



Agenda Item Executive Summary

Item Name A resolution approving of the first amended and restated license agreement between the Village of Bartlett and More Dusty, LLC Committee or Board Board

BUDGET IMPACT

Amount:	N/A	Budgeted	N/A
List what fund	N/A		

EXECUTIVE SUMMARY

Attached for your approval is a resolution approving of the first amended and restated license agreement between the Village of Bartlett and More Dusty, LLC.

The original agreement was dated October 2, 2019 and allowed for extensions by the administrator through December 31st, 2021. The agreement allows the business to stage on 214 South Oak for installation and improvements, relative to a brewpub on the nearby property of what is commonly known as 117-121 East Railroad Ave.

Staff Recommendation: Staff recommends approving this agreement, given the significant progress the developer has made with their permitting process and the constant communication with staff.

ATTACHMENTS (PLEASE LIST)

- A resolution approving of the first amended and restated license agreement between the Village of Bartlett and More Dusty LLC
- First amended and restated license agreement which includes exhibits A, B, and C

ACTION REQUESTED

- For Discussion Only
- Resolution
- Ordinance
- Motion:

MOTION: I move to approve Resolution 2021- ____ A Resolution approving of the first amended and restated license agreement between the Village of Bartlett and More Dusty, LLC

Staff: Scott Skrycki
Assistant Administrator

Date: 12/14/2021

Memorandum

To: Paula Schumacher, Village Administrator
From: Scott Skrycki, Assistant Village Administrator
Date: 12/14/2021
Re: Agreement Between the Village of Bartlett and More Dusty

Background

The Village of Bartlett has been working to attract a brewery out of Villa Park for several years. Staff met with ownership numerous times and discussed multiple locations and business plans. After several tours and discussions about the community, More Brewing sent an offer in to the village for the former Lucky Jacks site on Railroad Ave., commonly known as 117-121 E. Railroad Ave.

More Brewing went on to purchase the property from the village later in 2019. Shortly after, the COVID-19 Pandemic has slowed the process of their proposed Brew Pub. However, they are back on track and have been submitting the appropriate documentation in preparation for ground breaking and future buildout.

Agenda Item

The agenda item before you tonight, is a resolution approving of the first amended and restated license agreement between the Village of Bartlett and More Dusty, LLC. The agreement allows for the developer to stage on 214 South Oak for installation and improvements, relative to a brew pub on the nearby property of what is commonly known as 117-121 East Railroad Ave.

The term of the agreement is to commence on February 28th, 2023. The agreement allows for one 6-month extension if both parties agree, and the extension can be executed by the Village Administrator.

Recommendation

Staff recommends passing the resolution. Given the increased communications, as well as the completion of the PICA (Performance Improvements Completion Agreement), staff feels as though they remain committed and the project is close to starting.

Motion

I move to approve Resolution 2021- ____ A Resolution approving of the first amended and restated license agreement between the Village of Bartlett and More Dusty, LLC

RESOLUTION 2021 - _____

**A RESOLUTION APPROVING OF THE FIRST AMENDED
AND RESTATED LICENSE AGREEMENT BETWEEN THE
VILLAGE OF BARTLETT AND MORE DUSTY, LLC**

BE IT RESOLVED by the President and Board of Trustees of the Village of Bartlett, an Illinois municipal corporation of Cook, DuPage and Kane Counties, Illinois, as follows:

SECTION ONE: The First Amended and Restated License Agreement dated as of December 21, 2021, between the Village of Bartlett and More Dusty, LLC (the "Agreement"), a copy of which is appended hereto and expressly incorporated herein by this reference, is hereby approved.

SECTION TWO: That the Village President and the Village Clerk are hereby authorized and directed to sign and attest, respectively, the Agreement on behalf of the Village of Bartlett.

SECTION THREE: SEVERABILITY. The various provisions of this Resolution are to be considered as severable, and of any part or portion of this Resolution shall be held invalid by any Court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Resolution.

SECTION FOUR: REPEAL OF PRIOR RESOLUTIONS. All prior Ordinances and Resolutions in conflict or inconsistent herewith are hereby expressly repealed only to the extent of such conflict or inconsistency.

SECTION FIVE: EFFECTIVE DATE. This Resolution shall be in full force and effect upon passage and approval.

