



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: 3a.

Title: Recommendation to Approve and Execute a Parking Deck Easement and Operating Agreement between the City of St. Charles and First Street Development II, LLC and MAC Partners, LLC.

Presenter: Chris Bong, P.E.

Meeting: Planning & Development Committee

Date: June 12, 2017

Proposed Cost: \$0

Budgeted Amount: \$

Not Budgeted:

Executive Summary *(if not budgeted please explain):*

A parking deck easement and operating agreement between the City of St. Charles and the owners of the First Street Development Lot 1/Building #1 (First Street Development II, LLC, and MAC Partners, LLC,) of the First Street Redevelopment Project is being presented to the Planning and Development Committee for consideration.

The City previously granted an access easement for vehicular and pedestrian ingress/egress purposes to the owners of the lots surrounding the parking deck on October 4, 2016. The agreement now currently before the committee focuses on operations and maintenance between the Parking Deck and Building #1.

Each of these two structures will depend upon the other, to some extent, for utility services and other facilities. This agreement describes the necessary easements and the required operation and maintenance necessary to ensure the efficient operation of both structures. Some topics covered in the agreement include:

- Granting the City access to the Building #1 control room for streetscape irrigation controls.
- Granting Building #1 owners access to their utility services that pass through the parking deck area.

A team of City staff from Community Development, Public Works, Fire Department, Police Department as well as the City Attorney have reviewed this document and have found that it addresses all pertinent matters.

Attachments *(please list):*

Resolution and Parking Deck Easement and Operating Agreement

Recommendation/Suggested Action *(briefly explain):*

Staff recommends approval and execution of the Parking Deck Easement and Operating Agreement between the City of St. Charles and First Street Development II, LLC and MAC Partners, LLC.

City of St. Charles, Illinois
Resolution No. _____

A Resolution Authorizing the Mayor and City Clerk of the City of St. Charles to Execute a Parking Deck Easement and Operating Agreement between the City of St. Charles and First Street Development II, LLC and MAC Partners, LLC.

**Presented & Passed by the
City Council on June 19, 2017**

BE IT RESOLVED by the Mayor and City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, that the Mayor and City Clerk be and the same are hereby authorized to execute a Parking Deck Easement and Operating Agreement between the City of St. Charles and First Street Development II, LLC and MAC Partners, LLC.

PRESENTED to the City Council of the City of St. Charles, Illinois, this 19th day of June, 2017

PASSED by the City Council of the City of St. Charles, Illinois, this 19th day of June, 2017

APPROVED by the Mayor of the City of St. Charles, Illinois, this 19th day of June, 2017

Raymond P. Rogina, Mayor

ATTEST:

City Clerk

COUNCIL VOTE:

Ayes:

Nays:

Absent:

Abstain:

PARKING DECK EASEMENT AND OPERATING AGREEMENT

This Parking Deck Maintenance and License Agreement (hereinafter the "Agreement") is made and entered into as of this ____ day of _____, 2017, by and between the City of St. Charles, an Illinois municipal Corporation, Kane and DuPage Counties, Illinois (hereinafter "City"), and First Street Development II, LLC, an Illinois limited liability company and MAC Partners, LLC, an Illinois limited liability company (hereinafter sometimes collectively referred to as "Lot Owners"). The City and the Lot Owners are sometimes hereinafter collectively referred to as the Parties ("Parties") or individually as the Party ("Party");

WITNESSETH

WHEREAS, The City and First Street Development II, LLC are parties to a certain City of St. Charles Central Downtown Tax Increment Financing Redevelopment Agreement (First Street Project), dated the 5th day of March, 2015 (the "RDA") as amended by the First Amendment to City Of St. Charles Tax Increment Financing Redevelopment Agreement dated September 6, 2016. Unless otherwise defined to the contrary, all defined terms in this Agreement shall have the same definition and meaning as provided for in the RDA.

WHEREAS, pursuant to Section 4.4 of the RDA, the City has constructed, as part of and in conjunction with the development of Phase I, a Public Deck on the City Deck Property, legally described on Exhibit A, attached hereto and made a part hereof.

WHEREAS, Lot Owners have constructed a mixed use commercial and office building (the "Building") on Lot 1 legally described on Exhibit B (the "Lot Owners Property").

WHEREAS, neither the Public Deck nor the building on Lot 1 is or will be functionally independent of each other, and each will depend upon the other, to some extent, for structural support, enclosure, ingress and egress, utility services and certain other Facilities and components necessary for the operation and use of the Public Deck, the streetscape and Building on Lots 1. The City Deck Property and Lot 1 are collectively sometimes referred to herein as the Property

WHEREAS, The Parties desire by this Agreement to provide for the efficient operation of Property and to assure the harmonious relationship among the owners of the Public Deck and the Building to protect the respective values of each such estate and interest in the Property, by creating (1) certain easements, covenants and restrictions against and affecting the City Deck Property which will be binding upon the owners from time to time of the City Deck Property , or of any portion thereof or interest or estate therein, and which will inure to the benefit of the owners from time to time of Lot 1 or of any portion(s) thereof or interest or estate therein, and (2) certain easements, covenants and restrictions against and affecting Lot 1 which will be binding upon the owners from time to time of the Lot 1 or of any portion thereof or interest or estate therein, and which will inure to the benefit of the owners from time to time of the City Deck Property or of any portion thereof or interest or estate therein.

