

ORDINANCE NO. 86-24

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A REVOCABLE USE PERMIT FOR 36160 DETROIT ROAD, PERMANENT PARCEL NO. 04-00-015-101-128, TO OCCUPY A PORTION OF THE CITY RIGHT-OF-WAY ALONG A SECTION OF DETROIT ROAD (NORTH SIDE) A WIDTH OF APPROXIMATELY 113.40 FEET AND DECLARING AN EMERGENCY

WHEREAS, pursuant to Ohio Revised Code Section 5515.01, the City of Avon can grant permission to a private owner to use or occupy a portion of the Right of Way within the municipality; and

WHEREAS, the entity Vic Kasner Avon Be, LLC owns property at 36160 Detroit Road in the City of Avon upon which is erected various landscaping and signage items including a decorative fence, landscape bed, landscape boulders, ground level lighting, sprinkler system, various shrubs and plants, and a private sign on the decorative fence which notes the name of the adjacent shopping plaza "French Creek" all of which currently encroach, and have encroached for some time, into the Detroit Road (State Route 254) Right of Way; and

WHEREAS, the City of Avon, in conjunction with the Ohio Department of Transportation (ODOT), plan to make improvements to the Detroit Road and Center Road (State Route 83) intersection and adjacent corridors across the Detroit Road frontage of the above noted property, Permanent Parcel Number 04-00-015-101-128 as part of the State Route 83 & State Route 254 Intersection Improvement project, also known as LOR-SR 254-05.55 & PID No. 111283; and

WHEREAS, to permit the entity Vic Kasner Avon Be, LLC to continue to maintain the noted landscape, signage, lighting, and fencing along Detroit Road, the City must enter into a Revocable Use Permit pursuant to ORC Section 5515.01; and

WHEREAS, Council has reviewed the proposed Revocable Use Permit and finds it to be in compliance with all the provisions of ORC Section 5515.01 and determines it to be in the best interests of the health, safety, and welfare of the citizens of Avon that said permit be granted.

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

Section 1 - That the Mayor is hereby authorized to execute a Revocable Use Permit to authorize the entity Vic Kasner Avon Be, LLC, its successors and assigns, as the owner of Permanent Parcel No. 04-00-015-101-128 to occupy a portion of the City Right-of-Way at 36160 Detroit Road, a width of approximately 113.40 feet. A copy of the Revocable Use Permit is marked Exhibit A, attached hereto, and incorporated herein by this reference.

Section 2 - That the Clerk of Council is hereby directed to file the Revocable Use Permit with the Lorain County Recorder.

Section 3 - That is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all

deliberations of this Council and of any of its committees which resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4 - That this Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public, health, safety, and welfare of the citizens of the City of Avon, Ohio, the immediate emergency being the necessity to enter into a revocable use permit with the owner of 36160 Detroit Road to occupy a part of the Right-of-Way in the City of Avon, Ohio along an approximately 113.40 feet section of Detroit Road and running the partial width of PPN 04-00-015-101-128; therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: September 23, 2024 DATE SIGNED: September 23, 2024

By: Brian Fischer
Brian Fischer, Council President

DATE APPROVED BY THE MAYOR: September 24, 2024

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: September 25, 2024
Electronically and at City Hall as
Provided by Council

Prepared By:

John A. Gasior, Esq.
Law Director

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.86-24, passed by the Council of said City on September 23, 2024.

IN WITNESS WHEREOF, I have on this 24th day of September 2024, affixed my signature and official seal.

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

REVOCABLE USE PERMIT

**CITY OF AVON
LORAIN COUNTY, OHIO**

And

**VIC KASNER AVON BE LLC.
36160 DETROIT ROAD
AVON, OH 44011
PP# 04-00-015-101-128**

Under the provisions of Section §§ 5515.01 of the Ohio Revised Code, permission is hereby granted to use or occupy a part of the Right-of-Way in the City of Avon, Ohio along a section of the northside of Detroit Road (S.R. 254) and running along the southerly property line of PPN 04-00-015-101-128, approximately 103.48 feet arc length. The property is currently owned by Vic Kasner Avon Be LLC. The permitted encroachment is solely for the following described objects; 2 existing decorative fences, 1 existing private sign "French Creek", 1 existing landscaping boulder, 1 existing spotlight, 11 existing shrubs, 1 existing sprinkler head, and 2 existing landscaping bed areas to remain in the public right of way.

