

## DuCharme Clark LLP

A REGISTERED LIMITED LIABILITY PARTNERSHIP

Attorneys at Law

646 Plank Road - Suite 204  
Clifton Park, New York 12065  
[www.ducharmeclark.com](http://www.ducharmeclark.com)  
[jducharme@nycap.rr.com](mailto:jducharme@nycap.rr.com)

Telephone: (518) 373-1482

JOHN W. CLARK, Maj Gen, USAF (Ret)

Fax: (518) 373-8758

JOHN B. DUCHARME

### VIA E-MAIL

[bza@albany.ny.gov](mailto:bza@albany.ny.gov)

June 23, 2021

City of Albany Board of Zoning Appeals  
200 Henry Johnson Boulevard  
First Floor, Suite 3  
Albany, New York 12210

Re: Surpass Chemical Company, Inc.'s *Opposition* to Application AV#0079;  
Druthers Brewing Company II, Inc.'s request for an area variance to construct  
a 13-foot wide, 110 foot long deck in the public right of way along Bridge  
Street.

Members of the Board of Zoning Appeals:

The law firm of DuCharme Clark, LLP., represents Surpass Chemical Company, Inc., ("Surpass"), a long standing property owner and taxpayer in the City of Albany. The purpose of this letter is to set forth Surpass' *opposition* to the above-referenced Application of Druthers Brewing Company II, Inc., ("Druthers") which seeks an area variance permitting it to construct a 13-foot wide, 110 foot long deck in the public right of way along Bridge Street. I respectfully request that all members of the City of Albany Board of Zoning Appeals ("BZA") be provided with a copy of this letter and that it be included in the public record for the June 23, 2021 meeting of the BZA.

### Surpass

Surpass is a corporation organized in the State of New York which has been operating in the City of Albany for more than 100 years. It owns five parcels of land in the City, located on Broadway, Bridge Street and Mill Street from which it transacts business, (Tax ID #'s: 65.16-4-7.2; 65.36-2-65; 66.29-1-8; 66.29-1-9; & 65.16-4-14). All of these properties are in close proximity to Druthers' restaurant located at 1053 Broadway at the intersection with Bridge Street. In fact, Surpass owns the property which adjoins Druthers' property on the southeast side along Bridge Street.

Surpass offers customers one stop shopping with over 400 chemicals in stock. It is proud to include the City of Albany as one of its many municipal customers. It is engaged in manufacturing, and offers customers services regarding blending and packaging with custom chemical formulations, liquid/dry blending, and packaging

capabilities. It provides transportation services with a company owned and operated fleet of trucks, as well as its own railway access along Bridge and Mill Streets. It offers lab analysis from a professionally staffed laboratory for quality control. It warehouses products with 55,000 combined square feet of space. Its staff provides a wide array of customer technical assistance, offering 24-hour emergency support and emergency deliveries. It is involved in the water and waste water industry offering a full line of water and waste water treatment products and services. It is involved in the semiconductor industry offering high purity process and waste water chemicals. It is involved in the agriculture and dairy industry offering many years of experience with sanitation products and technical service. It is involved in the food and beverage industry covering a wide range of food grade raw materials and cleaning products. It is involved in the pulp and paper industry serving traditional to specialty manufacturers. It is involved in the swimming pool industry offering a complete line of swimming pool chemicals, feeders, and control equipment. And, it is involved in a variety of other industries including: chemical processing, coatings, compounders, health and beauty, HVAC and plumbing, janitorial, laundry, leather, metal finishing, pharmaceutical re-packers, surface finishers, and textiles.

Surpass employs approximately 55 quality individuals who make-up the Surpass team. It offers competitive salaries and fringe benefits packages, and a potential for future promotion within the company for qualified employees who excel at their jobs. Many of Surpass' employees live in the neighborhoods that are located near Surpass' facilities on Broadway, Bridge Street and Mill Street.

As a chemical company, Surpass considers its number one priority to be safety. It takes every reasonable step to insure that it operates its business in a manner which protects its employees, customers and neighbors from harm which may be caused by the unintentional release of chemicals into the environment. It is against this backdrop that Surpass must oppose Druthers' pending request for an area variance to construct a 13-foot wide, 110 foot long deck in the public right of way along Bridge Street. As will be more fully explained below, Surpass respectfully submits that if Druthers' Application is approved by the BZA, it will make it more difficult for Surpass to transport its products in a safe manner along Bridge Street thereby exposing its employees, neighbors, and even the patrons of Druthers to unnecessary risks.

#### **Druthers' December 2013 Application for a Use Variance**

Druthers is a privately owned, for profit, corporation. In December 2013, Druthers applied to the BZA for a use variance seeking to permission to operate a commercial brewery and small tasting room in the building located at 1053 Broadway. See, Case # 1-14, 4158. The "Project Narrative" which accompanied the Application stated that "[a]bsent a use variance that would allow Druthers Brewing Company to purchase the Building and *utilize a small portion for a tasting room*, the Owner would move forward with relocating the existing plumbing supply business." A proposed renovation plan accompanied the Application and depicted a small "tasting" area with nineteen 4-person tables, and a bar with 21 stools. A copy of that proposed renovation plan is attached hereto as **Exhibit A**.