NOW, THEREFORE, in consideration of the foregoing premises and of the covenants and conditions hereinafter contained, the adequacy and sufficiency of which the Parties hereto hereby stipulate, the Parties hereby agree as follows:

ARTICLE 1 **DEFINITIONS**

1.1 Definitions. Whenever used in this Agreement, the following terms shall have the respective meanings specified below:

EASEMENTS. A collective reference to any and all easements provided for, declared, granted, reserved or created pursuant to the terms and provisions of this Agreement.

EMERGENCY SITUATION. A situation impairing or imminently likely to impair structural support of any Improvements or causing or imminently likely to cause bodily injury to persons or substantial physical damage to any Building or the Public Deck or any property in, on, under, within, upon or about the Property or substantial economic loss to an owner. An emergency situation includes weather related emergencies (i.e., snow, ice, flooding, etc.) that require entrances to the upper and lower deck to be closed for maintenance and/or snow removal. The duration of an Emergency Situation shall be deemed to include the time reasonably necessary to remedy the Emergency Situation

FACILITIES. Facilities shall include, but are not limited to, refuse and trash enclosures areas and receptacles, electric and water meters, irrigation control system, junctions and power lines for irrigation control system, electric utility equipment, AT&T or Comcast connections, mechanicals including air conditioning units, cabinets, cables, coils, computers, conduits, controls, control centers, devices, ducts, equipment, fans, fixtures, generators, hangers, indicators, junctions, lines, machines, lift station, motors, outlets, panels, pipes, pumps, triple basins, systems, tanks, transformers, valves, wiring, and the like used in providing services from time to time in any part of the Property, including, without limitation, air conditioning, alarm, antenna, circulation, cleaning, communication, cooling, electric, exhaust, heating, internet, lightning protection, natural gas, plumbing, radio, recording, sanitary, security, sensing, telephone, television, transportation, ventilation and water service, and any replacements of such items. Attached hereto and incorporated herein as Exhibits C and D are diagrams depicting the facilities on both the public deck and Lot 1.

MAINTENANCE or MAINTAIN. Operation, maintenance, repair, reconditioning, refurbishing, reconfiguration, inspection, testing, monitoring, cleaning and sanitizing (including debris removal), snow removal, painting, installation, reconstruction, restoration and replacement when necessary or desirable of the Building, Public Deck or Facilities and which includes the right of access to and the right to remove from the Building or the Public Deck portions of such Facilities for any of these purposes, subject, however, to any limitations set forth elsewhere in this Agreement.

OWNER(S). The Lot Owners, their successors in interest and the City, or either of them.

PARCEL(S). A vertically subdivided Lot or Lots comprising the Building and the Public Deck, or either of them.

PROJECT SITE. A collective reference to the Building and the Public Deck.

STRUCTURAL SUPPORTS. All construction elements (including, without limitation, structural members, footings or foundations, slabs, caissons, columns, beams, braces and trusses and other supporting components), if any, which are load bearing or which are necessary for the structural integrity of any portion of the Public Deck or Buildings.

ARTICLE 2

EASEMENTS APPURTENANT TO THE CITY DECK PROPERTY

In General. For the purposes of this Article 2, the following shall apply:

The Lot Owners are the grantors of the Easements described in this Article 2. The grants of Easements in this Article 2 shall bind and be enforceable against the Lot Owners and their successors and assigns.

The City is the grantee of the Easements described in this Article 2. The Easements shall benefit the City, and its respective successors and assigns.

(A) The grant of an Easement by the Lot Owners shall bind and burden Lot 1 which shall, for the purpose of this Article 2, be deemed to be the servient tenement. Where only a portion of Lot 1 is bound and burdened by the Easement, only that portion shall be deemed to be the servient tenement.

(B) The grant of an Easement to the City is appurtenant to and shall benefit the City Deck Property, which shall, for the purpose of this Article 2, be deemed to be the dominant tenement. Where only a portion of the City Deck Property is so benefited, only that portion shall be deemed to be the dominant estate. No property other than the City Deck Property as it may exist from time to time shall constitute part of the dominant tenement.

(C) Unless otherwise expressly provided in this Agreement, all Easements granted are irrevocable and perpetual in nature during the term and pursuant to the provisions of this Agreement.

(D) In exercising an Easement granted under this Article 2, the City shall minimize the impact of its exercise on the Lot Owners taking into consideration the economic impact of any disruption on the Lot Owners.

(E) The Lot Owners may, (1) in connection with the Maintenance of the Building, or (2) in an Emergency Situation, or (3) if necessary under applicable Law to prevent a dedication of, or an accruing of rights by, the public in and to the use of any of the Building (other than as granted herein), temporarily prevent, close off or restrict the flow of vehicular and pedestrian ingress, egress or use in, over, on, across and through any of the Easements, but only to the minimal extent and for the shortest period of time reasonably necessary under the circumstances in order to minimize the effect on the use of such Easement. The Lot Owners may, from time to time, impose reasonable security controls consistent with the operation by such owner of such owner's Building and of its business in such Building and any security system for the Building or any portion of a Building. In imposing limitations or controls, Lot Owner shall take into consideration the reasonable needs and requirements of the user of the Easement as well as the imposing Lot Owners' own needs and requirements. The City shall at all times strictly observe all requirements of a Lot Owners relating to the security of and access to the Lot Owners' Building.

