



FRED BUCHOLZ

DUPAGE COUNTY RECORDER

JUN.09,2017

3:11 PM

OTHER

\$42.00 07-13-216-011

016 PAGES R2017-057024

PIN:

07-13-216-011
07-13-216-021
07-13-216-022
07-13-216-013
07-13-216-014

ADDRESS:

433-435 SPRING AVENUE
NAPERVILLE, IL 60540

PREPARED BY:

CITY OF NAPERVILLE
LEGAL DEPARTMENT
630-420-4170

RETURN TO:

CITY OF NAPERVILLE
CITY CLERK'S OFFICE
400 SOUTH EAGLE STREET
NAPERVILLE, IL 60540

PZC 17-1-013

ORDINANCE NO. 17 - 059

AN ORDINANCE GRANTING A TEMPORARY USE AND APPROVING AN OWNER'S ACKNOWLEDGEMENT AND ACCEPTANCE AGREEMENT, LANDSCAPING PLAN AND BUILDING ELEVATION FOR REAL PROPERTY LOCATED AT 433-435 SPRING AVENUE, NAPERVILLE

WHEREAS, DuPage Precision Products Co. is the owner of real property located at 433-435 Spring Avenue, Naperville, Illinois, legally described on Exhibit A and depicted on Exhibit B ("Subject Property"); and

WHEREAS, DuPage Precision Products Co. currently operates a product assembly facility on the Subject Property; and

WHEREAS, in 2008 the Subject Property was rezoned from I (Industrial District) to R2 (Single-family and Low Density Multiple-family District) in accordance with the recommendations of the Spring Avenue Study; and

WHEREAS, as a result of the rezoning to R2 in 2008, the product assembly facility operated by DuPage Precision Products Co. on the Subject Property became a nonconforming use, permitted to continue in accordance with Municipal Code Section 6-10 (Nonconforming Uses); and

WHEREAS, DuPage Precision Products Co. now desires to sell the Subject Property to Kramer Restoration of DuPage County, LLC, which also goes by the name of Paul Davis Restoration Services of DuPage County, which acts as an insurance contractor specializing in remediation and reparation of water and fire damages in residential and commercial structures; and

WHEREAS, the proposed use of the Subject Property does not comply with the applicable City of Naperville R2 zoning regulations; and

WHEREAS, compliance with the City of Naperville R2 zoning regulations on the Subject Property is currently impractical due to operation of a concrete plant on property directly adjacent to the Subject Property; and

WHEREAS, the sale of the Subject Property to Kramer Restoration of DuPage County, LLC is contingent upon approval by the City Council of a temporary use to allow Paul Davis Restoration Services of DuPage County to use the Subject Property as described above and as further described in the Owner's Acknowledgement and Acceptance Agreement attached hereto as **Exhibit C**; and

WHEREAS, pursuant to Naperville Municipal Code Section 6-2-11, temporary uses which do not conform to the regulations prescribed elsewhere in Title 6 may be approved if the use does not have an adverse impact on the surrounding properties, public health, safety and general welfare; and

WHEREAS, the requested temporary use provides an appropriate transition for the Subject Property while the concrete plant adjacent to the Subject Property continues to operate; and

WHEREAS, on April 3, 2017, the Planning and Zoning Commission held a public hearing, to consider the Owner's request and recommended approval of the temporary use; and

WHEREAS, the City Council of the City of Naperville has determined that a temporary use to allow the Subject Property to be used for remediation and reparation of water and fire damages in residential and commercial structures should be granted subject to the terms and conditions set forth in this Ordinance and in the Owner's Acknowledgement and Acceptance Agreement attached hereto as **Exhibit C** and subject to **Exhibit D** (Landscape Plan) and **Exhibit E** (Elevation) attached hereto; and

WHEREAS, this Ordinance shall not become effective, nor shall it be recorded, unless and until Kramer Restoration of DuPage County, LLC acquires title to the Subject Property and provides evidence of such ownership to the satisfaction of the City Attorney;

WHEREAS, if Kramer Restoration of DuPage County, LLC does not become owner of the Subject Property within three (3) months of approval of this Ordinance, this Ordinance shall be automatically null and void without further action required by the City Council.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NAPERVILLE, DUPAGE AND WILL COUNTIES, ILLINOIS, in exercise of its home rule powers, as follows:

SECTION 1: The foregoing recitals are incorporated herein as though fully set forth in this Section 1. All exhibits referenced in this Ordinance shall be deemed incorporated and made part hereof.