Surpass owns property contiguous to the 1053 Broadway Property, but it has no record of receiving any notice from the City regarding Druthers' December 2013 application for a use variance. As such, Surpass did not appear and comment on that application.

On January 8, 2014, less than one-month after Druthers applied to the BZA for a use variance, it was granted. There does not appear to have been any substantial analysis of the traffic and parking issues which would be created along Broadway and Bridge Street as a result of the use variance permitting the tasting room. Instead, the application was granted on the condition that Druthers "agree upon a parking and traffic control plan with the division of Traffic Engineering."

### **Druthers' Constructed its Restaurant and Parking Issues Arose**

Following January 2013, Druthers renovated its 1053 Broadway Building into a restaurant which appears to be much larger than the *small* tasting room presented in its application for a use variance. Druthers' patrons began to park along the northwesterly side of Bridge Street in the marked "no parking" zone. They park near or on the railroad tracks which intersect with Bridge Street. And, they park on Surpass' private property. Surpass representatives have documented their concerns in this regard with photographs, four of which are attached hereto as **Exhibit B**. The first photograph depicts an automobile parked directly on operating, active railroad tracks. The second photograph depicts an automobile parked dangerously close to the operating, active railroad tracks. The third photograph depicts a family who parked their car on the other side of the railroad tracks, and after they left Druthers, had to wait for the track to clear before being able to cross to their car. The fourth photograph depicts cars owned by Druthers patrons parked on Surpass' property and blocking access to its facilities on Bridge and Mill Streets. This causes safety concerns for Surpass. It complained to both the owners of Druthers as well as the City of Albany's Police Department requesting assistance in enforcing the "no parking" along Bridge Street, but to no avail.

When Druthers' patrons park in the "no parking" zone along Bridge Street, it significantly narrows the width of street which is used by Surpass' large tank trucks to transport chemicals from its facilities on Bridge and Mill Streets. This increases Surpass' safety concerns when transporting chemicals along Bridge Street. On May 14, 2019, a car was illegally parked in the "no parking" zone on Bridge Street at the intersection with Broadway. As a large Surpass tank truck made a left hand turn off Broadway and onto Bridge Street, a car attempted to squeeze by the illegally parked car to make a right hand turn from Bridge Street onto Broadway. The car ran into the tank portion of the Surpass vehicle. An illustration depicting what happened that day is attached hereto as **Exhibit C**. Fortunately, no one was injured and the tank was not breached as a result of this accident. But, it highlights Surpass' ongoing concern with the situation on Bridge Street.

### **The June 14, 2020 Agreement Between Surpass & Druthers**

In and after March 2020, the Honorable Andrew M. Cuomo, Governor of the State

of New York, executed several Executive Orders which directed that all restaurants conducting business in the State of New York discontinue serving patrons in the restaurant and limited them to take-out services. In June 2020, Governor Cuomo executed Executive Orders which permit restaurants to resume serving patrons in outdoor sections of the restaurant, in addition to take-out services. At that time, Druthers requested that Surpass consent to closing Bridge Street to motor vehicle traffic during specific hours to permit it to serve patrons in outdoor sections of the restaurant to be located on Bridge Street in accordance with the Executive Orders. Surpass was willing to consent to Druthers closing Bridge Street to motor vehicle traffic on the terms and conditions set forth in June 14, 2020 Agreement, a copy of which is attached hereto as **Exhibit D**.

In the Agreement, Druthers acknowledged that Surpass requires Bridge Street to be open during the hours of 2:00 a.m., to 4 p.m., so that motor vehicles can access its Bridge Street Facility. Therefore, Druthers agreed not to close Bridge Street during those hours. See, ¶2 of Exhibit D.

In consideration for Surpass' consent, Druthers agreed to actively seek to prevent patrons from parking their vehicles in the "no parking" zone along Bridge Street. Druthers agreed to post signs at all points on ingress and egress in its restaurant advising patrons not to park in the "no parking" zone. It also agreed to post a notice on the home page of its website conspicuously advising patrons not to park in the "no parking" zone along Bridge Street. Druthers agreed to have at least one staff member dedicated to check parking and to proactively require patrons to move illegally parked cars. Druthers acknowledged that when the patrons park in the "no parking" zone, it adversely impacts Surpass' ability to access its Bridge Street Facility. See, ¶6 of Exhibit D.

Despite the foregoing provisions, the parking problems along Bridge Street persist making it less safe for Surpass to transport chemicals along this public street.

### **Druthers' Pending Application**

On June 18, 2021, Surpass received notice of Druthers' pending Application seeking an area variance to construct a 13-foot wide, 110 foot long deck in the public right of way along Bridge Street. Druthers' Application states:

To make dining safer for customers and to ensure the continued operation of Druthers in Albany, Druthers would like to construct a deck that is approximately 13 feet wide and 110 feet long. Because the existing property line "hugs" the restaurant/brewery at Druthers, such a deck would have to be built in the Public ROW. Section 375-402(G)(4) prohibits a deck from extending into an easement or Public ROW. In addition to this variance, Druthers is seeking a permanent easement over the land under the deck from the City of Albany. See, Part 2 of Master Application dated May 17, 2021.