(F) Any Easement granted under this Agreement shall in all events be subject to the concurrent use by the Lot Owners of the servient estate to the extent reasonably necessary for Maintenance of the property of the Lot Owners of the servient estate and for other uses which do not unreasonably interfere with the exercise of the Easement granted.

2.1 Structural Support. The Lot Owners hereby grant to the City a non-exclusive easement in all Structural Supports, if any, located in or constituting a part of Lot 1 for the support of the Public Deck to which the City is granted an Easement.

2.2 Use of Facilities. The Lot Owners hereby grant to the City a non-exclusive Easement to install and maintain Facilities over, on, across and through the lower level and control room of the Building, to the extent necessary to permit the, Maintenance, restoration or reconstruction of Facilities as required or

permitted pursuant to this Agreement, for their intended purposes of servicing the Public Deck, the streetscape or the Building and which services are necessary to the operation of the Public Deck, the streetscape and the Building provided, however that any scaffolding or similar structures or temporary obstructions shall be on a temporary basis.

2.3 Ingress and Egress. The Lot Owners hereby grant to the City a non-exclusive easement for ingress and egress only for persons, material and equipment in, over, on, across and through such portions of the Building including as are, and only to the extent, reasonably necessary to permit the Maintenance of any Facilities located in the Building which provide or are necessary to provide the Public Deck, the streetscape or the Building with any utilities or other services necessary to the operation of the Public Deck, the streetscape or the Building.

2.4 Blanket Utility and Access. A Blanket Utility and Access Easement was reserved and granted to the City over Lots 1, 2, 3 and 4 (Exclusive of buildings not including the open corridor through building 3) and as drawn on the plat of Resubdivision recorded as Document 2016 K 053789 on October 4, 2016 with the Kane County Recorder of Deeds (the "Plat"), for utility purposes, including the right to install, lay, maintain, repair, and replace electrical conduits, wires and equipment, water mains and pipes, sewer lines, gas mains, wires and equipment, cables for transmission of telephone, television or other electrically transmitted information, sprinkler lines and pumps within the areas therefore as shown on the Plat which are designed and intended to serve the Building and the Public Deck. The Lot Owners hereby grant to the City an addition to the aforesaid Blanket Utility and Access Easement in, over, on, across and through ten (10) foot wide strip of land on Lot 1 immediately adjacent to and extending along the entire east side of the Building for the purpose of maintenance as provided for in this Agreement.

ARTICLE 3 **EASEMENTS APPURTENANT TO THE LOT OWNERS PROPERTY**

In General. For the purposes of this Article 3, the following shall apply:

The City is the grantor of the Easements described in this Article 3. The grants of Easements in this Article 3 shall bind and be enforceable against the Lot Owners and their successors and assigns.

The Lot Owners are the grantees of the Easements described in this Article 3. The Easements shall benefit the City, and its respective successors, assigns.

(A) The grant of an Easement by the City shall bind and burden the City Deck Property which shall, for the purpose of this Article 3, be deemed to be the servient tenement. Where only a portion of the City Deck Property is bound and burdened by the Easement, only that portion shall be deemed to be the servient tenement.

(B) The grant of an Easement to the Lot Owners is appurtenant to and shall benefit Lot 1, which shall, for the purpose of this Article 3, be deemed to be the dominant tenement. Where only a portion of Lot 1 is so benefited, only that portion shall be deemed to be the dominant estate. No property other than Lot 1 as it may exist from time to time shall constitute part of the dominant tenement.

(C) Unless otherwise expressly provided in this Agreement, all Easements granted are irrevocable and perpetual in nature during the term and pursuant to the provisions of this Agreement.

(D) In exercising an Easement granted under this Article 3, the Lot Owners shall minimize the impact of its exercise on the City taking into consideration the economic impact of any disruption on the City

(E) The City may, (1) in connection with the Maintenance of the Public Deck, or (2) in an Emergency Situation, or (3) if necessary under applicable Law to prevent a dedication of, or an accruing of rights by, the public in and to the use of any of Public Deck (other than as granted herein), temporarily prevent, close off or restrict the flow of pedestrian ingress, egress or use in, over, on, across and through any of the Easements, but only to the minimal extent and for the shortest period of time reasonably necessary under the circumstances in order to minimize the effect on the use of such Easement. The City may, from time to time, impose reasonable security controls consistent with the operation by the City of the Public Deck and of its business in Public Deck and any security system for the Public Deck or any portion of the Public Deck. In imposing limitations or controls, the City shall take into consideration the reasonable needs and requirements of the user of the Easement as well as the City's own needs and requirements. The Lot Owners shall at all times strictly observe all requirements of the City relating to the security of and access to the Public Parking Deck.