SECTION 2: The Owner's Acknowledgement and Acceptance, attached to this Ordinance as **Exhibit C**, is hereby approved.

SECTION 3: The Landscape Plan, attached to this Ordinance as **Exhibit D**, is hereby approved.

SECTION 4: The Building Elevation, attached to this Ordinance as **Exhibit E**, is hereby approved.

SECTION 5: A temporary use pursuant to Naperville Municipal Code Section 6-2-11 is hereby granted to Kramer Restoration of DuPage County, LLC to allow operation of Paul Davis Restoration Services of DuPage County on the Subject Property as described herein subject to the terms and conditions of this Ordinance including each exhibit hereto. Said temporary use is granted solely for operation of Paul Davis Restoration Services of DuPage County and, in the absence of an amendment of this Ordinance, including but not limited to the Owner's Acknowledgement and Acceptance Agreement attached hereto as **Exhibit C**, no other entity, owner, lessee or tenant of the Subject Property shall be eligible for said temporary use.

SECTION 6: This Ordinance shall be subject to unilateral termination by action of the City Council: (1) for the reasons set forth in Sections 3 and 7 of the Owner's Acknowledgement and Acceptance Agreement attached hereto as **Exhibit C**; (2) if all terms and conditions of this Ordinance, including but not limited to each exhibit attached hereto, are not strictly complied with; or (3) for failure of the temporary use granted herein to comply with the Naperville Municipal Code or other applicable laws, as amended from time to time.

SECTION 7: The City Manager is authorized and directed to execute, and the City Clerk is authorized and directed to attest, the Owner's Acknowledgement and Acceptance Agreement attached hereto as **Exhibit C** upon satisfaction of the requirement that the Subject Property is owned by Kramer Restoration of DuPage County, LLC as provided herein and upon execution of said Agreement by Kramer Restoration of DuPage County, LLC.

SECTION 8: Upon written direction of the City Attorney the City Clerk is authorized and directed to record this Ordinance and all exhibits attached hereto with the DuPage County Recorder.

SECTION 9: This Ordinance shall be in full force and effect upon its recordation with the

DuPage County Recorder.

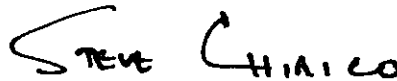
PASSED this 18th day of April, 2017.

AYES: ANDERSON, BRODHEAD, COYNE, GALLAHER, GUSTIN,
 HINTERLONG, KRUMMEN, OBARSKI, CHIRICO

NAYS: NONE

ABSENT: NONE

APPROVED this 19th day of April, 2017.



Steve Chirico
Mayor

ATTEST:



Pam Gallahue, Ph.D.
City Clerk



LEGAL DESCRIPTION

433-435 SPRING AVENUE

PARCEL 1: LOT 4 OF OWNER'S ASSESSMENT PLAT OF LOTS 18 AND 19 AND PART OF LOTS 15, 16, 17, AND 20 IN BLOCK 1 OF WOODLAWN ADDITION TO NAPERVILLE, IN SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID OWNER'S ASSESSMENT PLAT RECORDED JUNE 5, 1916, AS DOCUMENT 125409, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 2 LOTS 17 AND 20 (EXCEPT THE NORTH 18.50 FEET AND EXCEPT THAT PART OF SAID LOTS LYING WITHIN OWNER'S ASSESSMENT PLAT RECORDED JUNE 5, 1916, AS DOCUMENT 125409) IN BLOCK 1 OF WOODLAWN ADDITION TO THE VILLAGE OF NAPERVILLE, BEING A SUBDIVISION OF PART OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 23, 1870, AS DOCUMENT 13102, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 3: LOTS 21 AND 24 (EXCEPT THE NORTH 18.50 FEET) AND LOTS 22 AND 23 IN BLOCK 1 OF WOODLAWN ADDITION TO THE VILLAGE OF NAPERVILLE, BEING A SUBDIVISION OF PART OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 23, 1870, AS DOCUMENT 13102, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 4: LOT 27 (EXCEPT THE WEST 11.00 FEET THEREOF) AND LOT 25 (EXCEPT THE NORTH 18.50 FEET THEREOF) AND LOT 26 IN BLOCK 1 OF WOODLAWN ADDITION TO THE VILLAGE OF NAPERVILLE, BEING A SUBDIVISION OF PART OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 23, 1870, AS DOCUMENT 13102, IN DUPAGE COUNTY, ILLINOIS.