ROLL CALL VOTE:

AYES:

NAYS:

ABSENT:

PASSED:

APPROVED:

Kevin Wallace, Village President

ATTEST:

Lorna Giles, Village Clerk

CERTIFICATION

I, the undersigned, do hereby certify that I am the Village Clerk of the Village of Bartlett, Cook, DuPage and Kane Counties, Illinois, and that the foregoing is a true, complete and exact copy of Resolution 2021 - _____ enacted on December 21, 2021, and approved on December 21, 2021, as the same appears from the official records of the Village of Bartlett.

Lorna Giles, Village Clerk

FIRST AMENDED AND RESTATED LICENSE AGREEMENT

This First Amended and Restated Agreement (the "Amended Agreement") is made as of the 21st day of December, 2021, by and between the Village of Bartlett, a home rule municipality organized and existing under the laws of the State of Illinois, 228 South Main Street, Bartlett, Illinois, 60103 (the "Village" or "Licensor"), and More Dusty, LLC, an Illinois limited liability company, 126 Bennington Lane, Bartlett, Illinois, 60103 ("Licensee") (collectively, the "Parties").

RECITALS

A. Licensor is the owner of the property legally described on Exhibit A and depicted on the Plat of Survey attached hereto as Exhibit B, copies of which are attached hereto and incorporated herein, and commonly known as 214 South Oak Street, Bartlett, Illinois (the "Licensed Premises").

B. The Licensor and the Licensee entered into a certain License Agreement dated as of October 1, 2019 (the "Original License Agreement") which could be extended by the Village Administrator only through December 31, 2021.

C. Licensee desires to extend the term of the Original License Agreement to use the Licensed Premises to park its and its contractor's and its contractor's subcontractor's vehicles and/or for construction staging in connection with the construction and installation of improvements on the nearby property commonly known as 117-121 East Railroad Avenue, Bartlett, Illinois (the "Nearby Development Property"), including the storage of equipment and building materials upon the Licensed Premises (collectively, the "Parking and Staging Activities") expected to begin shortly, and the Village agrees to amend the Original License Agreement to extend the Term and address restoration issues at the end of the Term of this Amended Agreement.

D. Licensee shall be solely responsible to construct, install and perform the Grading, Stoning and Fencing Work (hereinafter defined) prior to using the Licensed Premises for Parking and Staging Activities, and restore the Licensed premises when its Parking and Staging Activities are complete during the term or any extended term of this First Amended and Restated License Agreement.

NOW, THEREFORE, for and in consideration of the covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree as follows:

1. Incorporation of Recitals and Exhibits. The foregoing Recitals and Exhibits thereto are incorporated as if fully set forth herein.

2. Grant of License. Subject to the terms and conditions of this Agreement, Licensor hereby grants Licensee and its contractors, and said contractors subcontractors and material suppliers and the Licensee's engineers, architects and consultants (collectively, the "Licensee's Agents"), a temporary license for the use of the Licensed Premises for the purpose of (a) performing, installing and constructing the Grading, Stoning and Fencing Work (hereinafter defined in Section 5 of this Agreement); and (b) after completion of the Grading, Stoning and Fencing Work to the satisfaction of the Bartlett Building Director (i) to park the

Licensee's Agent's vehicles upon the Licensed Premises, (ii) for construction staging, including the storage of equipment and building materials, and (iii) restoration of the Licensed Premises to its original condition, including removal of stone, filter fabric, silt fencing, temporary perimeter fencing regrade and restore the stripped and stockpiled topsoil after the Parking and Staging Activities have been completed, except for such improvements that the Village Public Works Director agrees in writing may remain after the Parking and Staging Activities have been completed (the "Restoration Work"), during the Term and any extended term agreed to by the Licensor (collectively, the "Permitted Activities"), subject to the terms and conditions herein.

3. No Lease or Easement. Nothing contained herein shall be construed to grant the Licensee a lease, easement or other interest in the Licensed Premises, as this Agreement is intended only to grant the Licensee a temporary non-exclusive right and license to use the Licensed Premises.

4. Term. The term of this Agreement (the "Term") shall commence on December 22, 2021 not before 7:00 a.m. (the "Commencement Date") and shall end on February 28, 2023 (the "Expiration Date"). The Term may be extended by the mutual agreement of the parties, and the Village Administrator is hereby authorized to approve, on behalf of the Village, up to one, six (6) month extension expiring no later than August 31, 2023 (the "Extended Term").

