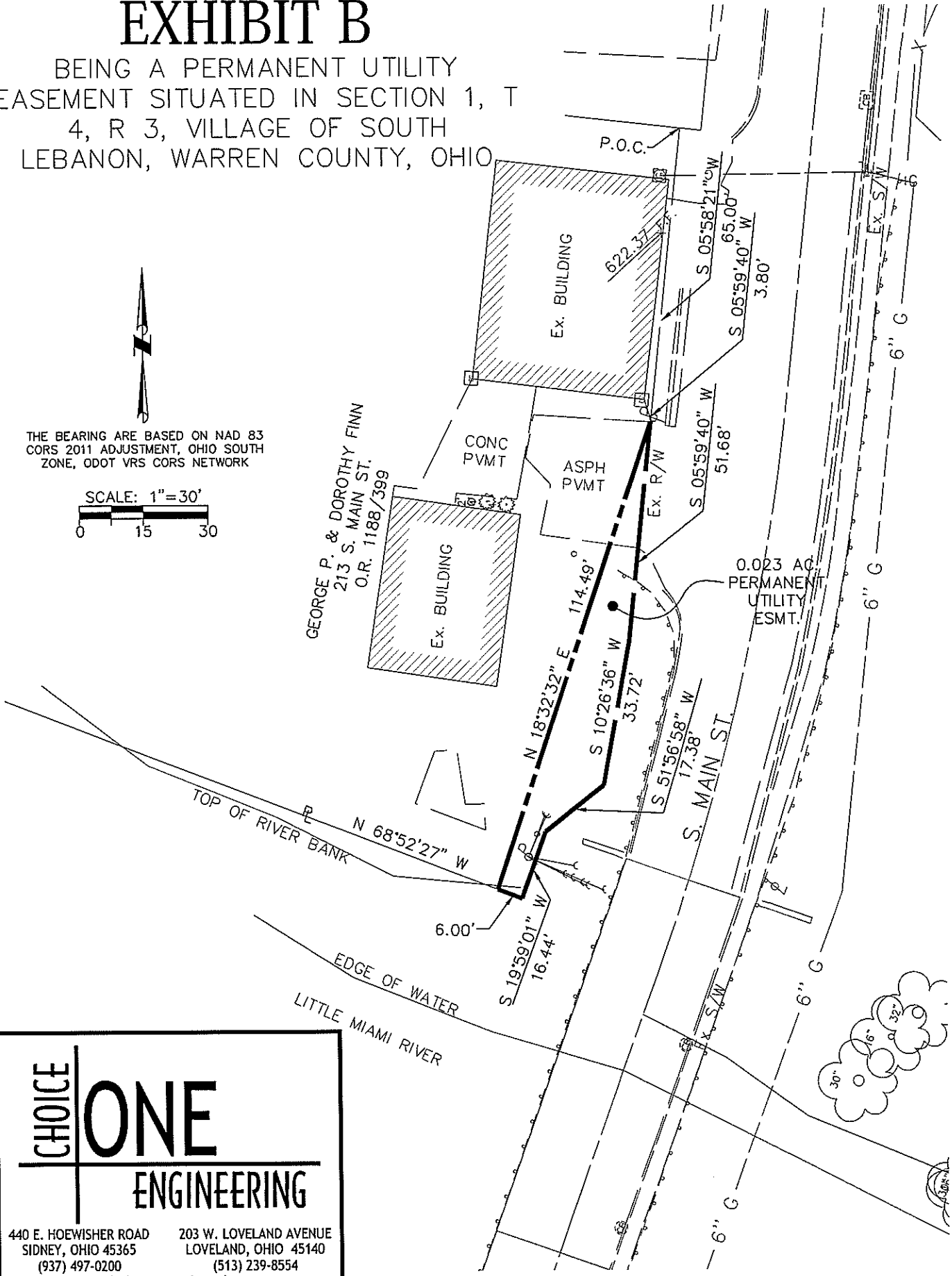
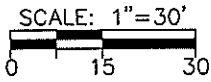
Containing 0.023 acres more or less with all being subject to any legal highway and easements of record.

# EXHIBIT B

BEING A PERMANENT UTILITY  
EASEMENT SITUATED IN SECTION 1, T  
4, R 3, VILLAGE OF SOUTH  
LEBANON, WARREN COUNTY, OHIO



THE BEARING ARE BASED ON NAD 83  
CORS 2011 ADJUSTMENT, OHIO SOUTH  
ZONE, ODOT VRS CORS NETWORK



**CHOICE ONE**  
ENGINEERING

440 E. HOEWISHER ROAD      203 W. LOVELAND AVENUE  
SIDNEY, OHIO 45365      LOVELAND, OHIO 45140  
(937) 497-0200      (513) 239-8554  
[www.choiceoneengineering.com](http://www.choiceoneengineering.com)

**LEGAL DESCRIPTION  
EXHIBIT A**

BEING A TEMPORARY CONSTRUCTION EASEMENT OVER, THROUGH, AND ACROSS A TRACT OF LAND OWNED BY GEORGE P. AND DOROTHY FINN AS DESCRIBED IN OFFICIAL RECORD 1188, PAGE 399 OF THE WARREN COUNTY DEED RECORDS, SITUATE IN SECTION 1, TOWN 4, RANGE 3, VILLAGE OF SOUTH LEBANON, WARREN COUNTY, OHIO AND BEING MORE FULLY DESCRIBED AS FOLLOWS:

Commencing for reference on the west right-of-way line of South Main Street and the north line of a tract of land owned by George P. & Dorothy Finn as describe in Official Record 1188, Page 399;

thence, South 05°-58'-21" West, 65.00 feet, along the west right-of-way line of South Main Street to a point;

thence, South 05°-59'-40" West, 3.80 feet, along the west right-of-way line of South Main Street to a point and being the principal place of beginning of the easement herein conveyed;

thence, South 18°-32'-32" West, 114.49 feet, to a point on the north line of the Little Miami River;

thence, North 68°-52'-27" West, 6.84 feet, along the north line of the Little Miami River to a point;

thence, North 10°-22'-00" East, 109.39 feet, to a point;

thence, South 86°-14'-33" East, 23.16 feet, to the principal place of beginning.