The revocable use area is identified in the legal description and survey map, both of which are attached hereto and incorporated herein by this reference. (Exhibits A and B, respectively).

This revocable use permit is hereby granted with the understanding that the property owner will abide by all the conditions set forth in Ohio Revised Code Section 5515.01.

The granting of this permit shall not be construed as an abridgement or waiver of any rights which the **CITY OF AVON** has in exercising its jurisdictional powers and this permit shall be binding upon the **CITY OF AVON** and the permittee, his/her/its heirs, successors and assigns.

The **CITY OF AVON**, at any time and for any reason, may order the removal of the encroachments, i.e., 2 existing decorative fences, 1 existing private sign "French Creek", 1 existing landscaping boulder, 1 existing spotlight, 11 existing shrubs, 1 existing sprinkler head, and 2 existing landscaping bed areas, that is the subject of this revocable use permit. If for any reason the **CITY OF AVON** or its duly authorized representative(s) deems it necessary to order the removal, reconstruction, relocation or repair of the encroachments, it shall be promptly undertaken at the sole expense of the owners (permittees) thereof. Failure on the part of the permittee to conform to the provisions of this permit will be cause for suspension, revocation or annulment of this permit, as the **CITY OF AVON** deems necessary, and the City may remove the encroachment at the permittee's sole expense. The permittee agrees to indemnify and save the **CITY OF AVON** harmless from any claims by any person for personal injury or damages allegedly arising from the existence or maintenance of the encroachment.

No alterations may be made to the encroachments except that the permittee may perform such routine maintenance as is required to keep the encroachment in good condition. If the encroachment is removed or destroyed, no new facilities shall be permitted to encroach on City of Avon street right-of-way without a new express, written consent of the **CITY OF AVON**. The encroachment for which this permit is issued shall be subject to all permits required by the **CITY OF AVON**. A photograph of the existing encroachment is attached to and incorporated into this permit as Exhibit C.

Any requests relative to the encroachment shall be made in writing to the following:

CITY OF AVON
Law Director
36815 Detroit Road
Avon, Ohio 44011

Dated at Philadelphia, PA this 6 day of SEPTEMBER, 2024.

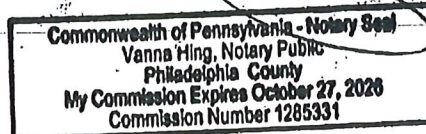
BY: [Signature] Sgt. KASNER (MEMBER)
VIC KASNER AVON BE LLC.

Pennsylvania
STATE OF ~~OHIO~~)
Philadelphia) ss.
LORAIN COUNTY)

BEFORE ME, a Notary Public, in and for said County and State, personally appeared the above-named who acknowledges the foregoing instrument.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Philadelphia, PA this 6th day of September, 2024.

[Signature]
Notary Public



Accepted this 24th day of September, 2024.

BY: BRYAN K. JENSEN, MAYOR
CITY OF AVON

STATE OF OHIO)
) ss.
LORAIN COUNTY)

BEFORE ME, a Notary Public, in and for said County and State, personally appeared the above-named **City of Avon** by and through its duly authorized **Mayor, Bryan K. Jensen**, the Grantor, who acknowledge that he did sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Avon, Ohio this 24 day of September, 2024.



Rose Frances Seighman

NOTARY PUBLIC
STATE OF OHIO

**My Commission Expires
August 2, 2025**

Rose Frances Sughran
Notary Public

Instrument Prepared by:
John A. Gasior
Law Director, City of Avon
36815 Detroit Road
Avon, Ohio 44011

EXHIBIT 'A'

RX SA-RP

Page 1 of 5

Ver. Date 07/21/2022

PID #111283

**PARCEL #1
SPECIAL AGREEMENT - REVOCABLE PERMIT**

**CITY OF AVON
LORAIN COUNTY, OHIO**

And

**VIC KASNER AVON BE LLC.
36160 DETROIT ROAD
AVON, OH 44011
PP# 04-00-015-101-128**

A Special Agreement – Revocable Permit to Occupy the Right-of-Way to the owner of 36160 Detroit Road – S.R. 254 (Vic Kasner Avon Be LLC.) for the 2 existing decorative fences, 1 existing private sign “French Creek”, 1 existing landscaping boulder, 1 existing spotlight, 11 existing shrubs, 1 existing sprinkler head, and 2 existing landscaping bed areas that has encroached on the public right-of-way.