PIN: 07-13-216-011, 07-13-216-021, 07-13-216-022, 07-13-216-013, and 07-13-216-014

OWNER'S ACKNOWLEDGEMENT AND ACCEPTANCE AGREEMENT
FOR 433 – 435 W. SPRING STREET

This Owner's Acknowledgement and Acceptance Agreement ("Agreement") is hereby entered into by and between the City of Naperville (hereinafter "CITY") and Kramer Restoration of DuPage County, LLC, in consideration of the TEMPORARY USE granted herein, as follows:

1. Kramer Restoration of DuPage County, LLC (hereinafter referred to as the "OWNER AND DEVELOPER") with an address of 502 W. Fifth Avenue, Naperville, IL 60563, is the owner of the property located at 433 – 435 W. Spring Avenue (hereinafter referred to as the "SUBJECT PROPERTY").
2. The OWNER and DEVELOPER proposes to utilize the SUBJECT PROPERTY for Paul Davis Restoration Services, which is an insurance contractor who specializes in remediation and reparation of water/fire damages in residential or commercial structures. Said use requires approval of a temporary use in accordance with Section 6-2-11 (Temporary Buildings, Structures, and Uses of Land) of the Naperville Municipal Code (hereinafter referred to as "TEMPORARY USE") based on the current R2 zoning of the SUBJECT PROPERTY and Ordinance 08-005. The OWNER AND DEVELOPER shall be obligated to use and maintain the TEMPORARY USE in accordance with the provisions of the Naperville Municipal Code, the conditions contained herein, the attached Statement of General Conditions, and the Ordinance approving the TEMPORARY USE.
3. TERM/TERMINATION: The SUBJECT PROPERTY is immediately adjacent to 515 Spring Avenue. The property located at 515 Spring Avenue is leased by Ozinga Ready Mix Concrete, Inc. ("Ozinga") which operates a concrete plant on said property as a non-conforming use ("Non-Conforming Use"). In the event that the OWNER AND DEVELOPER purchases the adjacent property at 515 Spring Avenue, the OWNER AND DEVELOPER agrees that it shall utilize the property located at 515 Spring Avenue in conformance and compliance with its R2 zoning classification and shall forever waive its right to continue the Non-Conforming Use applicable to said property.

The TEMPORARY USE for the SUBJECT PROPERTY shall expire, and the OWNER AND DEVELOPER shall immediately cease use of the SUBJECT PROPERTY for the TEMPORARY USE described herein, (i) on April 18, 2021, or (ii) within six (6) months after the expiration or termination of Ozinga's lease of the property located at 515 Spring Avenue, or (iii) within six (6) months of a finding that the Non-Conforming Use of 515 Spring Avenue is not renewed due to failure of continuous operation as a concrete plant for a period of six (6) months as provided in Section 6-10 (Nonconforming Uses) of the Naperville Municipal Code, or (iv) immediately after the purchase of the property at 515 Spring Avenue by the OWNER AND DEVELOPER, whichever occurs first. Upon expiration of the

TEMPORARY USE the SUBJECT PROPERTY shall be utilized in compliance with its R2 zoning classification.

