



# Agenda Item Executive Summary

Item Name 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

More Dusty, LLC, better known as More Brewing, entered into an agreement with the Village to purchase Village-owned property at 117-121 East Railroad Avenue on November 20, 2018. The contingency approving an extension for the purchase was approved on June 4, 2019. More Brewing is pursuing to construct a brand new building on the site pending approval from the Village Board.

## DISCUSSION

Due to site constraints, More Brewing has requested access to Village-owned property at 214 South Oak Street to utilize for their parking and staging activities while they construct their building at 117-121 East Railroad Avenue. Part of the agreement will require More Brewing, or its contractors, to install and maintain all of the grading, stoning and fencing work required on the Village property. The license agreement shall last until December 31, 2020, at which point, the agreement may be extended by mutual agreement of both More Brewing and the Village, if necessary. The maximum license time under this agreement could expand until December 31, 2021. A copy of the license agreement and corresponding Resolution are attached for your review.

## RECOMMENDATION

Staff recommends approval of the Resolution and license agreement with More Dusty, LLC for the use of the Village-owned property.

## ATTACHMENTS (PLEASE LIST)

Memo  
Resolution  
Agreement

## ACTION REQUESTED

For Discussion Only  
Resolution  
Ordinance

- ✓ Motion: MOTION TO APPROVE RESOLUTION #2019- \_\_\_\_ - R, A RESOLUTION APPROVING OF THE LICENSE AGREEMENT BETWEEN THE VILLAGE OF BARTLETT AND MORE DUSTY, LLC

Staff: Dan Dinges, Director of Public Works

Date: 9/23/2019

# Memo

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**To:** Paula Schumacher, Village Administrator  
**From:** Dan Dinges, Director of Public Works  
**Subject:** License Agreement between the Village of Bartlett and More Dusty, LLC  
**Date:** September 23, 2019

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## **BACKGROUND**

More Dusty, LLC, better known as More Brewing, entered into an agreement with the Village to purchase Village-owned property at 117-121 East Railroad Avenue on November 20, 2018. The contingency approving an extension for the purchase was approved on June 4, 2019. More Brewing is pursuing to construct a brand new building on the site pending approval from the Village Board.

## **DISCUSSION**

Due to site constraints, More Brewing has requested access to Village-owned property at 214 South Oak Street to utilize for their parking and staging activities while they construct their building at 117-121 East Railroad Avenue. Part of the agreement will require More Brewing, or its contractors, to install and maintain all of the grading, stoning and fencing work required on the Village property. The license agreement shall last until December 31, 2020, at which point, the agreement may be extended by mutual agreement of both More Brewing and the Village, if necessary. The maximum license time under this agreement could expand until December 31, 2021. A copy of the license agreement and corresponding Resolution are attached for your review.

## **RECOMMENDATION**

Staff recommends approval of the Resolution and license agreement with More Dusty, LLC for the use of the Village-owned property.

### **Motion**

**MOTION TO APPROVE RESOLUTION #2019- \_\_\_\_ - R, A RESOLUTION APPROVING OF THE LICENSE AGREEMENT BETWEEN THE VILLAGE OF BARTLETT AND MORE DUSTY, LLC**

RESOLUTION 2019 - \_\_\_\_\_

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

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**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 License Agreement dated as of October 1, 2019, 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 2019 - \_\_\_\_\_ enacted on October 1, 2019, and approved on October 1, 2019, as the same appears from the official records of the Village of Bartlett.

\_\_\_\_\_  
Lorna Giles, Village Clerk

## LICENSE AGREEMENT

This Agreement (the "Agreement") is made as of the 1<sup>st</sup> day of October, 2019, 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. Licensee desires 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") during the Term of this Agreement.

C. 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.

**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, and/or (ii) for construction staging, including the storage of equipment and building materials during the Term (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 October 3, 2019 not before 7:00 a.m. (the "Commencement Date") and shall end on December 31, 2020 (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 two, six (6) month extensions, with the second extension expiring no later than December 31, 2021.