## Surpass Opposition to the Application

Surpass opposes Druthers' pending Application for the following reasons. Granting Druthers the right to build its deck will *not* make dining safer for its customers. To the contrary, it will place them in closer proximity to Bridge Street which is used by Surpass to transport chemicals in large tank trucks. It will also expand Druthers' use of the property contiguous to Bridge Street exacerbating Surpass' existing problems with its attempts to safely and lawfully use Bridge Street to access its facilities with the large tank trucks.

On Monday, June 21, 2021, at approximately 3:30 p.m., representatives of Surpass stood on Bridge Street and took the two photographs attached hereto as **Exhibit E**. The first photograph depicts two vehicles parked in the "no parking" zone on Bridge Street and a National Grid truck having to stop and pull over as it traveled on Bridge Street towards Broadway to permit another vehicle to pass as it traveled on Bridge Street towards Mill Street. The second photograph depicts the same two vehicles parked in the "no parking" zone on Bridge Street and a Surpass tank truck turning left off Broadway onto Bridge Street. If Druthers' deck was constructed as planned, the Surpass tank truck would be forced to drive in very close proximity to any patrons sitting on that deck.

During the afternoon on Tuesday, June 22, 2021, a representatives of Surpass stood on Bridge Street and took the photograph attached hereto as **Exhibit F**. It depicts vehicles parked in the "no parking" zone on Bridge Street significantly narrowing the width of the street and making it very difficult for Surpass tank trucks to access its Bridge and Mill Street facilities. Clearly, Druthers' request to extend its use of the property contiguous to Bridge Street will exacerbate Surpass' existing problems with its safe and lawful use of this street to access its facilities with the large tank trucks.

### **Druthers' Application Should Be Analyzed as One Seeking a Use Variance as Opposed to an Area Variance**

On June 1, 2017, the City of Albany adopted its Unified Sustainable Development Ordinance ("USDO") which includes among its purposes to facilitate the provision of adequate transportation in the City as well as promote public health, safety and general welfare of its citizens. See, USDO §375-102. As Druthers' Application concedes, the USDO precludes the construction of front porches which "extend into the right-of-way or any easement." See, USDO §375-402(1)(G)(4).

Druthers' Application seeks an area variance in order to avoid compliance with this provision of the USDO: Surpass respectfully submits that given the zoning in this case, the more stringent rules applicable to a use variance should be applied by the BZA.

An *area variance* is the "authorization of the zoning board of appeals for the use of land which is not allowed by the dimensional or physical requirements of the applicable zoning regulations." General City Law §81-b(1)(b). In contrast, a *use variance* is the "authorization of the zoning board of appeals for the use of land for

a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.” General City Law §81-b(1)(a).

Both Druthers’ and Surpass’ properties located on Bridge and Mill Streets are zoned “Light Industrial” according to the City’s zoning map. A restaurant is *not* a permitted use and a bar or tavern is a “vacant property use” in the Light Industrial zone. See, USDO §375-3(B), “Permitted Use Table.” As is set forth above, Druthers was permitted to operate a commercial brewery and small tasting room in the building located at 1053 Broadway pursuant to the January 8, 2014, use variance, see, Case # 1-14, 4158, and it has continued to do so under the subsequently enacted USDO as a non-conforming use.

Druthers is now seeking to significantly expand the non-conforming use of its 1053 Broadway property by constructing a 13-foot wide, 110 foot long deck on which it will locate fifteen 4-person tables to serve its restaurant customers. See, “Preliminary Site Plan” submitted with Druthers’ Application. Surpass respectfully submits that such a significant expansion of Druthers’ non-conforming use should be analyzed by the more stringent rules applicable to a use variance. See, Upper Delaware Ave. Ass’n of Delmar, inc. v. Fritts, 124 A.D.2d 273, 274 (3d Dept 1986)(holding that a use variance is required to expand a non-conforming use), *citing*, Crossroads Recreation, Inc. v. Broz, 4 N.Y.2d 39, 42 (1958). As such, Druthers’ Application for the area variance should be denied.

**Druthers’ Application Fails to Meet  
Elements Required for it to Receive an Area Variance**

If the BZA decides that Druthers’ Application for an area variance is appropriate, then Surpass respectfully submits that Druthers has not meet all of the elements required for it to receive an area variance.

The General City Law §81-a(4) provides:

Area variances. (a) The zoning board of appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.

(b) In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:

(i) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area

variance;

(ii) whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;

(iii) whether the requested area variance is substantial;

(iv) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

(v) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

(c) The board of appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community. General City Law §81-a(4)

It is respectfully submitted that the facts set forth above establish that the detriment which Surpass and the surrounding neighborhood will suffer as a result of granting Druthers' application *far exceed* the financial benefit Druthers may obtain by expanding its non-conforming restaurant into the public right-of-way.

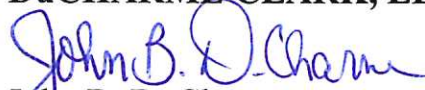
**Druthers Is Not Entitled to Any Easements**

Druthers' pending Application fails to provide any legitimate reasons why the City should impair the value of its property along Bridge Street to the detriment of its citizens and the benefit of a privately owned, for-profit business by granting Druthers a permanent easement for no consideration.