If during the Term of the TEMPORARY USE, the OWNER AND DEVELOPER ceases to operate from the SUBJECT PROPERTY for the TEMPORARY USE described herein for a continuous period of six (6) months or more, the TEMPORARY USE shall automatically become null and void, and any subsequent use of the SUBJECT PROPERTY shall conform to the R2 zoning regulations.

Notwithstanding the foregoing, the TEMPORARY USE shall be subject to termination in advance of the Term described above as provided in Section 7 below. In the event of termination of the TEMPORARY USE, the SUBJECT PROPERTY shall be utilized in compliance with its R2 zoning classification.

4. USE: During the term of the TEMPORARY USE, the OWNER AND DEVELOPER shall be the sole occupant on the SUBJECT PROPERTY which shall be used solely for the purpose described herein. The TEMPORARY USE granted is specific to the OWNER AND DEVELOPER only and said TEMPORARY USE shall not be transferred, leased, rented, or otherwise permitted to be used by any other person or entity.
5. LIMITATIONS REGARDING USE OF THE SUBJECT PROPERTY: The following limitations shall be applicable to the TEMPORARY USE approved for the SUBJECT PROPERTY:
 - a. Parking Restrictions:
 - i. Large commercial vehicles used in conjunction with the TEMPORARY USE such as those depicted on EXHIBIT 1 or similar sized vehicles as determined by the Zoning Administrator shall be parked in the rear of the SUBJECT PROPERTY between the buildings and the railroad.
 - ii. Smaller commercial vehicles used in conjunction with the TEMPORARY USE other than those described and depicted in Section 5.a.i above shall be permitted to park in any legal parking spaces on the SUBJECT PROPERTY.
 - iii. Non-commercial vehicles utilized by employees and customers of the TEMPORARY USE shall be permitted within any legal parking space.
 - iv. Semi-trucks shall be prohibited from the TEMPORARY USE at the SUBJECT PROPERTY.
 - b. All loading and unloading activities occurring outside of the buildings on the SUBJECT PROPERTY with the exception of waste management pick-up services shall be limited to the hours between 7 a.m. and 7 p.m. Monday through Saturday and shall occur entirely within the rear of the SUBJECT PROPERTY between the buildings and the railroad. Waste management pick-up services shall be limited to the hours between 6 a.m. and 10 p.m. Monday through Saturday.

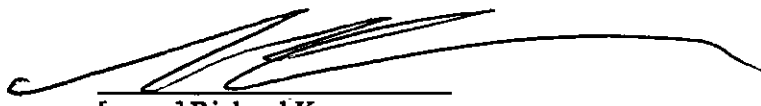
- c. Any noise generated from the SUBJECT PROPERTY shall not exceed the performance standard for commercial use as set forth in Section 6-14-4.1 of the Naperville Municipal Code ("Standard"). If the CITY determines that the SUBJECT PROPERTY is in violation of the Standard, the OWNER AND DEVELOPER shall take necessary measures (e.g., limiting all loading/unloading activities to inside the buildings) to bring the SUBJECT PROPERTY into compliance with the Standard. If the OWNER AND DEVELOPER fails to promptly remedy the violation to the satisfaction of the Zoning Administrator, the Zoning Administrator may recommend termination of the TEMPORARY USE to the City Council as provided in Section 7 below.
 - d. Any dumpster shall be located in the rear of the SUBJECT PROPERTY between the buildings and the railroad, not visible from Spring Avenue. The dumpster area shall be kept clean and free of litter and debris. All garbage shall be contained within a dumpster at all times and the dumpsters shall be covered with a lid at all times except when loading into a dumpster is occurring.
 - e. No outdoor storage of materials collected or stored in conjunction with the operation of the TEMPORARY USE shall be allowed on the SUBJECT PROPERTY. Parking of operable commercial vehicles shall not constitute outdoor storage provided that they are parked in compliance with Section a above.
 - f. Any exterior lighting shall be limited to lighting necessary for security purposes, and shall not exceed 0.00 foot-candles at the south property line and 2.0 foot-candles along the west, north and east property lines. Exterior lighting shall not shine, glare or spill onto the adjacent residential properties. The OWNER AND DEVELOPER shall provide the Zoning Administrator a photometric plan for review and approval prior to installation of any exterior lighting. There shall be no flashing lights on the SUBJECT PROPERTY, except those lights that are required in accordance with applicable life safety regulations.
6. SUBJECT PROPERTY IMPROVEMENTS: The OWNER AND DEVELOPER will make the improvements to the SUBJECT PROPERTY listed below in order to improve the appearance of the SUBJECT PROPERTY. Said improvements shall be completed and approved by the City prior to issuance of a temporary or final occupancy permit for the SUBJECT PROPERTY. All future improvements of the SUBJECT PROPERTY shall be subject to review and approval by the Zoning Administrator and shall not be taken into consideration by the City Council relative to any future request to extend the term of the TEMPORARY USE.
- a. Remove and replace landscaping materials on the south side of the buildings located on the SUBJECT PROPERTY in accordance with the Landscape Plan (EXHIBIT D to the ordinance approving the TEMPORARY USE).
 - b. Stain the brick façade and paint the rest of the facades on the exterior of the buildings on the SUBJECT PROPERTY in accordance with the Color Rendering (EXHIBIT E to the ordinance approving the TEMPORARY USE).