[Surveyor’s description of the premises follows]

SPECIAL AGREEMENT

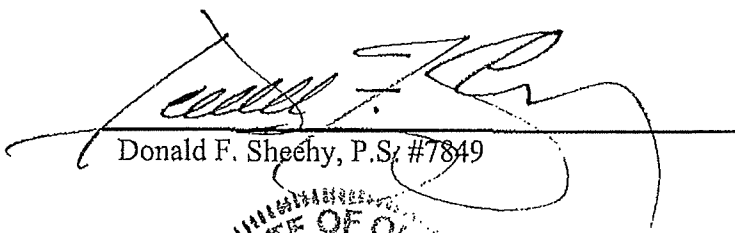
Situated in the City of Avon, County of Lorain, State of Ohio and known as a part of Original Avon Township, Section 15, Township 7 North, Range 16 West and being a **0.0556 acres (2,423 sq.ft.) Special Agreement** for the 2 existing decorative fences, 1 existing private sign “French Creek”, 1 existing landscaping boulder, 1 existing spotlight, 11 existing shrubs, 1 existing sprinkler head, and 2 existing landscaping bed areas located within a 1.290 acre (deed) parcel of land as conveyed to Vic Kasner Avon Be LLC. by deed dated January 25, 2018 as recorded in Instrument #2018-0659535 (PP #04-00-015-101-128) of Lorain County Deed Records and being a parcel of land lying on the left side of the centerline and within the right-of-way of Detroit Road – S.R. 254 (width varies) and further bounded and described as follows;

Beginning at the angle point of intersection of the Southeasterly line of said Vic Kasner Avon Be LLC. land (PP #04-00-015-101-128) with the existing Northwesterly right-of-way line of said Detroit Road – S.R. 254 and the Principal Place of Beginning of the premises herein intended to be described;

- COURSE I** Thence **North 00 degrees 08 minutes 17 seconds West**, along said existing Westerly right-of-way line of Detroit Road – S.R. 254, a distance of **20.37 feet** to a point on the Southerly line of said City of Avon's land (PP #04-00-015-101-128);
- COURSE II** Thence Northeasterly, along the existing Northwesterly right-of-way arc of a curve deflecting to the right, **103.48 feet**, said curve having a **radius of 1,514.67 feet**, a **delta of 03 degrees 46 minutes 58 seconds** and a **chord which bears North 62 degrees 44 minutes 19 seconds East**, a distance of **103.46 feet** to a point;
- COURSE III** Thence **South 25 degree 18 minutes 15 seconds East**, a distance of **19.50 feet** to a point;
- COURSE IV** Thence **South 59 degrees 57 minutes 11 seconds West**, a distance of **97.40 feet** to a point;
- COURSE V** Thence **South 85 degree 06 minutes 51 seconds West**, a distance of **16.00 feet** to a corner on the existing Northwesterly right-of-way line and being the **Principal Place of Beginning** and containing **0.0556 acres (2,423 sq.ft.)** of land, more or less which is part of Lorain County Auditor's Permanent Parcel #04-00-015-101-128;

Basis of Bearing for this legal description is **North 58 degrees 18 minutes 25 seconds East** as the centerline of Detroit Road – S.R. 254 (width varies) as evidenced by monuments found and is the same as calculated and reproduced from the Ohio State Plane Coordinates System – North Zone by ties to the O.D.O.T. VRS Network and are used to indicate angles only.