(F) Any Easement granted under this Agreement shall in all events be subject to the concurrent use by the City of the servient estate to the extent reasonably necessary for Maintenance of the property of the City of the servient estate and for other uses which do not unreasonably interfere with the exercise of the Easement granted.

3.1 Structural Support. The City hereby grants to the Lot Owners a non-exclusive easement in all Structural Supports, if any, located in or constituting a part of City Deck Property for the support of the Building with respect to which the Lot Owners are granted an Easement.

3.2 Use of Facilities. The City hereby grant to the Lot Owners a non-exclusive easement for the use for their intended purposes of all Facilities, located in the Public Deck and connected to Facilities located in the Building, for their intended purposes of servicing the Public Deck, the streetscape or the Building and which services are necessary to the operation of the Public Deck, the streetscape and the Building provided, however that any scaffolding or similar structures or temporary obstructions shall be on a temporary basis.

3.3 Ingress and Egress. The City hereby grants to the Lot Owners a non-exclusive easement for ingress and egress only for persons, material and equipment in, over, on, across and through such portions of the Public Deck including as are, and only to the extent, reasonably necessary to permit the Maintenance of any Facilities located in the Public Deck which provide or are necessary to provide the Building with any utilities or other services necessary to the operation of the Building.

3.4 Underground Parking Garage Access Easement. The City granted a perpetual, non-exclusive access easement for ingress/egress purposes, that runs with the land to the owners of Lot 1, Lot 2 and Lot 3 or any part(s) thereof, in, upon, over and through the ingress and egress easement on Lot 4 and as drawn on the plat of Resubdivision recorded as Document 2016 K 053789 on October 4, 2016 with the Kane County Recorder of Deeds, for the purpose of pedestrian and vehicular access over and upon Lot 4, including but not limited to the lower and ground level of any structure ever located on Lot 4, to the underground parking areas located on Lot 1, Lot 2 and Lot 3(the "Underground Parking Garage

Access Easement”). The perpetual non-exclusive ingress/egress easement shall inure to the benefit of any Lot Owner's successors or assigns.

ARTICLE 4
MAINTENANCE AND REPAIR; DAMAGE TO FACILITIES

4.1 Maintenance of City Facilities. The City shall, at its sole cost and expense, Maintain and keep all Facilities servicing the Public Deck, the streetscape located in the Building in good and safe working order and condition, and shall make all repairs or replacements of, in, on, under, within, upon or about such property, whether such repairs or replacements are to the interior or exterior of such property, or structural and non-structural components of such property, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in safe first-class order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The City further agrees that it shall not suffer or commit, and shall use all reasonable precautions to prevent waste to such property.

4.2 Maintenance of Lot Owner Facilities. The Lot Owners shall, at their sole cost and expense, Maintain and keep all Facilities servicing the Building located in the Public Deck, including the grease interceptor, in good and safe working order and condition, and shall make all necessary repairs or replacements of, in, on, under, within, upon or about such property, whether such repairs or replacements are to the interior or exterior of such property, or structural and non-structural components of such property, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in safe first-class order and condition and free from water leakage, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Lot Owners further agree that it shall not suffer or commit, and shall use all reasonable precautions to prevent waste to such property.

4.3 Maintenance of Underground Parking Garage Access Easement. The City shall, at their sole cost and expense, Maintain and keep the Underground Parking Garage Access Easement located on Lot 4 in good and safe order and condition, and shall make all repairs or replacements of, in, on, under, upon or about such Easement, whether such repairs are structural or non-structural components of such property, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in safe first-class order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise.

ARTICLE 5
INDEMNIFICATIONS

5.1 Indemnity by Parties. Each party (hereinafter in this Section 5.1 the “Indemnifying Party”) covenants and agrees, at its sole cost and expense, to indemnify, defend and hold harmless the other Parties (hereinafter in this Section 5.1, collectively the “Indemnitee”) from and against any and all claims, including any actions or proceedings, against the Indemnitee, for losses, liabilities, damages, judgments, costs and expenses by or on behalf of any person, firm, corporation or governmental authority, other than the Indemnitee, to the extent caused by the Indemnifying Party’s, as well as the Indemnifying Party’s employees’, agents’, licensees’ and invitees’ negligence or willful misconduct related to the use,

management , possession, Maintenance, exercise or enjoyment of an Easement or Facility, and from and against all costs, reasonable attorneys' fees, expenses and liabilities incurred with respect to any such claim, action or proceeding arising therefrom. In case any action or proceeding is brought against the Indemnitee by reason of any such claim, the Indemnifying Party, upon notice from the Indemnitee, covenants to defend such action or proceeding with attorneys reasonably satisfactory to the Indemnitee. Any counsel for the insurance company providing insurance against such claim, action or proceeding shall be presumed reasonably satisfactory to the Indemnitee.