- c. Install a 6' tall, solid wood or PVC fence with a gate, or comparable non-deciduous landscape screening, subject to the review and approval by the Zoning Administrator, along the south property line of the SUBJECT PROPERTY between the west property line and the west wall of the existing building.
 - d. Any proposed signage on the SUBJECT PROPERTY shall not be illuminated and shall be subject to review and approval of a separate sign permit.
7. **REQUIREMENT TO ADDRESS LEGITIMATE CONCERNS:** In the event that the TEMPORARY USE of the SUBJECT PROPERTY causes one or more legitimate concerns to be raised and the City's Zoning Administrator determines that such concern or concerns have a legitimate basis and communicates the same to the OWNER AND DEVELOPER, the OWNER AND DEVELOPER agrees to take appropriate measures to promptly address such concerns. The Zoning Administrator shall review and report to Council any complaints or issues raised concerning the TEMPORARY USE of the SUBJECT PROPERTY within two years of the approval of the TEMPORARY USE. If said concerns are not addressed to the satisfaction of the Zoning Administrator, the Zoning Administrator may recommend termination of the TEMPORARY USE to the City Council; said termination will be at the discretion of the City Council.
8. **BINDING EFFECT:** The undersigned acknowledges and agrees that the terms contained and referenced herein shall be binding upon and inure to the benefit of the City of Naperville, the OWNER AND DEVELOPER, and the successors, assigns, and any subsidiary, affiliate or parent of the OWNER AND DEVELOPER.
9. **RECORDATION:** This Agreement will be recorded in the Office of the DuPage County Recorder.

The undersigned warrants that he is the owner of the SUBJECT PROPERTY, or is the duly authorized representative of the owner in the case of a corporation, partnership, trust, or similar ownership form which owns the SUBJECT PROPERTY. The undersigned has full power and authority to sign this Agreement and voluntarily agrees to the provisions set forth herein.

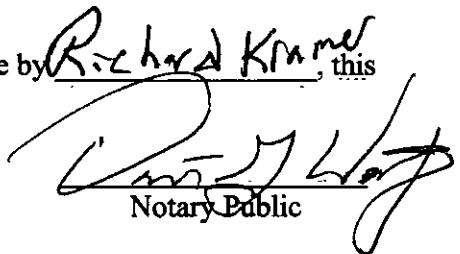
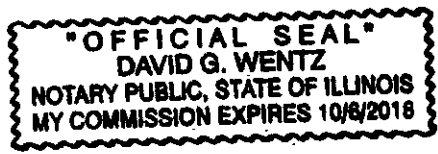
/SIGNATURES ON FOLLOWING PAGES/

OWNER AND DEVELOPER:
Kramer Restoration of DuPage County, LLC



[name] Richard Kramer
[title] Owner

The foregoing instrument was acknowledged before me by Richard Kramer, this
30th day of May, 2017.