7.21.2022
Date:


Donald F. Sheehy, P.S. #7849

File #19415 PPN 04-00-015-101-128
Special Agreement – Revocable Permit
EXHIBIT-A

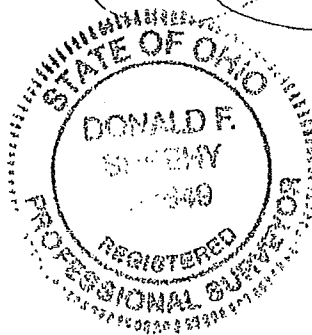


Exhibit C
Special Agreement - Revocable Permit

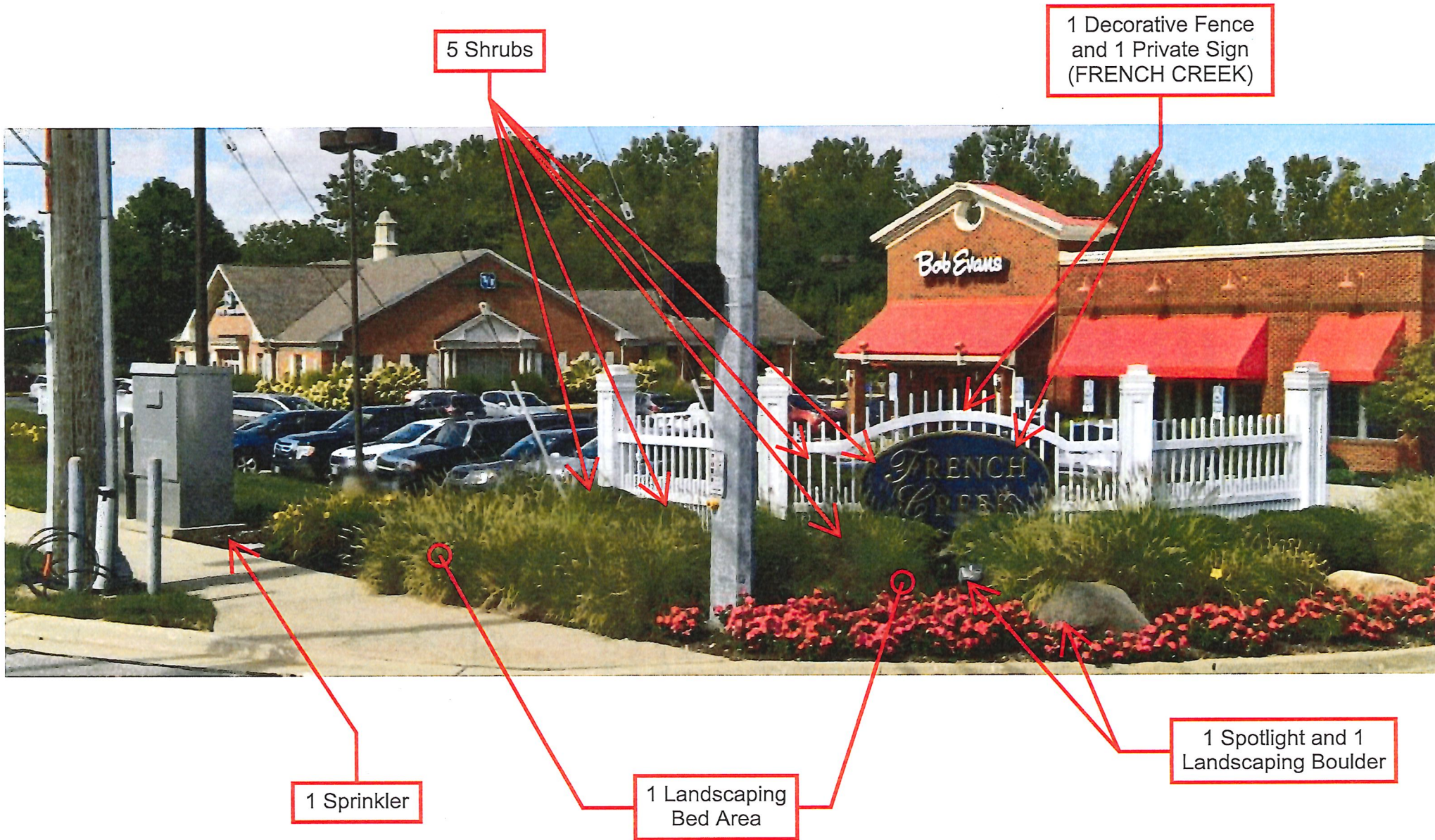
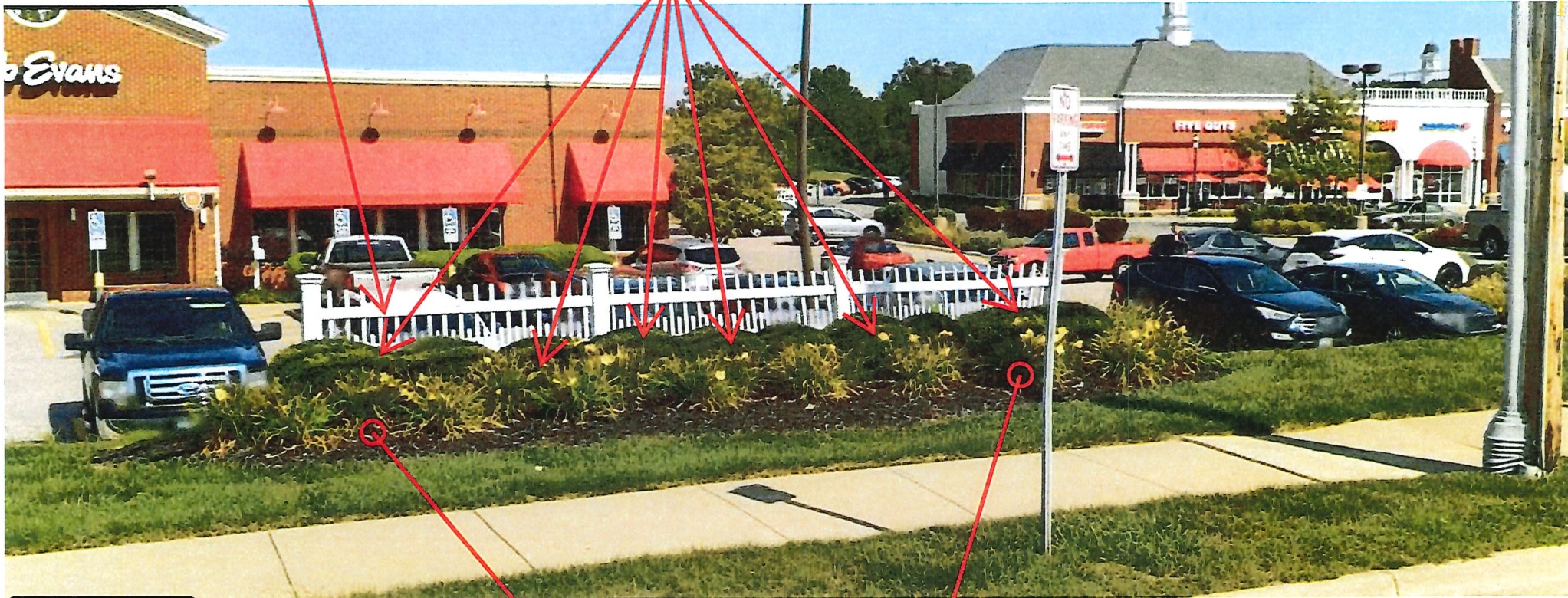