Thank you for your consideration of the foregoing.

Respectfully submitted,

**DuCHARME CLARK, LLP**



John B. DuCharme

JBD:nb

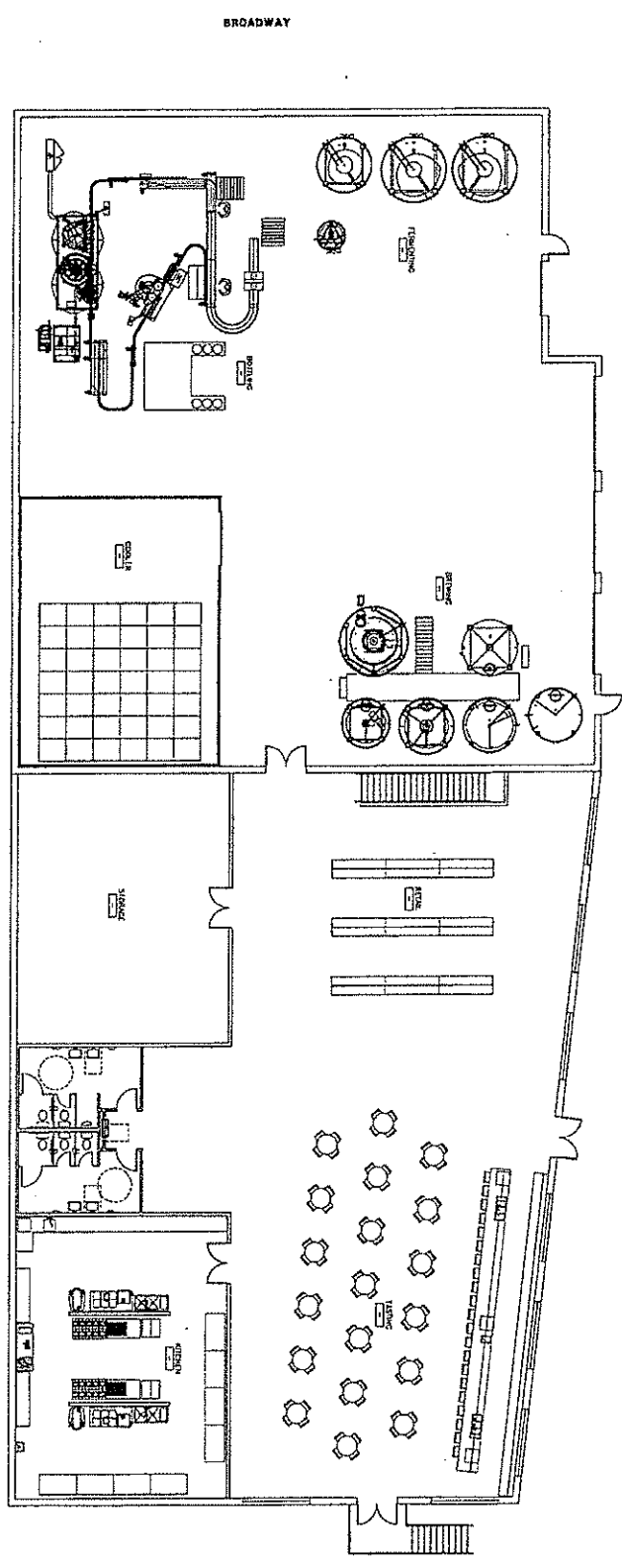
Enclosures

cc: Leonard J. Smith, President of Surpass (via e-mail)

# **EXHIBIT “A”**



1  
 PR1  
 SCALE: 1/4" = 1'-0"  
 PROPOSED SCHEMATIC PLAN



2)

NO.	DESCRIPTION	DATE
1	PROPOSED SCHEMATIC PLAN	4/11/14
2	REVISION: CORRECTIONS	
3	REVISION: CORRECTIONS	
4	REVISION: CORRECTIONS	
5	REVISION: CORRECTIONS	
6	REVISION: CORRECTIONS	
7	REVISION: CORRECTIONS	
8	REVISION: CORRECTIONS	
9	REVISION: CORRECTIONS	
10	REVISION: CORRECTIONS	

PR1  
 PROJECT NO. 14171  
 SCALE: 1/4" = 1'-0"  
 DRAWING: ARCHITECT  
 DESIGN: ARCHITECT  
 SHEET: 2 OF 3  
 PROJECT: RENOVATION

**RENOVATION**  
**DRUTHERS BREWING COMPANY**  
**1053 BROADWAY STREET**  
**ALBANY, NEW YORK**  
 PROJECT NO. 14171  
 SCALE: 1/4" = 1'-0"  
 DRAWING: ARCHITECT  
 DESIGN: ARCHITECT  
 SHEET: 2 OF 3  
 PROJECT: RENOVATION

