

ORDINANCE NO. 146-23

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH OC-SMA LLC, OWNER OF MEDINA SUPPLY, TO ALLOW FOR PUBLIC PARKING ON PERMANENT PARCEL NOS. 028-19D-01-021 AND 028-19D-01-018, AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEDINA, OHIO:

- SEC. 1:** That the Mayor is hereby authorized and directed to enter into an Agreement with OC-SMA LLC, owner of Medina Supply located at 230 East Smith Rd., aka Shelly Materials, to allow for public parking on Permanent Parcel Nos. 028-19D-01-021 and 028-19D-01-018.
- SEC. 2:** That in accordance with Ohio Revised Code §5705.41(D), at the time that the contract or order was made and at the time of execution of the Finance Director's certificate, sufficient funds were available or in the process of collection, to the credit of a proper fund, properly appropriated and free from any previous encumbrance.
- SEC. 3:** That a copy of the Agreement is marked Exhibit A, attached hereto and incorporated herein.
- SEC. 4:** That the funds to cover the agreement, in the amount of \$7,221.00 are available in Account Number 001-0410-52215 to be paid to RT Fence.
- SEC. 5:** That it 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 any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law.
- SEC. 6:** That this Ordinance shall be considered an emergency measure necessary for the immediate preservation of the public peace, health and safety, and for the further reason that the parking can be utilized immediately; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and signature by the Mayor.

PASSED: September 11, 2023

SIGNED: John M. Coyne, III
President of Council

ATTEST: Kathy Patton
Clerk of Council

APPROVED: September 12, 2023

SIGNED: Dennis Hanwell
Mayor

AGREEMENT

ORD. 146-23
Exh. A

This Agreement is hereby entered into this 12th day of September, 2023, by and between the **CITY OF MEDINA**, an Ohio Municipal Corporation, located at 132 North Elmwood Avenue, Medina, Ohio 44256, (hereinafter referred to as "the City") and **OC-SMA LLC**, an Ohio Limited Liability Company, now known as Shelly Materials, Inc., an Ohio Corporation located at 2301 Progress Street, Dover, OH 44622 (hereinafter referred to as "Shelly Materials, Inc.").

WITNESSETH:

WHEREAS, Shelly Materials, Inc. is the owner of property located on South Broadway Street, Medina, Ohio, known as Permanent Parcel No. 028-19D-01-021 and property located at 230 East Smith Road, Medina, Ohio, known as Permanent Parcel No 028-19D-01-018; and

WHEREAS, the City of Medina desires to use at grade hard surfaces for a parking lot area located on Permanent Parcel No. 028-19D-01-021 and Permanent Parcel No 028-19D-01-018, (hereinafter referred to as "Parking Lot"); and

WHEREAS, the existing 7,200 sq. ft. building located on Permanent Parcel No. 028-19D-01-021, (hereinafter referred to as "Building") will not be accessed, utilized, or maintained by the City of Medina; and

WHEREAS, the City agrees to maintain the Parking Lot for the term of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements herein contained, the parties, the City and the Shelly Materials, Inc., their successors and assigns, hereby covenant, promise, and agree as follows:

I. PREMISES

Shelly Materials, Inc grants to the City the nonexclusive use and occupancy of the at grade hard surfaces for public parking purposes located on South Broadway Street, Medina, Ohio, known as Permanent Parcel No. 028-19D-01-021 and 230 East Smith Road, Medina, Ohio, known as Permanent Parcel No 028-19D-01-018. The extent of the premises is indicated in "Exhibit A".

The City shall use the Properties for public parking, and the Properties shall not be used for any other purposes whatsoever. Use of the Properties for a purpose not expressly permitted in this paragraph shall constitute a material breach of this Agreement. Shelly Materials, Inc. makes no representations that the Properties are suitable, in whole or in part, for the City's intended use. The City shall be solely responsible for assuring that the Properties are suitable for the City's intended purposes.

II. SITE ALTERATIONS

The City hereby agrees to be solely responsible to install a six (6) foot tall chain link fence along the east side of the Parking Lot and is authorized to remove fencing on the west side of the Parking Lot as shown in "Exhibit B".

The City agrees to be solely responsible to stripe the Parking Lot for designated parking spaces as approximately shown in Exhibit B, subject to necessary adjustments.

The City shall be permitted to install signage to identify the lot and provide traffic control and exterior lighting on existing utility poles.

No additional alterations shall be made to the property except as required for purposes of maintenance and as set forth in this Agreement unless mutually agreed upon by the City and Shelly Materials, Inc.