Exhibit C
Special Agreement - Revocable Permit

1 Decorative Fence

6 Shrubs



1 Landscaping
Bed Area

2024-0028413

ORDINANCE Fee:\$90.00 Page 1 of 9
Recorded: 10/2/2024 at 12:25 PM

Receipt: T20240020418

Lorain County Recorder Mike Doran



ORDINANCE NO. 86-24

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A REVOCABLE USE PERMIT FOR 36160 DETROIT ROAD, PERMANENT PARCEL NO. 04-00-015-101-128, TO OCCUPY A PORTION OF THE CITY RIGHT-OF-WAY ALONG A SECTION OF DETROIT ROAD (NORTH SIDE) A WIDTH OF APPROXIMATELY 113.40 FEET AND DECLARING AN EMERGENCY

WHEREAS, pursuant to Ohio Revised Code Section 5515.01, the City of Avon can grant permission to a private owner to use or occupy a portion of the Right of Way within the municipality; and

WHEREAS, the entity Vic Kasner Avon Be, LLC owns property at 36160 Detroit Road in the City of Avon upon which is erected various landscaping and signage items including a decorative fence, landscape bed, landscape boulders, ground level lighting, sprinkler system, various shrubs and plants, and a private sign on the decorative fence which notes the name of the adjacent shopping plaza "French Creek" all of which currently encroach, and have encroached for some time, into the Detroit Road (State Route 254) Right of Way; and

WHEREAS, the City of Avon, in conjunction with the Ohio Department of Transportation (ODOT), plan to make improvements to the Detroit Road and Center Road (State Route 83) intersection and adjacent corridors across the Detroit Road frontage of the above noted property, Permanent Parcel Number 04-00-015-101-128 as part of the State Route 83 & State Route 254 Intersection Improvement project, also known as LOR-SR 254-05.55 & PID No. 111283; and

WHEREAS, to permit the entity Vic Kasner Avon Be, LLC to continue to maintain the noted landscape, signage, lighting, and fencing along Detroit Road, the City must enter into a Revocable Use Permit pursuant to ORC Section 5515.01; and

WHEREAS, Council has reviewed the proposed Revocable Use Permit and finds it to be in compliance with all the provisions of ORC Section 5515.01 and determines it to be in the best interests of the health, safety, and welfare of the citizens of Avon that said permit be granted.