5. Grading, Stoning and Fencing Work. Prior to using the Licensed Premises for the Parking and Staging Activities, the Licensee shall perform the following work and install the following improvements at its sole cost and expense:

- A. Strip topsoil and stockpile at the rear of the lot with silt fencing to protect against any material movement;
- B. Install filter fabric on all areas for stone and parking/storage;
- C. Place a minimum of 6 inches of 2" – 3" stone (CA-1 or CA-3) throughout the parking and storage area;
- D. Install silt fencing around the perimeter of the site, minus the construction entrance;
- E. Install and maintain a construction entrance (8" stone) in accordance with the typical detail attached hereto as Exhibit C; and
- F. Install a temporary 6 foot chain link fence around the perimeter of the Licensed Premises with one locking gate at the construction entrance;

(collectively referred to as the "Grading, Stoning and Fencing Work"). The Licensee shall remove all dirt, mud and debris that it or the Licensee's Agents place or get carried onto any street.

6. Insurance. Licensee, and its general contractor that will be constructing the improvements on the Nearby Development Property (the "Contractor"), shall each procure prior to entering upon the Licensed Premises and maintain during the Term, and any extension thereof, insurance against claims for injuries to persons or damages to property

which may arise from or in connection with the performance of the Grading, Stoning and Fencing Work hereunder, or which may arise from or in connection with the Licensee's operation and use of the Licensed Premises, including the Restoration Work, by the Licensee, its members, managers, agents, representatives, employees, contractors and/or contractor's subcontractors. The cost of such insurance shall be borne by the Licensee.

A. Minimum Scope and Limit of Insurance.

Coverage shall be at least as broad as:

- i. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- ii. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Licensee has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
- iii. **Workers' Compensation:** as required by the State of Illinois with Statutory Limits, and Employer's Liability Insurance with limits of no less than **\$1,000,000** per accident for bodily injury or disease.

If the Licensee and/or the Contractor maintain broader coverage and/or higher limits than the minimums shown above, the Licensor requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Licensee and by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Licensor.

B. Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain, the following provisions:

- i. **Additional Insured Status**
The Village of Bartlett, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Licensee including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Licensee's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used).
- ii. **Primary Coverage**
For any claims related to this Agreement, the Licensee's insurance coverage and the Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the Village, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Village, its officers,

officials, employees, or volunteers shall be in excess of the Licensee's insurance and the Contractor's insurance and shall not contribute with it.

iii. Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice to the Licensor.

iv. Waiver of Subrogation

Licensee and the Contractor hereby grant to Licensor a waiver of any right to subrogation which any insurer of said Licensee and/or Contractor may acquire against the Licensor by virtue of the payment of any loss under such insurance. Licensee and the Contractor each agree to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Village has received a waiver of subrogation endorsement from the insurer.

v. Self-Insured Retentions

Self-Insured retentions must be declared to and approved by the Licensor. The Licensor may require the Licensee to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the Licensor.

vi. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the Licensor.

vii. Verification of Coverage

Licensee and the Contractor shall each furnish Licensor with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Licensor before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Licensee's obligation to provide them for itself and for the Contractor. The Licensor reserves the right to require complete, certified copies of any required insurance policies, including endorsements required by these specifications, at any time.

7. Indemnification. The Licensee shall indemnify, defend, and hold harmless Licensor and its officials, officers, employees and agents from and against any and all claims, demands, actions, costs, and expenses, including attorney's fees and court costs for bodily injury, death, or damage to property arising out of the use of the Licensed Premises by Licensee and any of Licensee's Agents, including without limitation the Contractor, and/or otherwise arising directly or indirectly out of the Permitted Activities.

8. No Third Party Beneficiaries and/or Waiver. This License Agreement is entered into solely for the benefit of the contracting Parties, and nothing in this License Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person and entity who is not a party to this Agreement or to acknowledge, establish or impose any legal duty to any third party, except as to the Licensee's Contractor as stated in this Amended Agreement. Nothing herein shall be

construed as an express and/or implied waiver of any common law and/or statutory immunities and/or privileges of Licensor, and/or any of its respective officials, officers, employees and/or agents.