Notary Public

CITY OF NAPERVILLE

By: Steve Chirico
Steve Chirico
Mayor

Attest:
By: Pam Gallahue
Pam Gallahue, Ph.D.
City Clerk

(corporate seal)



STATEMENT OF GENERAL CONDITIONS

The following information represents general requirements to be fulfilled by the OWNER AND DEVELOPER through the development of the SUBJECT PROPERTY as approved by City Council. This list is not intended to be comprehensive and does not preclude all other requirements as set forth in the Naperville Municipal Code. These requirements are in addition to those that were listed in the Owner's Acknowledgement and Acceptance Agreement for 433-435 w. Spring Street ("OAA").

Building Permits: No building permits shall be issued for a particular lot or parcel within the subject property until the Transportation, Engineering, and Development Business Group; Public Utilities Department; and Fire Department have determined that sufficient improvements have been installed and are functioning to protect the health, safety, and welfare of the public.

Infrastructure Availability Charges and User Fees: Any OWNER or DEVELOPER requesting connection and service to the City's water or sanitary system shall pay for all infrastructure availability charges and user fees in accordance with Title 8 of the Naperville Municipal Code as are applicable to that portion of the SUBJECT PROPERTY for which connection and service is requested.

Facility Installation Charges and User Fees: Any OWNER or DEVELOPER requesting connection and service to the City of Naperville electric system shall pay for all Facility Installation Charges (FIC) and user fees in accordance with Title 8 of the Naperville Municipal Code as are applicable to that portion of the SUBJECT PROPERTY for which connection and service is requested.