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

Section 1 - That the Mayor is hereby authorized to execute a Revocable Use Permit to authorize the entity Vic Kasner Avon Be, LLC, its successors and assigns, as the owner of Permanent Parcel No. 04-00-015-101-128 to occupy a portion of the City Right-of-Way at 36160 Detroit Road, a width of approximately 113.40 feet. A copy of the Revocable Use Permit is marked Exhibit A, attached hereto, and incorporated herein by this reference.

Section 2 - That the Clerk of Council is hereby directed to file the Revocable Use Permit with the Lorain County Recorder.

Section 3 - That is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all

deliberations of this Council and of any of its committees which resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4 - That this Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public, health, safety, and welfare of the citizens of the City of Avon, Ohio, the immediate emergency being the necessity to enter into a revocable use permit with the owner of 36160 Detroit Road to occupy a part of the Right-of-Way in the City of Avon, Ohio along an approximately 113.40 feet section of Detroit Road and running the partial width of PPN 04-00-015-101-128; therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: September 23, 2024 DATE SIGNED: September 23, 2024

By: Brian Fischer
Brian Fischer, Council President

DATE APPROVED BY THE MAYOR: September 24, 2024

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: September 25, 2024
Electronically and at City Hall as
Provided by Council

Prepared By:

John A. Gasior, Esq.
Law Director

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.86-24, passed by the Council of said City on September 23, 2024.

IN WITNESS WHEREOF, I have on this 24th day of September 2024, affixed my signature and official seal.

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

REVOCABLE USE PERMIT

**CITY OF AVON
LORAIN COUNTY, OHIO**

And

**VIC KASNER AVON BE LLC.
36160 DETROIT ROAD
AVON, OH 44011
PP# 04-00-015-101-128**

Under the provisions of Section §§ 5515.01 of the Ohio Revised Code, permission is hereby granted to use or occupy a part of the Right-of-Way in the City of Avon, Ohio along a section of the northside of Detroit Road (S.R. 254) and running along the southerly property line of PPN 04-00-015-101-128, approximately 103.48 feet arc length. The property is currently owned by Vic Kasner Avon Be LLC. The permitted encroachment is solely for the following described objects; 2 existing decorative fences, 1 existing private sign "French Creek", 1 existing landscaping boulder, 1 existing spotlight, 11 existing shrubs, 1 existing sprinkler head, and 2 existing landscaping bed areas to remain in the public right of way.

The revocable use area is identified in the legal description and survey map, both of which are attached hereto and incorporated herein by this reference. (Exhibits A and B, respectively).

This revocable use permit is hereby granted with the understanding that the property owner will abide by all the conditions set forth in Ohio Revised Code Section 5515.01.

The granting of this permit shall not be construed as an abridgement or waiver of any rights which the **CITY OF AVON** has in exercising its jurisdictional powers and this permit shall be binding upon the **CITY OF AVON** and the permittee, his/her/its heirs, successors and assigns.

The **CITY OF AVON**, at any time and for any reason, may order the removal of the encroachments, i.e., 2 existing decorative fences, 1 existing private sign "French Creek", 1 existing landscaping boulder, 1 existing spotlight, 11 existing shrubs, 1 existing sprinkler head, and 2 existing landscaping bed areas, that is the subject of this revocable use permit. If for any reason the **CITY OF AVON** or its duly authorized representative(s) deems it necessary to order the removal, reconstruction, relocation or repair of the encroachments, it shall be promptly undertaken at the sole expense of the owners (permittees) thereof. Failure on the part of the permittee to conform to the provisions of this permit will be cause for suspension, revocation or annulment of this permit, as the **CITY OF AVON** deems necessary, and the City may remove the encroachment at the permittee's sole expense. The permittee agrees to indemnify and save the **CITY OF AVON** harmless from any claims by any person for personal injury or damages allegedly arising from the existence or maintenance of the encroachment.

No alterations may be made to the encroachments except that the permittee may perform such routine maintenance as is required to keep the encroachment in good condition. If the encroachment is removed or destroyed, no new facilities shall be permitted to encroach on City of Avon street right-of-way without a new express, written consent of the **CITY OF AVON**. The encroachment for which this permit is issued shall be subject to all permits required by the **CITY OF AVON**. A photograph of the existing encroachment is attached to and incorporated into this permit as Exhibit C.

Any requests relative to the encroachment shall be made in writing to the following:

CITY OF AVON
Law Director
36815 Detroit Road
Avon, Ohio 44011

Dated at ~~Avon, Ohio~~ ^{Philadelphia, PA} this 6 day of SEPTEMBER, 2024.