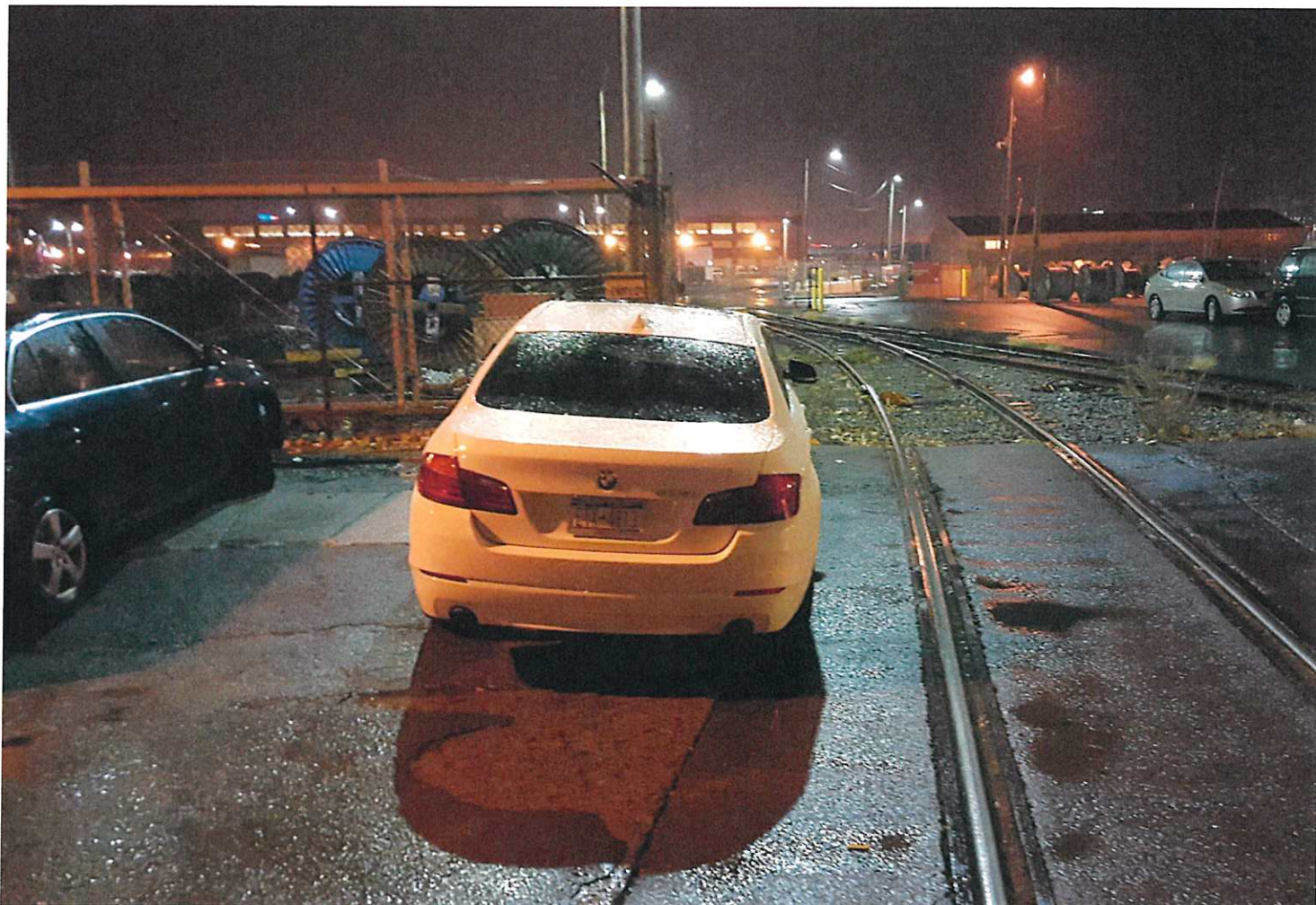
THIS DOCUMENT IS THE PROPERTY OF PAONE ARCHITECTURE, P.C. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF PAONE ARCHITECTURE, P.C.