9. Notice. All notices required shall be in writing and shall be given in the following manner:

A. By personal delivery of such notice; or

B. By mailing of such notice to the addresses recited herein by certified mail, return receipt requested. Except as otherwise provided herein, notice served by certified mail, shall be effective on the date of mailing; or

C. By sending facsimile transmission. Notice shall be effective as of date and time of facsimile transmission, provided that the notice transmitted shall be sent on business days during business hours (9:00 A.M. to 4:30 P.M. Chicago time). In the event fax notice is transmitted during non-business hours, the effective date and time of notice is the first hour of the first business day after transmission.

Any party shall have the right to designate any other address for notice purposes by written notice to the other party or his attorney in the manner aforesaid. The addresses of the Parties are as follows:

If to Licensee: More Dusty, LLC
126 Bennington Lane
Bartlett, Illinois, 60103

With a copy to: Timothy E. Hoerman, Ltd.
323 North Washington Street
Westmont, Illinois, 60559
Fax: 630-570-0222

If to Licensor: Village of Bartlett
228 South Main Street
Bartlett, Illinois, 60103
Attention: Paula Schumacher, Village Administrator

With a copy to: Bryan E. Mraz
Bryan E. Mraz & Associates, P.C.
111 East Irving Park Road
Roselle, Illinois, 60172
Fax: 630-529-2019

10. Prohibited Uses and Activities.

A. The Licensee agrees to keep the Licensed Premises in a clean, safe, and sanitary condition. The Licensee further agrees that it shall abide by any and all applicable laws, ordinances, statutes, codes, and regulations of the Village of Bartlett, the State of Illinois and the United States of America and enforcement and regulatory agencies thereof, which regulate or control the Licensee's use of the Licensed Premises.

B. Licensee specifically agrees not to use or permit the Licensed Premises to be used for any unlawful and/or immoral purpose and/or business.

C. Licensee covenants and agrees not to maintain or permit any nuisance on the Licensed Premises which shall be in any manner injurious to or endanger the health, safety and comfort of the persons residing or being upon or in the vicinity of the Licensed Premises.

D. The possession, sale and/or consumption of alcoholic beverages are prohibited upon the Licensed Premises.

11. Supervision. Licensee assumes and exercises full responsibility for the supervision of Licensee's Agents, including but not limited to the Contractor, and the Permitted Activities during the term of this Agreement. The Parties agree that Licensor has no duty to supervise any person or activity in connection with the Licensee's and/or the Licensee's Agent's use of the Licensed Premises.

12. Access. Nothing in this Agreement shall restrict the access to the Licensed Premises by the employees, officers, officials, or agents or Licensor.

13. Disclaimer. Licensee expressly acknowledges that the Licensor makes no representations or warranties express or implied, as to the adequacy, fitness or condition of the Licensed Premises for the purposes set forth herein, or for any other purpose or use, express or implied, by the Licensee. ALL IMPLIED WARRANTIES OF QUALITY, FITNESS, MERCHANTABILITY AND HABITABILITY ARE HEREBY EXCLUDED. Licensee accepts use of the Licensed Premises "AS-IS" and "WITH ALL FAULTS". Licensee acknowledges that it has inspected the Licensed Premises and has satisfied itself as to the adequacy, fitness and condition thereof.

15. Repair. Upon the expiration of this Agreement, Licensee shall repair any damage to the Licensed Premises attributable to any acts of Licensee, Licensee's Agents and/or the Permitted Activities.

16. No Licensor Liability for Property Damage. The Licensor and its employees, agents, volunteers, officers, and/or officials shall not be liable for any damage to any vehicles, equipment, supplies, materials and/or other property (collectively, the "Property") stored or otherwise located upon on the Licensed Premises, unless such damage is attributable to the willful, wanton, and/or intentional acts of the Licensor. In no event shall Licensor and/or any of its officials, officers, employees, agents, and/or volunteers be liable for any punitive, consequential, special, indirect, incidental, and/or exemplary damages and/or lost revenues arising out of this Agreement and/or any acts and/or omissions of Licensor and/or its officials, officers, volunteers, employees, and/or agents, and Licensee on its behalf and the behalf of the Contractor and the other Licensee's Agents hereby waives any right to such damages and/or lost revenues.

17. Default. In the event of default hereunder, the non-defaulting party shall be entitled to terminate this License Agreement and shall be entitled to all remedies available at law and/or equity including its reasonable attorney's fees and costs.

18. Miscellaneous.

A. The Parties agree that no change or modification to this Agreement, or any exhibits or attachments hereto, shall be of any force or effect unless such amendment is dated, reduced to writing, executed by both Parties, and attached to and made a part of this Agreement.