III. MAINTENANCE

The City hereby agrees to be solely responsible for all maintenance of the Parking Lot, including adjacent sidewalk areas, so as to keep the property in good condition during the term of this Agreement. Shelly Materials, Inc shall not be responsible for any maintenance needs with respect to the Parking Lot if they should occur. The City's obligation to maintain the Parking Lot includes, but is not limited to, snow removal, deicing, crack repair, resurfacing, and striping of parking spaces.

The City represents and warrants that prior to entering into this Agreement it had an opportunity to inspect the Property and conduct any due diligence it desires with regard to the Property, and the City finds the Property suitable for its purposes. **THE CITY ACCEPTS THE PROPERTY AS OF THE DATE OF POSSESSION, "AS-IS", "WHERE IS", AND "WITH ALL FAULTS".**

Shelly Materials, Inc hereby agrees to be solely responsible for all maintenance of the Building.

IV. TERM

The term of this Agreement shall be valid commencing on the date of full execution of this Agreement and end on the date two (2) years from the date of full execution of this Agreement.

This Agreement shall be extended with mutual agreement of both the City and Shelly Materials, Inc within six (6) months from the end of this Agreement.

V. UTILITIES

The City of Medina shall be responsible for all utility costs with respect to the Parking Lot. Shelly Materials, Inc shall be responsible for all utility costs with respect to the Building.

VI. REAL ESTATE TAXES

Shelly Materials, Inc agrees to remain solely responsible for the payment of real estate taxes on the subject property pursuant to the terms of the Land Installment Contract.

VII. RISK OF LOSS AND INSURANCE

The City agrees to primary responsibility for damage and/or injury to person or property proximately caused by use of the subject parking lot property during the term of this Agreement. The City shall maintain, during the entire term of this Agreement, liability insurance coverage covering the City's use of the subject property in the amount of One Million Dollars (\$1,000,000). To the extent permissible under Ohio law and to the extent of the City's insurance liability coverage, the City agrees to indemnify, hold harmless, and defend the Shelly Company from and against any and all liability, losses, damages, costs, and expenses, including reasonable attorneys' fees, incurred in connection with any claim, suit, proceeding, inquiry, or investigation based upon or relating to any use of the Parking Lot after the commencement date of this Lease and while the City is in possession of or has the right to possession of the Parking Lot pursuant to this Lease.

The City understands and agrees that any vehicles parked or stored by the City, or others with the City's permission, on the Property are stored at the City's own risk. Shelly Materials, Inc. cannot and does not ensure the safety of items stored by the City or others as permitted by the City. The City assumes the risk of loss to the City's property or the property of others as permitted by the City due to vandalism, theft, malicious mischief, unauthorized use, fire, collision, natural elements, acts of God or any other cause whatsoever. Shelly Materials, Inc. has provided no security against risks of loss to the City's property, or the property of others, against injury to the person of the City or the City's employees, agents, invitees, and guests. Thus, Shelly Materials, Inc. shall not be liable for any injury or damage to the City or any person or to any property at any time on the Property from any cause whatsoever. The City expressly assumes the risk of any loss to the City's property from any of the causes whatsoever and the City understands and agrees that lack of security shall not be deemed negligence on the part of Shelly Materials, Inc. Further, the City hereby releases Shelly Materials, Inc. from any such liability for damages and hereby waives any claim for damages arising out of the use of the Property and agrees to hold harmless Shelly Materials, Inc. from any claim or demand arising out of the use of the Property, including but not limited to costs of investigation, settlement, litigation, attorney fees, and expert witness fees, whether such claim involves an allegation of Shelly Materials, Inc.'s negligence in whole or in part. The City assumes the responsibility for and will undertake to secure its property from all risks.

VIII. TERMINATION

This Agreement may only be terminated by any party for reasons of just cause or as agreed upon by the parties or as agreed upon by a court of law should the matter of termination be an issue that is not agreed upon as between the parties. In any event, this Agreement shall terminate at the expiration of the term described herein above in Section IV.

IX. NOTICES

All notices which may be proper and necessary to be served hereunder shall be in writing and shall be served by personal delivery or by certified mail. Any such correspondence shall be sent to the following addresses:

To the City:

Office of the Mayor
City of Medina
132 North Elmwood Avenue
Medina, OH 44256

To Shelly Materials, Inc:

Shelly Materials, Inc
ATTN: Dustin Miller
2301 Progress Street
Dover, OH 44622

X. FORCE MAJEURE

Neither City nor Shelly Materials, Inc shall be deemed to be in breach of this Agreement by reason of failure to perform any of its obligations hereunder if, while and to the extent that such failure is due to strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of government authority, weather conditions, floods, riots, rebellion, sabotage, or any other circumstance for which it is not responsible and which are not within its control; provided that this provision shall not prevent either party from exercising its right of termination under this agreement.