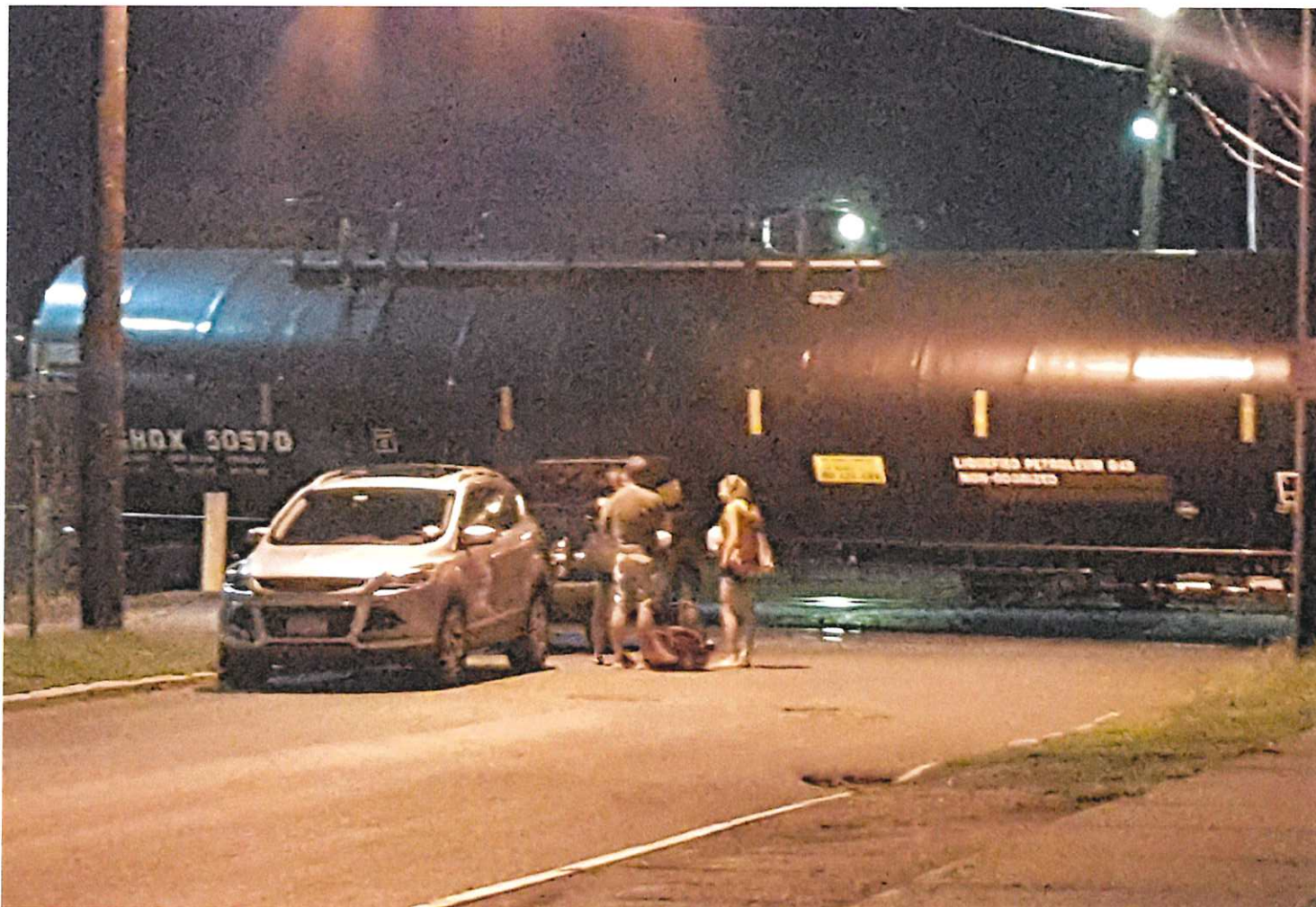


PAONE ARCHITECTURE, P.C.  
 INTERIOR DESIGN • DESIGN/BUILD  
 50 ROUTE 11  
 SALEM TOWN, NY 12154  
 518-662-0212 FAX 518-662-0211  
 WWW.PAONEARCHITECT.COM