Landscape plan 433-435 W. Spring Street

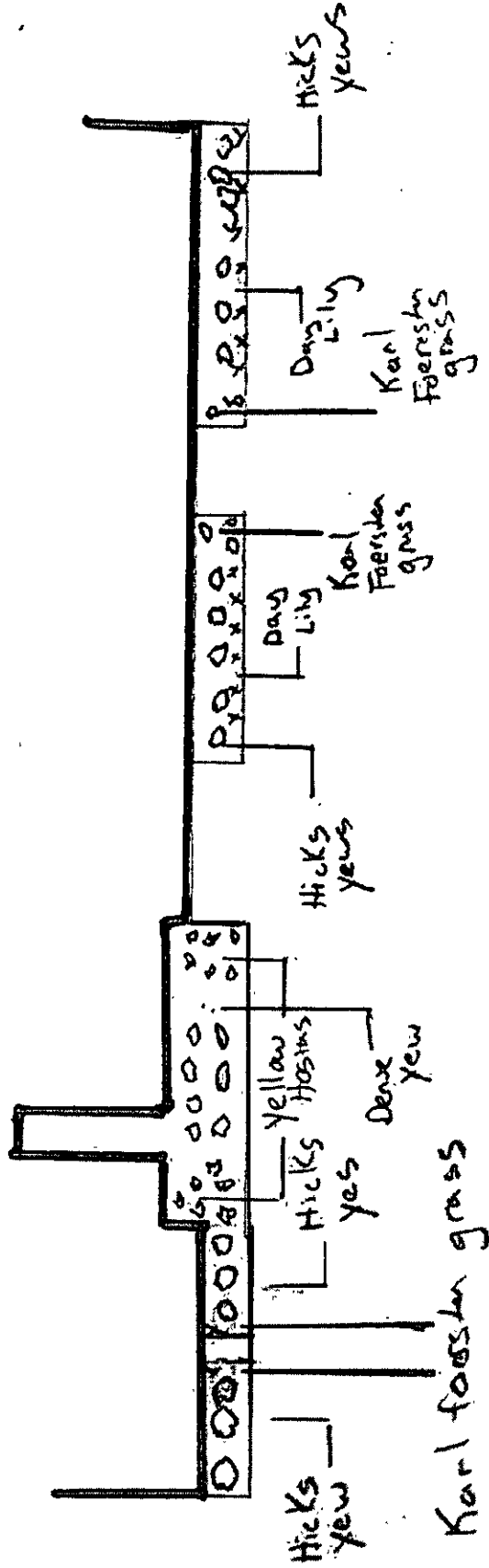


EXHIBIT C

SPRING AVE

EXHIBIT D

3/4/17

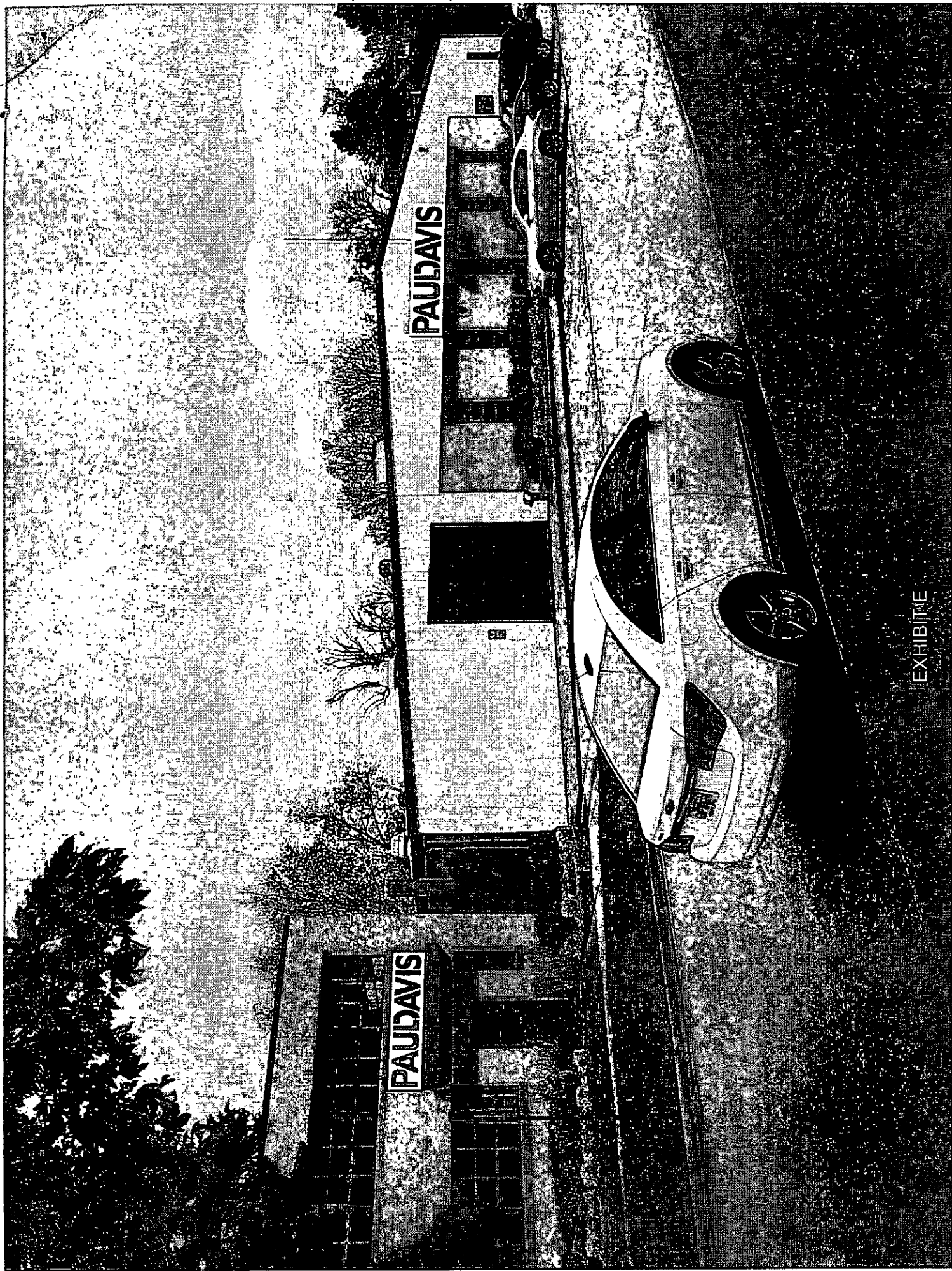


EXHIBIT E