ARTICLE 6 **INSURANCE**

6.1 Real and Personal Property. The City shall keep the Public Deck insured for no less than “all risk” coverage on real property and personal property owned by the City used in the operation of the Public Deck for an amount not less than ninety percent (90%) of the insurable replacement cost thereof. The Lot Owners shall keep the Building insured for no less than “all risk” coverage on real property and personal property owned by the Lot Owners used in the operation of the Building for an amount not less than ninety percent (90%) of the insurable replacement cost thereof. Replacement cost shall be determined annually by an independent appraiser or by a method acceptable to the insurance company providing such coverages. Such policies shall be endorsed with a replacement coverage endorsement and an agreed amount clause (waiving any applicable co-insurance clause) in accordance with such determination or appraisal.

6.2 Public Liability. The Lot Owners and the City shall each (1) insure against public liability claims and losses on a comprehensive or commercial general liability form of insurance with broad form coverage endorsements covering claims, for personal and bodily injury or property damage occurring in, on, under, within, upon or about the Project Site, or as a result of operations thereon (including contractual liability covering obligations created by this Agreement including, but not limited to, those indemnity obligations contained in this Agreement), and (2) maintain automobile liability insurance for owned, non-owned and hired vehicles, each coverage in such amounts as may be required by Law and as may from time to time be carried by prudent owners of first-class commercial or public parking garage buildings (as the case may be) in the western suburbs of the greater Chicago metropolitan area, but in all events for limits, as to the City and the Lot Owners and the Public Deck and the Building respectively, of not less than \$1,000,000.00 for each occurrence and \$2,000,000.00 aggregate for personal and bodily injury or property damage with an amount not less than \$5,000,000.00 umbrella coverage. Each such policy shall be endorsed to provide cross-liability and severability of interests for the named insured.

6.3 Flood and Earthquake. The City and the Lot Owners, in addition to “all risk” property insurance required under Section 6.1, shall each insure the Public Deck and the Building respectively against earthquake and flood risks in an amount equal to the replacement cost thereof or such lesser amount as then may be reasonably available in the insurance market; both subject, however, to deductibles available and reasonable for such types of insurance.

6.4 Insurance Companies. Insurance policies required by Article 6 shall be purchased from reputable and financially responsible insurance companies: taking into consideration the nature and amount of insurance required, who shall hold a current Policyholder's Alphabetic and Financial Size Category Rating of not less than A/VII (or such lesser rating as the Owners and Mortgagees may agree)

according to Best's Insurance Reports or a substantially equivalent rating from a nationally-recognized insurance rating service.

6.5 Insurance Provisions. Each policy described in Article 6: (i) shall provide that the knowledge or acts or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under any such policy; (ii) shall insure as "named" insureds the City and the Lot Owners (except that the Owners other than the primary insured shall be "additional" insureds under policies described in 6.2); (iii) shall provide (except for liability insurance described in Section 6.2 for which it is inapplicable) by endorsement or otherwise, that the insurance shall not be invalidated should any of the insureds under the policy waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the property insured under the policy, if such provisions or endorsements are available and provided that such waiver by the insureds does not invalidate the policy or diminish or impair the insured's ability to collect under the policy, or unreasonably increase the premiums for such policy unless the party to be benefited by such endorsement or provision pays such increase (iv) shall provide for a minimum of thirty (30) days' advance written notice of the cancellation, nonrenewal or material modification of such policy to Mortgagees and all insureds thereunder; (v) shall include a standard mortgagee endorsement or loss payable clause in favor of the Mortgagees reasonably satisfactory to them; and (vii) shall not include a co-insurance clause. Unless otherwise specified in this Agreement, the "all-risk" form of property-related insurance required to be procured and maintained by the Lot Owners and City shall provide no less coverage (with the exception of deductible amounts) than the standard form of insurance currently promulgated by the Insurance Services Office its successor, or other substantially similar insurance organization having responsibility for the design and publication of standardized insurance coverage forms for use by the insurance industry.

6.6 Limits of Liability. Insurance specified in this Article 6 or carried by the Owners shall be jointly reviewed by the Owners periodically at the request of any Owner, but no review will be required more often than annually (unless there is a substantial change in the Property or operations conducted in the Property), to determine if such limits, deductible amounts and types of insurance are reasonable and prudent in view of the type, place and amount of risk to be transferred and the financial responsibility of the insureds, and to determine whether such limits, deductible amounts and types of insurance comply with the requirements of all applicable statutes, laws, ordinances, codes, rules, regulations, or orders and whether on a risk management basis, additional types of insurance or endorsements against special risks should be carried or whether required coverages or endorsements should be deleted. Initially, deductible amounts for insurance required under Sections 6.1 and 6.2 shall not exceed \$25,000; provided, however, such maximum shall not apply to the City in the event it elects to self-insure risks under Section 6.9. Deductible amounts for insurance required under Section 6.2 shall not be more than is reasonable considering the financial responsibility of the insured and shall also be subject, in any case, to the consideration to be given deductible amounts described in this Section 6.6. Limits of liability may not be less than limits required by Mortgagees, notwithstanding amounts set forth in this Article 6. Such limits shall be increased or decreased, deductible amounts increased or decreased or types of insurance shall be modified, if justified, based upon such review, and upon any such increase, decrease or modification, the Owners shall, at any Owner's election, execute an instrument in recordable form confirming such increase, decrease or modification, which any Owner may record with the Recorder as a supplement to this Agreement; provided, that no agreement regarding a decrease in limits of liability, increase in deductible amounts or elimination of any types of coverages shall be effective without the written consent of the Mortgagees.