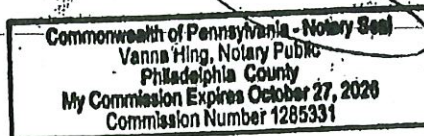
BY: [Signature] Sgt. KASNER (MEMBER)
VIC KASNER AVON BE LLC.

~~STATE OF OHIO~~ ^{Pennsylvania}
~~Philadelphia~~ ^{Philadelphia}) ss.
~~LORAIN COUNTY~~)

BEFORE ME, a Notary Public, in and for said County and State, personally appeared the above-named who acknowledges the foregoing instrument.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Philadelphia, PA Ohio this 6th day of September, 2024.

[Signature]
Notary Public



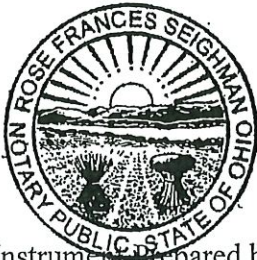
Accepted this 24th day of September, 2024.


BY: **BRYAN K. JENSEN, MAYOR**
CITY OF AVON

STATE OF OHIO)
) ss.
LORAIN COUNTY)

BEFORE ME, a Notary Public, in and for said County and State, personally appeared the above-named **City of Avon** by and through its duly authorized **Mayor, Bryan K. Jensen**, the Grantor, who acknowledge that he did sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Avon, Ohio this 24 day of September, 2024.



Rose Frances Seighman

NOTARY PUBLIC
STATE OF OHIO

My Commission Expires
August 2, 2025


Notary Public

Instrument Prepared by:
John A. Gasior
Law Director, City of Avon
36815 Detroit Road
Avon, Ohio 44011

EXHIBIT 'A'

RX SA-RP

Page 1 of 5

Ver. Date 07/21/2022

PID #111283

**PARCEL #1
SPECIAL AGREEMENT - REVOCABLE PERMIT**

**CITY OF AVON
LORAIN COUNTY, OHIO**

And

**VIC KASNER AVON BE LLC.
36160 DETROIT ROAD
AVON, OH 44011
PP# 04-00-015-101-128**

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[Surveyor's description of the premises follows]

SPECIAL AGREEMENT

Situated in the City of Avon, County of Lorain, State of Ohio and known as a part of Original Avon Township, Section 15, Township 7 North, Range 16 West and being a **0.0556 acres (2,423 sq.ft.) Special Agreement** for the 2 existing decorative fences, 1 existing private sign “French Creek”, 1 existing landscaping boulder, 1 existing spotlight, 11 existing shrubs, 1 existing sprinkler head, and 2 existing landscaping bed areas located within a 1.290 acre (deed) parcel of land as conveyed to Vic Kasner Avon Be LLC. by deed dated January 25, 2018 as recorded in Instrument #2018-0659535 (PP #04-00-015-101-128) of Lorain County Deed Records and being a parcel of land lying on the left side of the centerline and within the right-of-way of Detroit Road – S.R. 254 (width varies) and further bounded and described as follows;

Beginning at the angle point of intersection of the Southeasterly line of said Vic Kasner Avon Be LLC. land (PP #04-00-015-101-128) with the existing Northwesterly right-of-way line of said Detroit Road – S.R. 254 and the Principal Place of Beginning of the premises herein intended to be described;

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- COURSE III** Thence South 25 degree 18 minutes 15 seconds East, a distance of 19.50 feet to a point;
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- COURSE V** Thence South 85 degree 06 minutes 51 seconds West, a distance of 16.00 feet to a corner on the existing Northwesterly right-of-way line and being the **Principal Place of Beginning** and containing 0.0556 acres (2,423 sq.ft.) of land, more or less which is part of Lorain County Auditor's Permanent Parcel #04-00-015-101-128;

Basis of Bearing for this legal description is North 58 degrees 18 minutes 25 seconds East as the centerline of Detroit Road – S.R. 254 (width varies) as evidenced by monuments found and is the same as calculated and reproduced from the Ohio State Plane Coordinates System – North Zone by ties to the O.D.O.T. VRS Network and are used to indicate angles only.