Signed in the presence of:

Sherry A. Crow
Kimberly A. Walter

CITY OF MEDINA,
an Ohio Municipal Corporation

By: Dennis Hanwell
DENNIS HANWELL, Mayor

STATE OF OHIO)
)ss:
COUNTY OF MEDINA)

Before me, a Notary Public in and for said County and State, personally appeared the above-named City of Medina, an Ohio municipal corporation, by Dennis Hanwell, its Mayor, who executed the foregoing instrument in my presence and acknowledged the same to be the voluntary act of said City and his voluntary act individually and as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal at Medina, Ohio, this 12th day of September, 2023.

SHERRY A. CROW
Notary Public
State of Ohio, Medina County
My Commission Expires 5-27-24

Sherry A. Crow
NOTARY PUBLIC

Signed in the presence of:

**OC-SMALLC, an Ohio Limited Liability
Company, now known as Shelly Materials, Inc, an
Ohio Corporation**

By: _____
DUSTIN MILLER, Vice President and General
Manager

STATE OF OHIO)
)
COUNTY OF MEDINA)ss:

Before me, a Notary Public in and for said County and State, personally appeared the above-named Shelly Materials, Inc by Dustin Miller, its Vice President and General Manager, who executed the foregoing instrument in my presence and acknowledged the same to be the voluntary act of said company and his voluntary act individually and as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal at Medina, Ohio,
this _____ day of _____, 2023.

NOTARY PUBLIC

Document & Form Approved by:

GREGORY A. HUBER, Law Director
City of Medina

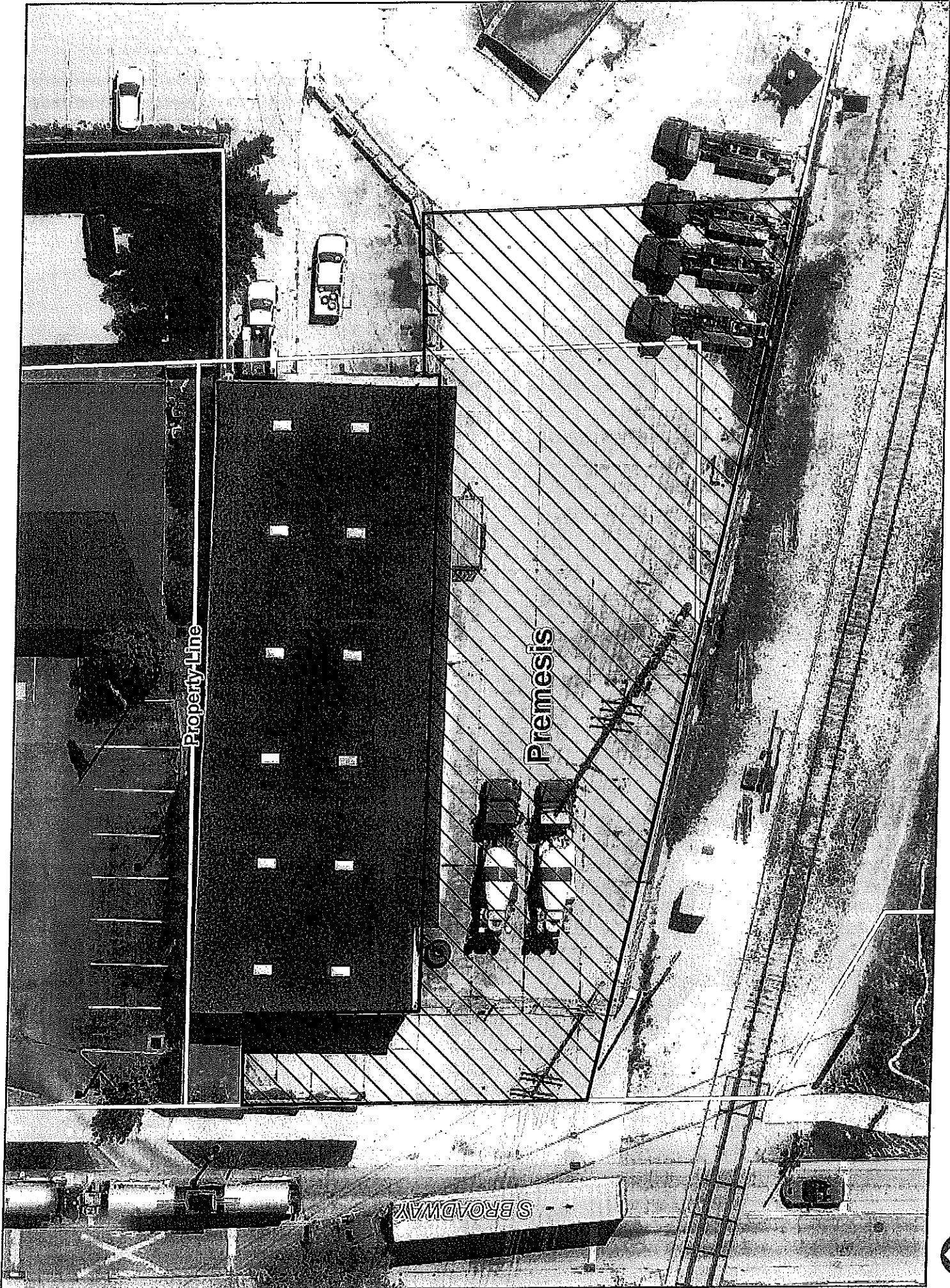


Exhibit A



0 10 20 30 40 Feet

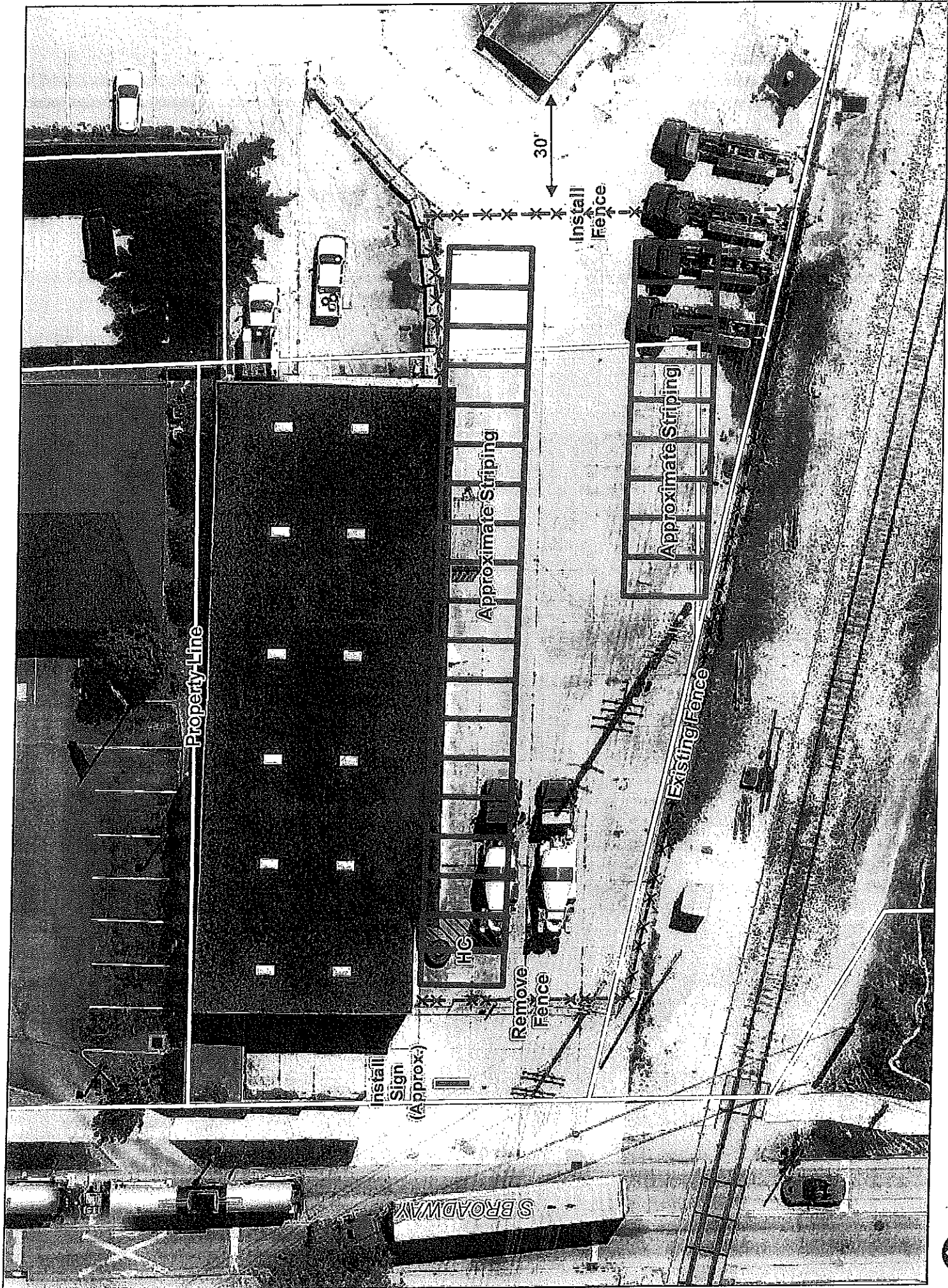


Exhibit B