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 shall procure 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 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 maintains 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. 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 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 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 hereby grants to Licensor a waiver of any right to subrogation which any insurer of said Licensee may acquire against the Licensor by virtue of the payment of any loss under such insurance. Licensee agrees 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 shall 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. 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, 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. 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 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 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:

VILLAGE OF BARTLETT

By: \_\_\_\_\_  
Kevin Wallace, Village President

Attest:

\_\_\_\_\_  
Lorna Giles, Village Clerk

Licensee:

MORE DUSTY, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its Manager

**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

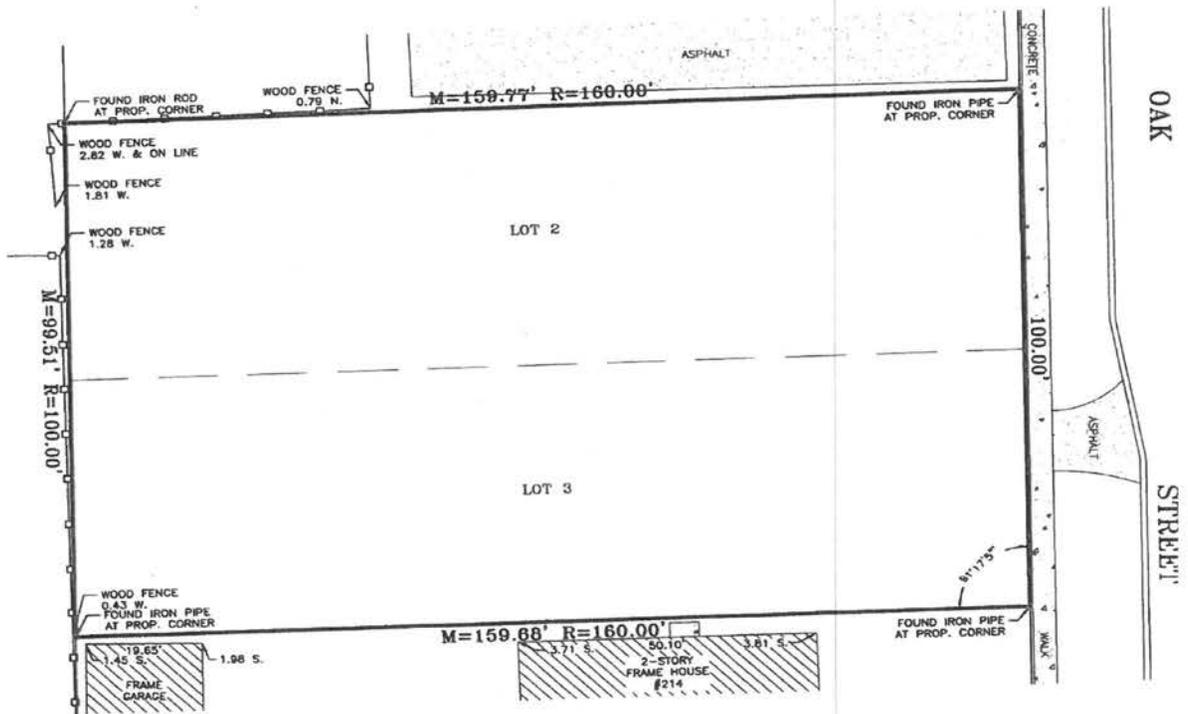
**PLAT OF SURVEY**  
**Studnicka and Associates, Ltd.**  
Studnicka2000@gmail.com

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

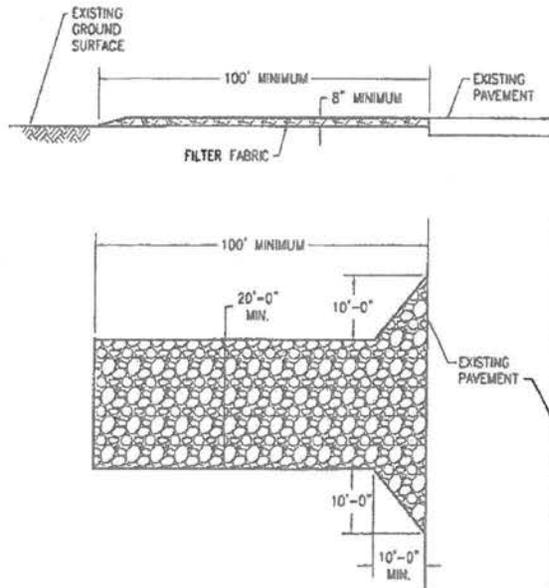
STATE OF ILLINOIS }  
COUNTY OF WILL } ss



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