7.21.2022

Date:

Donald F. Sheehy, P.S. #7849

File #19415 PPN 04-00-015-101-128
Special Agreement – Revocable Permit
EXHIBIT-A

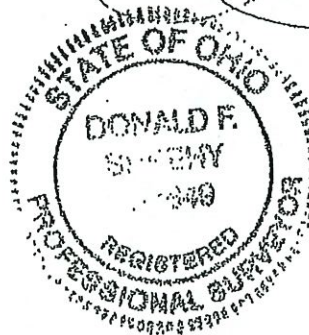
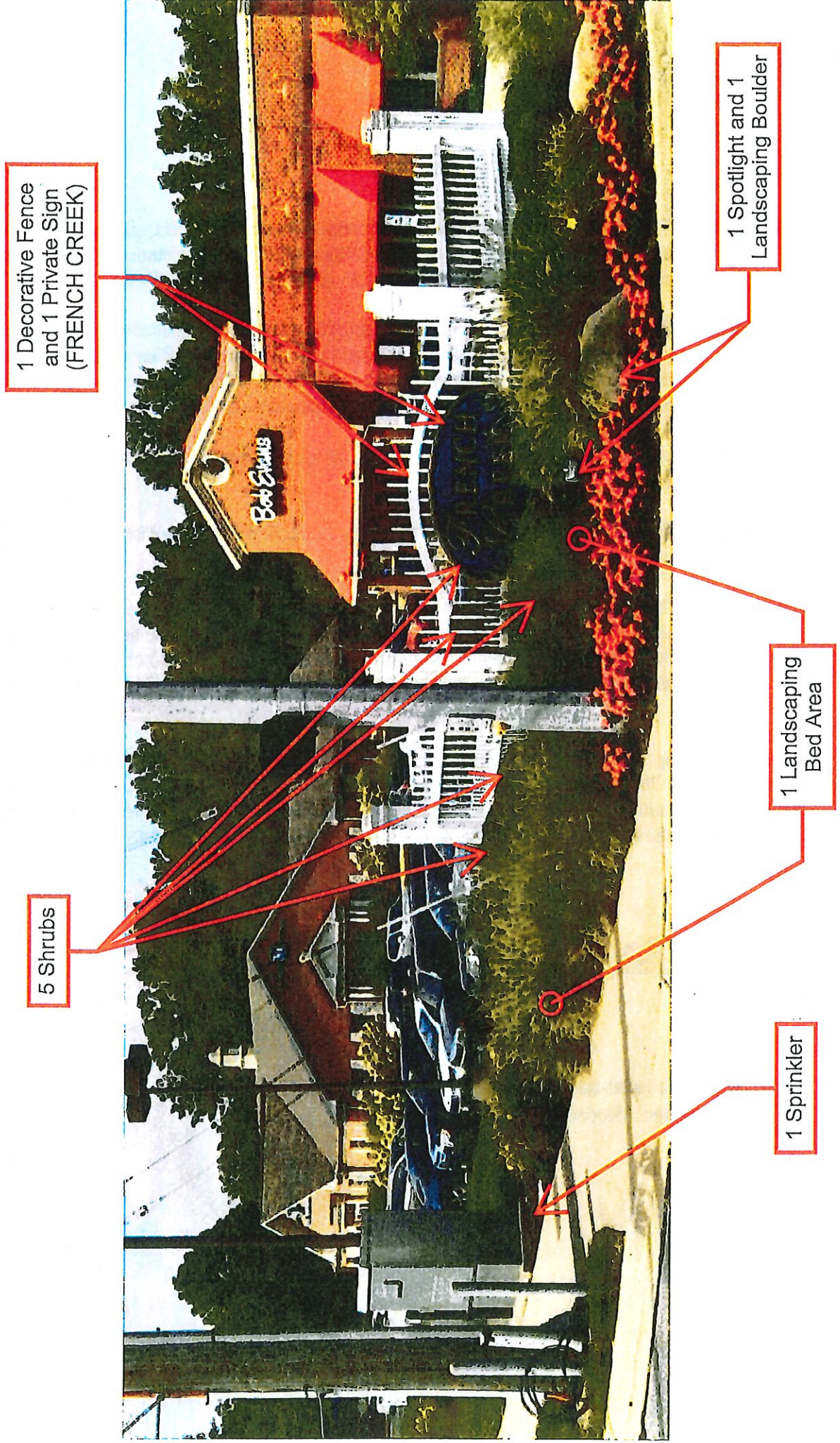


Exhibit C
Special Agreement - Revocable Permit



1 Decorative Fence
and 1 Private Sign
(FRENCH CREEK)

5 Shrubs

1 Sprinkler

1 Landscaping
Bed Area

1 Spotlight and 1
Landscaping Boulder

Exhibit C
Special Agreement - Revocable Permit