Containing 0.038 acres more or less with all being subject to any legal highway and easements of record.

The bearings are based on NAD 83 CORS 96 Adjustment, Ohio South Zone, ODOT VRS CORS Network.

The above description was prepared by Allen J. Bertke, Ohio Professional Surveyor Number 8629, based on a survey performed under his direction and dated March 3, 2015. For a pictorial example, see attached Exhibit "B".

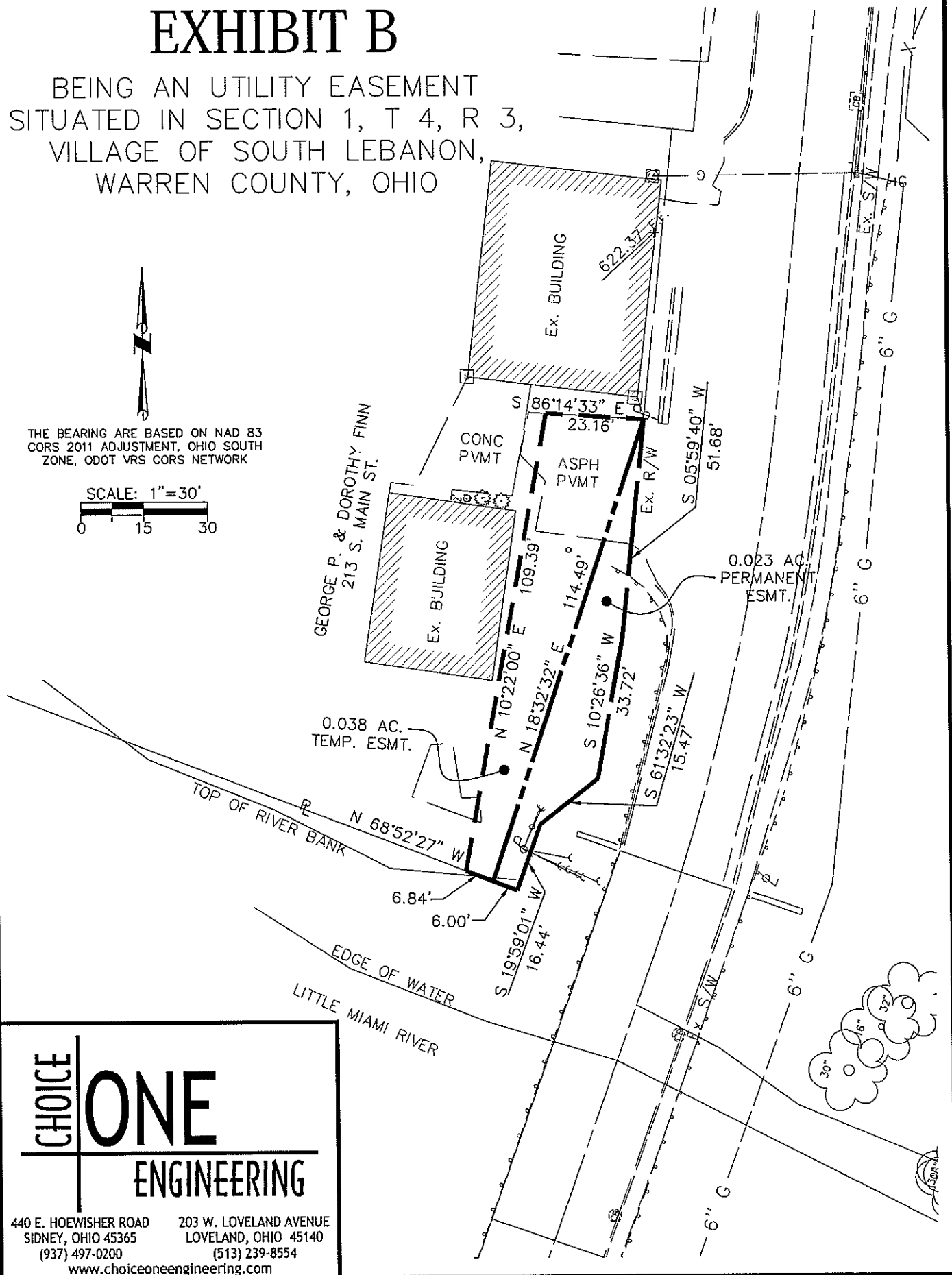
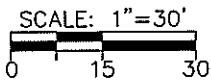


# EXHIBIT B

BEING AN UTILITY EASEMENT  
SITUATED IN SECTION 1, T 4, R 3,  
VILLAGE OF SOUTH LEBANON,  
WARREN COUNTY, OHIO



THE BEARING ARE BASED ON NAD 83  
CORS 2011 ADJUSTMENT, OHIO SOUTH  
ZONE, ODOT VRS CORS NETWORK



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