6.7 Renewal Policies. Copies of all renewal insurance policies or binders with summaries of coverages afforded and evidencing renewal shall be delivered by the City and Owners to the other Owners and to the Mortgagees at least ten (10) days prior to the expiration date of any such expiring insurance policy. Binders shall be replaced with certified full copies of the actual renewal policies as soon as reasonably possible. Should an Owner fail to provide and maintain any policy of insurance required under this Article 6 or pay its share of the premiums or other costs for any joint policies, then the other Owners may purchase such policy and the costs of such policy (or the Defaulting Owner's share of such costs) shall be due from the Defaulting Owner within ten (10) days after written demand by the Creditor Owners.

6.8 Waiver. Provided that such a waiver does not invalidate the respective policy or policies or diminish or impair the insured's ability to collect under such policy or policies or unreasonably increase the premiums for such policy or policies unless the party to be benefited by such waiver pays such increase, and without limiting any release or waiver of liability or recovery contained elsewhere in this Agreement, each Owner hereby waives all claims for recovery from the other Owners for any loss or damage to any of its property insured (or required to be insured under this Agreement) under valid and collectible insurance policies to the extent of any recovery collectible (or which would have been collectible had such insurance required under this Agreement been obtained) under such insurance policies plus any deductible amounts.

6.9 Self-Insurance. Notwithstanding anything to the contrary contained in this Article 6, for so long as the Public Deck Owner is the City, the Public Deck Owner shall not be required at any time to obtain and pay for insurance, from a third-party beneficiary as required under Sections 6.1 and 6.2 upon notice to the other Owner(s) that shall self-insure. Self-insured amounts shall be disbursed in the same manner as insurance proceeds.

ARTICLE 7 **NOTICES AND APPROVALS**

7.1 Notices to Parties. Each notice, demand, request, consent, approval, disapproval, designation or other communication (all of the foregoing are herein referred to as a "notice") that an Owner is required, permitted or desires to give or make or communicate to any other Owner shall be in writing and shall be (i) delivered personally, with a receipt requested therefor; or (ii) sent by facsimile; or (iii) sent by a recognized overnight courier service; or (iv) delivered by United States registered or certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the Owners at their respective addresses set forth below, and shall be effective (a) upon receipt or refusal if delivered personally or by facsimile; (b) one (1) business day after depositing with a recognized overnight courier service; or (c) three (3) business days after deposit in the mail, if mailed. All notices by facsimile shall be subsequently confirmed by U.S. certified or registered mail.

If to the MAC Property Owner:

Robert Zimmers
c/o ALE Solutions
St. Charles Illinois 60174
Fax: 866-814-6832
Email: Robert.Zimmers@alesolutions.com

With a copy to: Paul Gilman
Aronberg Goldgehn Davis & Garmisa
330 N. Wabash Avenue, Suite 1700
Chicago Illinois 60611
Fax: 312-222-6368
Email: pgilman@agdglaw.com

If to the Commercial Property Owner: First Street Development II, LLC
409 East Illinois Avenue Unit 1C
St. Charles, Illinois 60174
Attn: Keith Kotche
Fax: 630-587-0700
Email: Keith@levatokotche.com

With a copy to: Bochte, Kuzniar & Navigato, PC
2580 Foxfield Road Suite 200
St. Charles Illinois 60174
Attn: William F. Bochte
Fax: (630)-377-3479
Email: wbochte@bknlaw.com

If to the City: City of St. Charles
Attention: City Administrator
Two East Main Street
St Charles, Illinois 60174
Fax: Fax No. (630) 377-4440

With a copy to: Hoscheit, McGuirk, McCracken & Cuscaden, P.C.
1001 East Main Street, Suite G
St Charles, Illinois 60174
Attention: John McGuirk
Fax: (630)-523-8799
Email: jmc@hmcpc.com

Any Owner may designate a different address or additional addresses from time to time, provided such Owner has given at least ten (10) days' prior notice of such change of address. Failure to give notices to an Owner's counsel identified above shall not render notice to such Owner or Mortgagee invalid or ineffective. If any Owner shall cease to be the "Owner" of its respective portion of the Property, and the succeeding Owner of that portion of the Property shall fail to give a notice of change of address, then notices may be sent to any one of the following: (i) to the last Owner of record disclosed to the Owner giving notice, (ii) to "Owner of Record" at the street address for that Owner's portion of the Property as designated by the U.S. Postal Service (or by the successor of the U.S. Postal Service) or the City of St. Charles department or agency having jurisdiction over City of St. Charles addresses, or (iii) to the grantee at the address shown in that last recorded conveyance of the portion of the Property in question.

