ST. CHARLES
SINCE 1834

AGENDA ITEM EXECUTIVE SUMMARY

Title:	Approve an Ordinance Authorizing the Execution of an Amendment to a Purchase Agreement By and Between the City of St. Charles and SMN Development, L.L.C.
Presenter:	Chris Aiston

Please check appropriate box:

	Government Operations		Government Services
	Planning & Development	X	City Council (5/7/12)
	Public Hearing		

Estimated Cost:	N/A	Budgeted:	YES		NO	

If NO, please explain how item will be funded:

Executive Summary:

In a letter dated January 30, 2012 and citing his client's inability to secure pre-lease/pre-sale commitments required for private financing, Attorney Joe Klein, on behalf of SMN Development, LLC ("SMN), has requested an amendment to the pending Purchase Agreement between the City and SMN. Per this request, SMN is asking that it be given until on or before December 12, 2012 to (i) secure a building permit and (ii) secure an unconditional commitment for construction financing, with the construction escrow to be opened simultaneously with, and as a condition to closing the purchase on the City's First Street, 52-foot wide parcel.

As planned, once purchased, SMN will combine this parcel with its property at 1 West Main Street (former Manor Restaurant parcel). Based on an August 16, 2011 request from SMN for an extension to May 8, 2012, Staff recommended and Council approved an extension to May 7, 2012, assuming continued progress in the ongoing negotiations concerning a joint venture business arrangement (JV) for Phase III of the First Street project on adjacent parcels. Both parties in proposed JV (First Street, LLC and Inland) reported progress during the Council's February 21st meeting. At this time, staff is recommending an amendment to the subject Agreement allowing SMN until July 17, 2012 to meet the aforesaid conditions.

Attachments: *(please list)*

Ordinance (including Exhibit A, the Amended Purchase Agreement)

Recommendation / Suggested Action *(briefly explain)*:

Recommendation to approve an Ordinance Approving and Authorizing the Execution of an Amendment to Purchase Agreement By and Between the City of St. Charles and SMN Development, L.L.C.

For office use only:	*Agenda Item Number:* IL

CITY OF ST. CHARLES, ILLINOIS
ORDINANCE NO. _____

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF AN AMENDMENT TO PURCHASE AGREEMENT BY AND BETWEEN THE CITY OF ST. CHARLES AND SMN DEVELOPMENT, L.L.C.

WHEREAS, SMN Development, L.L.C., an Illinois limited liability company (the "Developer"), has previously entered into a Purchase Agreement, originally dated September 2, 2008 (and subsequently amended), with the City of St. Charles, Kane and DuPage Counties, Illinois (the "City") for the purchase of a certain vacant parcel of real property (the "Premises") located within the First Street Redevelopment Project Area (the "Redevelopment Area"); and

WHEREAS, the parties desire to amend the Agreement to revise the conditions of and date for closing of the Premises; and

WHEREAS, the Corporate Authorities of the City find it is in the best interests of the City to enter into this Amendment to Purchase Agreement.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, as follows:

Section 1. That the foregoing recital clauses to this Ordinance are adopted as the findings of the Corporate Authorities of the City of St. Charles and are incorporated herein by specific reference.

Section 2. That upon receipt from the Developer of four (4) executed copies of the Amendment to Purchase Agreement, the City Administrator is hereby authorized to execute an Amendment to Purchase Agreement in substantially the form of such agreement appended to this Ordinance as Exhibit A, with such changes therein as shall be approved by the officials of the City executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions

to constitute conclusive evidence of their approval of any and all changes or revisions therein from and after the execution and delivery of such Amendment to Purchase Agreement.

Section 3. That the officials, officers and employees of the City are hereby authorized to take such further actions and execute such documents as are necessary to carry out the intent and purpose of this Ordinance and of the Amendment to Purchase Agreement.

Section 4. That this Ordinance shall be in full force and effect upon and after its passage in the manner provided by law.

PRESENTED to the City Council of the City of St. Charles, Illinois this ____ day of _____, 2012.

PASSED by the City Council of the City of St. Charles, Illinois, this ____ day of _____, 2012.

APPROVED by the Mayor of the City of St. Charles, Illinois, this _____ day of _____, 2012.

_____
Mayor Donald P. DeWitte

ATTEST:

_____
City Clerk

COUNCIL VOTE:
Ayes:
Nays:
Absent:
Abstain:

APPROVED AS TO FORM:

_____ Date:_____
City Attorney

EXHIBIT A

AN AMENDMENT TO PURCHASE AGREEMENT

This Amendment to Purchase Agreement ("Amendment") is entered into on this _____ day of _____, 2012, by and between SMN Development, L.L.C., an Illinois limited liability company ("Purchaser"), and the City of St. Charles, an Illinois municipal corporation ("Seller").

W I T N E S E T H:

WHEREAS, Purchaser and Seller entered into that certain Purchase Agreement, dated September 2, 2008 (and subsequently amended), for the purchase and sale of the Premises, as defined in the Agreement and legally described in Exhibit A, attached hereto and to be made a part hereof; and

WHEREAS, the Seller and Purchaser desire to amend the Agreement to extend the Conditions Precedent Date, under Paragraph 8 of the Agreement; and

WHEREAS, the parties desire to further amend and modify the Agreement to incorporate the terms and conditions set forth in this Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby mutually agree as follows:

1. Incorporation of Recitals. The foregoing recitals are hereby incorporated as if fully rewritten.

2. Definitions; Amendment Controls. Capitalized terms used, but not defined herein, shall have the same meaning ascribed to such terms in the Agreement. To the extent any of the terms and conditions set forth in this Amendment shall conflict with any of the terms and conditions of the Agreement, the terms and conditions set forth in this Amendment shall at all times supersede, govern and control. In all other respects, this Amendment shall supplement the terms and conditions of the Agreement.

3. Conditions Precedent. Paragraph 8 of the Agreement is hereby deleted in its entirety and the following Paragraph 8 is hereby inserted in lieu thereof:

> 8. **Conditions Precedent**. On or before July 17, 2012, this Agreement and each party's obligations to close are subject to Purchaser (i) securing a building permit and (ii) securing an unconditional commitment for construction financing, with the construction escrow to be opened simultaneously with, and as a condition to, the closing herein of the Premises between the parties.

4. Compliance. The parties hereby acknowledge that each has been faithfully performing its required obligations under the terms of the Agreement and that neither party is in breach or in default in the performance of any covenant or agreement required to be performed of such party under the Agreement as of the date hereof.

5. Ratification of Agreement. Except as amended and modified in this Fourth Amendment, the Agreement is hereby ratified to be in full force and effect.

6. Counterparts. This Amendment may be executed in counterparts, each of which shall constitute an original, but all together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed or caused this Fourth Amendment to the Agreement to be executed, as of the day and year first above written.

PURCHASER:

SMN Development, L.L.C.,
an Illinois limited liability company

By:_____

Attest:_____

SELLER:

City of St. Charles,
an Illinois municipal corporation

By:_____
Brian Townsend
City Administrator

EXHIBIT "A"

Legal Description of Real Estate

LOT 2 OF PHASE III FIRST STREET REDEVELOPMENT SUBDIVISION OF PART OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 27 AND EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 34, TOWNSHIP 40 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 8, 2008, AS DOCUMENT 2008K089916 AND CORRECTION CERTIFICATE RECORDED DECEMBER 8, 2008, AS DOCUMENT 2008K089917.