# **EXHIBIT “B”**

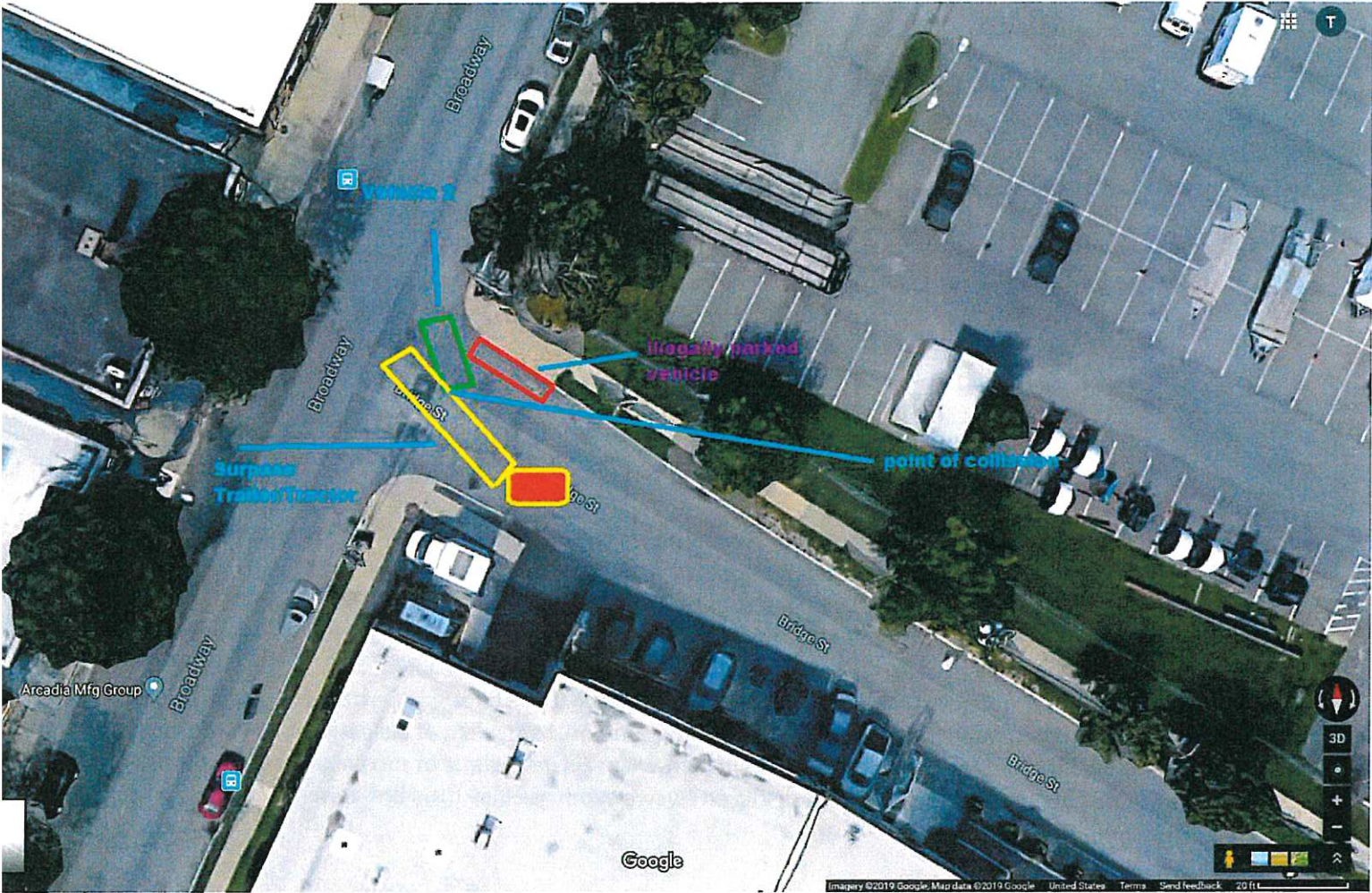








# **EXHIBIT “C”**





# **EXHIBIT “D”**

## AGREEMENT

This Agreement is entered into as of the <sup>14<sup>th</sup></sup> day of June, 2020 ("Effective Date") by and between **Surpass Chemical Company, Inc.**, a corporation duly organized and authorized to conduct business in the State of New York, which maintains its principal office at 1254 Broadway, Albany, New York 12204 ("Surpass"); and **1053 Brewing, LLC**, a limited liability company duly organized and authorized to conduct business in the State of New York, which owns the real property and improvements located at 1053 Broadway, Albany, New York 12204 ("1053 Brewing"); and **Druthers Brewing Company, Inc.**, a corporation duly organized and authorized to conduct business in the State of New York, which leases and operates a restaurant at 1053 Broadway, Albany, New York 12204 ("Druthers").

## RECITALS

**WHEREAS**, Surpass is the owner and operator of commercial facilities located in the City of Albany, including one located on Bridge Street (the "Bridge Street Facility"); and

**WHEREAS**, Surpass accesses its Bridge Street Facility via Bridge Street, a public street located in the City of Albany; and

**WHEREAS**, large trucks with tank trailers frequently travel along Bridge Street to access the Bridge Street Facility; and

**WHEREAS**, 1053 Brewing owns the real property and improvements located at 1053 Broadway, Albany, New York 12204, which adjoins and is located to the South of Bridge Street; and

**WHEREAS**, Druthers leases from 1053 Brewing the real property and improvements located at 1053 Broadway, Albany, New York, and operates a restaurant at that property; and

**WHEREAS**, in and after March 2020, the Honorable Andrew M. Cuomo, Governor of the State of New York, executed several Executive Orders which directed that all restaurants conducting business in the State of New York discontinue serving patrons in the restaurant and limited them to take-out services; and

**WHEREAS**, in June 2020, Governor Cuomo executed Executive Orders which permit restaurants to resume serving patrons in outdoor sections of the restaurant, in addition to take-out services; and

**WHEREAS**, Druthers would like Surpass' consent to close Bridge Street to motor vehicle traffic during specific hours to permit it to serve patrons in outdoor sections of the restaurant to be located on Bridge Street in accordance with the Executive Orders; and

**WHEREAS**, Surpass is willing to consent to Druthers closing Bridge Street to motor vehicle traffic on the terms and conditions set forth herein;

**NOW THEREFORE**, in consideration of the mutual promises set forth herein, the parties agree as follows.

1. **Surpass' Consent**: In accordance with the terms and conditions set forth herein,

Surpass consents to Druthers closing Bridge Street to motor vehicle traffic so that Druthers can serve its patrons in outdoor sections of the restaurant to be located on Bridge Street.

2. **Limited Hours of Closure:** Druthers and 1053 Broadway both understand that Surpass requires Bridge Street to be open during the hours of 2:00 A.M., to 4 P.M., so that motor vehicles can access its Bridge Street Facility. Therefore, 1053 Broadway and Druthers will *not* attempt to close Bridge Street during the hours between 2:00 A.M., and 4 P.M., on any day of the week (Monday through Sunday).

3. **Area to Be Used by Druthers:** During time periods when Bridge Street is closed, Druthers will define the area to be used by it to service its patrons. Druthers will erect barriers to define this area. These barriers will be adequate to prevent Druthers' patrons from trespassing on Surpass' property in any manner, including but not limited to parking their vehicles on Surpass' property.

4. **Insurance:** Druthers will name Surpass as an additional insured on its insurance policies to indemnify Surpass in the event that Surpass' property is damaged by a patron, and to hold harmless Surpass and provide it with a defense in the event that a patron alleges he/she is injured while on Surpass' property.