7.2 Multiple Owners. . If at any time the interest or estate of the City or a Lot Owner as to its Property or any portion thereof shall be owned by more than one person (hereinafter collectively referred to as "multiple owners"), the multiple owners shall give to the other Owners a written notice, executed and acknowledged by all of the multiple owners, in a form proper for recording, which shall (a) designate one person, having an address in the State of Illinois to whom shall be given, as agent for all of the

multiple owners, all notices thereafter given to the multiple owners, and (b) designate such as agent for the service of process in any action or proceeding involving the determination or enforcement of any rights or obligations under this Agreement. A property manager shall be designated as agent for all of the Lot Owners for the purposes of clause (a) and (b) of the immediately preceding sentence. Thereafter, until such designation is revoked by written notice given by all of the multiple owners or their successors in interest, any notice, and any summons, complaint or other legal process (which such summonses, complaints and legal processes are hereafter in this Article 7 collectively referred to as "legal process"), given to, or served upon, such agent shall be deemed to have been given to, or served upon, each and every one of the multiple owners at the same time that such notice or legal process is given to, or served upon, such agent. If the multiple owners shall fail to designate in writing one such agent to whom all notices are to be given and upon whom all legal process is to be served, or if such designation shall be revoked and a new agent is not designated, then any notice or legal process may be given to, or served upon, any one of the multiple owners as agent for all of the multiple owners and such notice or legal process shall be deemed to have been given to, or served upon, each and every one of the multiple owners at the same time that such notice or legal process is given to, or served upon, any one of them, and each of the multiple owners shall be deemed to have appointed each of the other multiple owners as agent for the receipt of notices and the service of legal process. To the extent that multiple owners have an interest in a Parcel, then, unless otherwise agreed upon between such multiple owners, any approval or consent of the Owners of such Parcel shall require the approval or consent of the Owners owning a majority of the percentage interests originally allocated to such Parcel.

Article 8 **GENERAL**

8.1 Cooperation of Owners. In fulfilling obligations and exercising rights under this Agreement, each Owner shall cooperate with the other Owners to promote the efficient operation of each respective portion of the Property and the harmonious relationship among the Owners and to protect the value of each Owner's respective portion, estate or interest in the Property. To that end, each Owner shall share information which it possesses relating to matters which are the subject of this Agreement, except such information as such Owner may reasonably deem confidential or which may be the subject of litigation or which such Owner is prohibited from revealing pursuant to court order. From time to time after the date of this Agreement, each Owner shall furnish, execute and acknowledge, without charge (except as otherwise provided in this Agreement) such other commercially reasonable instruments, documents, materials and information as another Owner may reasonably request in order to confirm to such requesting Owner the benefits contemplated by this Agreement, but only so long as any such request does not restrict or abridge the benefits granted the other Owner under this Agreement. The Owners will execute and record the Plat of Subdivision and this Agreement, and the Owners agree to execute such commercially reasonable amendments to this Agreement as may be reasonably necessary to modify the legal description for the Project Site and the parcels to conform to the Plat of Subdivision and to obtain consents of their Mortgagees, if required to record the Plat of Subdivision or to confirm subordination of their Mortgages to such amendments. Except as otherwise expressly provided in this Agreement, whenever the consent, approval or agreement of an Owner is required or requested pursuant to this Agreement, such consent, approval or agreement shall not be unreasonably withheld, delayed or conditioned.

8.2 Severability. The illegality, invalidity or unenforceability under law of any covenant, restriction or condition or any other provision of this Agreement shall not impair or affect in any manner the validity, enforceability or effect of the remaining provisions of this Agreement.

8.3 **Headings.** The headings of Articles and Sections in this Agreement are for convenience of reference only and shall not in any way limit or define the content, substance or effect of the Articles or Sections.

8.4 **Amendments to Agreement.** Except as otherwise provided in this Agreement, this Agreement may be amended or terminated only by an instrument signed by all of the then Owners, and consented to by the Mortgagees. As to Public Parking Deck or the Building, consent to or execution by the Mortgagees of the Public Deck or the Building (other than a Mortgagee under a mortgage initially placed on the Public Deck or the Building) shall not be required, and any such Mortgagees shall nevertheless be subordinate to such amendments. Any amendment to or termination of this Agreement shall be recorded with the Recorder. Notwithstanding the foregoing, each Owner may change and supplement the plans applicable to such Owner's portion of the Property if such change or supplement does not affect any other Owner's portion of the Property, which change or supplement shall be deemed not to be an amendment of this Agreement; provided, however, such Owner shall promptly notify the other Owners of such change or supplement. Any proposed change or supplement to any of the plans which does or would affect any other Owner's portion of the Property shall be considered an amendment to this Agreement which shall be subject to the provisions of this Section 8.4 governing amendments. To the extent an Owner wishes to further subdivide its Property the Agreement may be amended to reflect the change in ownership of a Parcel, such Owner shall be responsible for all costs to prepare and record an amendment to this Declaration and each Owner agrees to execute such amendment.

8.5 **Term.** The covenants, conditions and restrictions contained in this Agreement shall be enforceable by the Owners and their respective successors and assigns for the term of this Agreement, which shall be perpetual (or if the Law provides for a time limit on any covenant, condition or restriction, then such covenant, condition or restriction shall be enforceable for such shorter period), subject to amendment or termination as set forth in Section 8.4. If the Law provides for such shorter period, then upon expiration of such shorter period, such covenants, conditions and restrictions shall be extended automatically without further act or deed of the Owners, except as may be required by law, for successive periods of twenty (20) years each, subject to amendment or termination as set forth in Section 8.4.