B. The Parties agree that the titles of the items of this Agreement, hereinabove set forth, are for convenience of identification only and shall not be considered for any other purpose.

C. This Agreement shall be construed, governed, and enforced according to the laws of the State of Illinois, and the exclusive venue for purposes of enforcing this Agreement shall be the Circuit Court of Cook County, Illinois.

D. The Parties agree that if any provision of this Agreement is held invalid for any reason whatsoever, the remaining provisions shall not be affected thereby if such remainder would then continue to conform to the purposes, terms and requirements of applicable law.

E. Licensee shall not assign any rights granted hereunder without the prior written approval of Licensor, which Licensor may withhold in its sole and absolute discretion.

F. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

G. The Parties acknowledge that this Agreement was freely negotiated by each of the Parties hereto, each of whom was represented by separate counsel; accordingly, this Agreement shall be construed according to the fair meaning of its terms, and not against any Party.

H. Each of the undersigned signing as an officer or agent on behalf of the respective Party to this Agreement warrants that he or she holds such capacity as is specified beneath his or her name and further warrants that he or she is authorized to execute and effectuate this Agreement and that he or she does so voluntarily and in his or her official capacity.

Licensor:

Licensee:

VILLAGE OF BARTLETT

MORE DUSTY, LLC

By: _____
Kevin Wallace, Village President

By: _____
Name: _____
Its Manager

Attest:

Lorna Gilles, Village Clerk

EXHIBIT A

LEGAL DESCRIPTION OF LICENSED PREMISES

LOTS 2 AND 3 IN BLOCK 5 IN BARTLETT'S SUBDIVISION OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 34, TOWNSHIP 41 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

EXHIBIT B

PLAT OF SURVEY



Residential
Commercial
ALTA

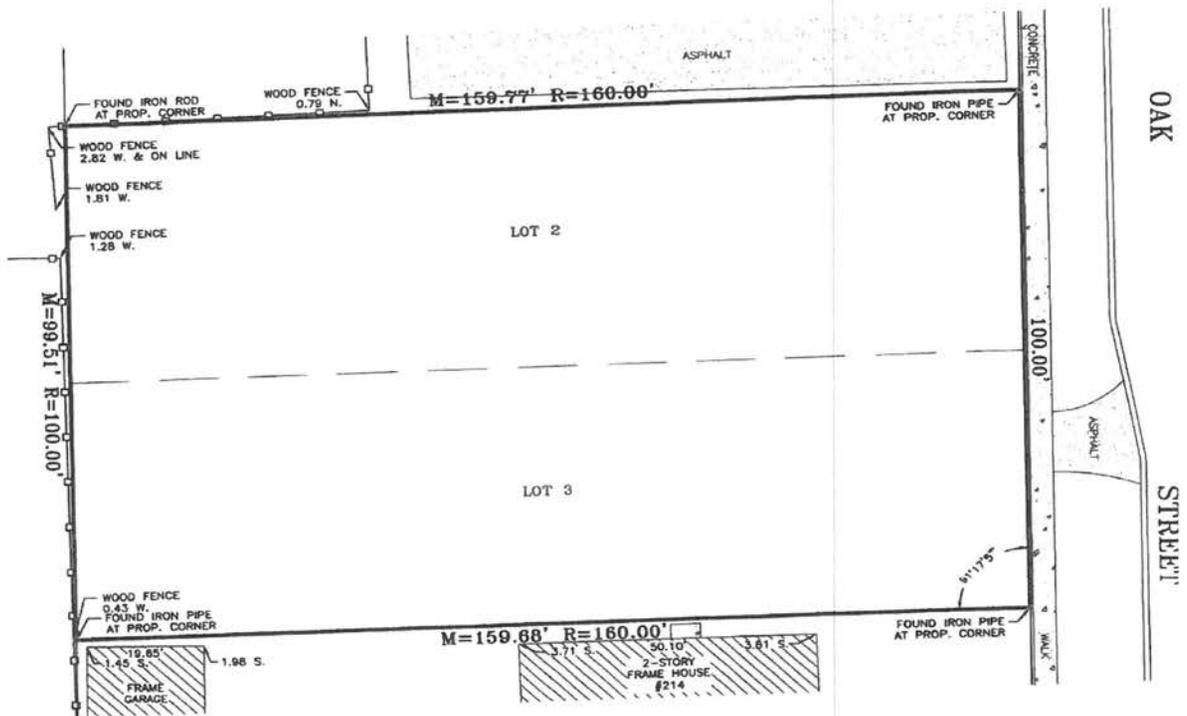
PLAT OF SURVEY
Studnicka and Associates, Ltd.
Studnicka2000@gmail.com

Topographical
Condominium
Site Plans

Tel. 815 485-0445
Fax 815 485-0528

17901 Haas Road
Mokena, Illinois 60448

LOTS 2 AND 3 IN BLOCK 5 IN BARTLETT'S SUBDIVISION OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 34, TOWNSHIP 41 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.