5. **Druthers to Maintain Area:** Druthers shall maintain the area to be used by its patrons in a clean and sanitary manner. On a daily basis, Druthers will not permit trash, picnic tables, or any other items to remain on Bridge Street once it is reopened to vehicle traffic.

6. **Consideration for Surpass' Consent:** In consideration for Surpass consent, as set forth herein, at all times following the execution of this Agreement, both Druthers and 1053 Broadway agree that they will actively seek to prevent patrons from parking their vehicles in the "no parking zones" along Bridge Street. Druthers shall post signs at all points on ingress and egress in its restaurant advising patrons not to park in the "no parking zones." Druthers shall post a notice on the home page of its website conspicuously advising patrons not to park in the "no parking zones" along Bridge Street. Druthers shall proactively monitor the "no parking zones," take steps to identify patrons who have illegally parked cars, and work with those patrons to ensure that illegally parked cars are moved. The task of monitoring the "no parking zones" shall be added to the duties of our host staff. Druthers will also work with City of Albany officials to implement a more explicit means of preventing individuals from parking in the "no parking zones." Both Druthers and 1053 Broadway understand and acknowledge that when the patrons park in the "no parking zones" it adversely impacts Surpass' ability to access its Bridge Street Facility. This provision shall survive the termination of this Agreement.

7. **Bridge Street to be Reopened in the Event of an Emergency:** Notwithstanding the foregoing, Druthers and 1053 Broadway will immediately reopen Bridge Street in the event of an emergency to permit first responders to access Surpass' property whenever Surpass or the first responders deem it necessary.

8. **Termination of Surpass' Consent:** Surpass' consent to the closure of Bridge Street shall automatically terminate on the earlier to occur of: (i) the date that Druthers can lawfully resume serving its patrons at 100% of its posted capacity inside its 1053 Broadway restaurant<sup>1</sup> or (ii) September 30, 2020. Surpass and Druthers shall remain in

<sup>1</sup> Druthers is expected to be allowed to serve inside its Broadway restaurant at 50% of its posted capacity on June 17,

communication as often as necessary to gauge the progress of the Bridge Street closing. If either party feels this new activity is detrimental to their business there will be a meeting to see if a mutual solution can be found. If either party does not agree with the solution, and no other solution is found, then the activity should cease immediately.

**9. Specific Performance, No Waiver of Damages:** The parties acknowledge and agree that the rights being protected by the terms of this Agreement are of a special, unique, unusual and extraordinary character, which gives them a particular value, and that the breach of any provision of this Agreement may cause irreparable injury and damage to the non-breaching party. In such event, the non-breaching party shall be entitled to seek specific performance of all of the acts and the undertakings required of the breaching party hereunder and to obtain injunctive and other equitable relief in any court of competent jurisdiction to prevent the violation or threatened violation of any of the provisions of this Agreement. Neither this paragraph nor any exercise by the nonbreaching party of its right to equitable relief or specific performance herein granted shall constitute a waiver by the nonbreaching party of any other rights, which it may have to damages or other relief. No failure or delay by a party in exercising any right, power or privilege hereunder shall operate as a waiver hereof nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege hereunder.

**10. Governing Law & Jurisdiction:** This Agreement is to be considered as wholly executed and delivered within the State of New York, and it is the intention of the parties that it shall be construed, interpreted and applied in accordance with the laws of the New York. The parties hereby submit to the jurisdiction of the state courts of the State of New York located in Albany County.

**11. Enforceability:** If any provision contained in this Agreement is held to be invalid, illegal or unenforceable, in whole or in part, by a court of competent jurisdiction, the parties agree to be bound by all other provisions of this Agreement and the parties agree that such court shall have the authority to modify any such invalid, illegal, or unenforceable provision so as to render it valid, legal, and capable of being enforced.

**12. Successors & Related Companies:** The parties agree that this Agreement shall be binding upon the successors, assigns and related companies of each party (including but not limited to Druthers Brewing Company II, Inc., Druthers Brewing Company III, Inc., and Druthers Brewing Company IV, LLC), and shall inure to the benefit of, and be enforceable by, such successors, assigns, and related companies.


**13. Waiver:** The parties agree that a party's failure at any time to require performance of any provision of this Agreement shall in no way affect such party's right at a later time to enforce the same. No waiver by a party of a breach of a term contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of such breach of any other term of this agreement.

**14. Counterparts:** This Agreement may be executed in one or more counterparts, including by electronic signature, each of which will be deemed to be an original, and such counterparts will together constitute the same instrument. Delivery of an executed signature page of this agreement by facsimile or electronic transmission will be effective as delivery

of a manually executed counterpart of this agreement.

**IN WITNESS WHEREOF**, each of the Parties has caused this agreement to be executed by its duly authorized representatives, effective on the effective date written above.

**1053 Brewing, LLC**

By:   
Christopher Martell, Managing Member

**Druthers Brewing Company, Inc.,**

By:   
Christopher Martell, President

**Surpass Chemical Company, Inc.**

By:   
Tyler Smith, General Manager

# **EXHIBIT “E”**







# **EXHIBIT “F”**