Scale: 1" = 20 feet
Distances are marked in feet and decimals.
Ordered by: Tushar Chotalia
Order No.: 17-11-116
Compare all points before building by same and at once report any difference.
For building lines, restrictions, or easements not shown hereon, refer to abstract, deed or ordinance.
Field work completed: 11/16/2017
Drawn by: Paul Burlingame

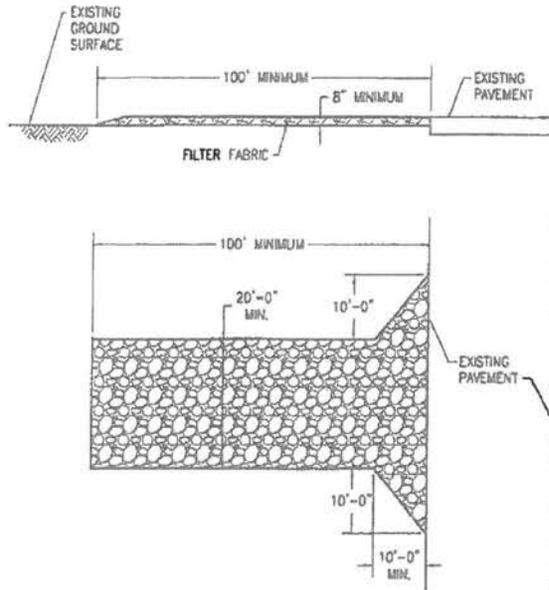
STATE OF ILLINOIS }
COUNTY OF WILL } ss



Studnicka and Associates, Ltd., an Illinois Land Surveying Corporation does hereby certify that this professional service conforms to the current Illinois standards for boundary survey.

Mokena, IL, November 17, A.D. 2017

EXHIBIT C



NOTES:

1. THE ENTRANCE SHALL BE IN PLACE PRIOR TO ANY SITE GRADING ACTIVITIES.
2. USE 2" STONE, OR RECYCLE CONCRETE EQUIVALENT.
3. THICKNESS NOT LESS THAN 8".
4. FILTER FABRIC SHALL BE PLACED OVER THE ENTIRE AREA PRIOR TO PLACING OF STONE.
5. THE ENTRANCE SHALL BE MAINTAINED IN A CONDITION WHICH WILL PREVENT TRACKING OR FLOWING OF SEDIMENT INTO PUBLIC RIGHTS-OF-WAY. THIS MAY REQUIRE PERIODIC TOP DRESSING WITH ADDITIONAL STONE AS CONDITIONS DEMAND AND REPAIR AND/OR CLEANOUT OF ANY MEASURES USED TO TRAP SEDIMENT. ALL SEDIMENT SPILLED, DROPPED, WASHED OR TRACKED INTO PUBLIC RIGHTS-OF-WAY MUST BE REMOVED IMMEDIATELY.
6. WHEELS SHALL BE CLEANED TO REMOVE SEDIMENT PRIOR TO EXIT ONTO PUBLIC RIGHT-OF-WAY.
7. WHEN WASHING IS REQUIRED, IT SHALL BE DONE ON AN AREA STABILIZED WITH STONE AND WHICH DRAINS INTO AN APPROVED SEDIMENT TRAPPING DEVICE.
8. INSPECTION AND NEEDED MAINTENANCE SHALL BE PROVIDED ONCE A WEEK AND AFTER EACH RAIN EVENT GREATER THAN 1/2 INCH.
9. THE ENTRANCE SHALL BE UTILIZED BY ALL CONSTRUCTION TRAFFIC UNTIL PERMANENT PAVEMENTS ARE IN PLACE.

STABILIZED CONSTRUCTION ENTRANCE

NOT TO SCALE

STANDARD
DETAIL NO. 1

08-01-2004