8.6 **Construction of Agreement.** The provisions of this Agreement shall be construed to the end that the Property shall remain a commercial/retail/office and public parking mixed-use property.

8.7 **Abandonment of Easements.** Easements created hereunder shall not be presumed abandoned by non-use or the occurrence of damage or destruction of a portion of the Property subject to an Easement unless the Owner benefited by such Easement states in writing its intention to abandon the Easement; provided, however, that the consent of the Mortgagees shall also be required with respect to any such abandonment.

8.8 **Applicable Laws.** Parties acknowledge that this Agreement and all other instruments in connection with this Agreement have been negotiated, executed and delivered in the County of Kane and State of Illinois. This Agreement and such other instruments shall, in all respects, be governed, construed, applied and enforced in accordance with the Laws of the State of Illinois, including without limitation, matters affecting title to all real property described in this Agreement.

8.9 **No Third-Party Beneficiary.** This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third party beneficiary (except the Mortgagees) under any Laws or otherwise.

8.10 **Incorporation.** Each provision of the Recitals to this Agreement and each Exhibit and Appendix attached hereto is hereby incorporated in this Agreement and is an integral part hereof.

8.11 Notice to Mortgagees; Rights of Mortgagee.

(A) The term "Mortgage" as used in this Agreement shall mean any mortgage (or any trust deed) given primarily to secure the repayment of money owed by the mortgagor and constituting a lien the real property encumbered by such mortgage; provided, however, no mortgage or trust deed on a portion of the Public Parking Deck or the Building shall be included within the definition of "Mortgage" unless specifically stated to the contrary. The term "Mortgagee" as used in this Agreement shall mean the Mortgagee from time to time under any such Mortgage (or the beneficiary under any such trust deed). The term "First Mortgage" shall mean a Mortgage that is superior to all other consensual liens and encumbrances.

(B) If a Mortgagee shall have served on all of the Owners, by personal delivery, recognized overnight courier service, or by United States registered or certified mail, return receipt requested, postage prepaid, a written notice specifying the name and address of such Mortgagee, such Mortgagee shall be given a copy of each and every notice required to be given by one Owner to the others at the same time as and whenever such notice shall be given by one Owner to the others, at the address last furnished by such Mortgagee. After receipt of such notice from a Mortgagee, no notice thereafter given by any Owner to the others shall be deemed to have been given unless and until a copy of such notice shall have been given to the Mortgagee. If a Mortgagee so provides or otherwise requires in a notice given by the Mortgagee in accordance with this Section 1.1(B), the proceeds of any claim under an insurance policy or condemnation Award required to be delivered to an Owner shall, upon notice from a Mortgagee, be delivered to such Owner's Mortgagee to be disbursed by the Mortgagee to the Depository in accordance with the provisions of this Agreement.

(C) Notwithstanding anything to the contrary specified in this Agreement (including this Section 0), no Owner need give any notice to more than one Mortgagee per Parcel, or to any mortgagee or trustee under a mortgage or trust deed other than a "Mortgage" as defined in Section 1.1(A).

8.12 Property Manager. All rights, obligations and benefits under this Agreement accruing to the Lot Owners, including but not limited to the obligations to insure pursuant to Sections 6.1, 6.2, , 6.3 and Section 8.4 above, shall be exercised by a property manager on behalf of the Lot Owners. Any action to enforce rights, obligations, burdens and benefits under this Agreement with respect to the Lot Owners may be taken by the property manager by its duly authorized officers acting pursuant to authority granted by this Agreement. Notices under this Agreement from the Lot Owners may be given by the property manager. The Lot Owners shall provide the name of the Property Manager as well as the Property Manager's address, email address, phone number and other contact information within fourteen (14) days of the execution of this Agreement.

8.13 Binding Effect. The Easements, covenants and restrictions created under, this Agreement shall be binding upon and inure to the benefit of all parties having or acquiring any right, title or interest in or to any portion of, or interest or estate in, the Property, and each of the foregoing shall run with the land.

**ARTICLE 9
LIMITATION OF LIABILITY**

9.1 **Limitation of Liability.** The liability under this Agreement of an Owner shall be limited to and enforceable solely against the assets of such Owner constituting an interest in the Property (including insurance and condemnation proceeds attributable to the Property and including, where the Owner is a trustee of a land trust, the subject matter of the trust) and no other assets of such Owner, except as hereinafter provided in this Section 9.1. Assets of an Owner which is a limited liability company do not include the individual assets of the members of such limited liability company Owner, and a negative

capital account of a member in a limited liability company which is an Owner and an obligation of a member to contribute capital to the limited liability company which is an Owner shall not be deemed to be assets of the limited liability company which is an Owner. At any time during which an Owner is trustee of a land trust, all of the covenants and conditions to be performed by it under this Agreement are undertaken solely as trustee, as aforesaid, and not individually, and no personal liability shall be asserted or be enforceable against it or any of the beneficiaries under the trust

9.2 **Transfer of Ownership.** If an Owner shall sell, assign, transfer, convey or otherwise dispose of its portion of the Property (other than as security for a loan to such Owner and other than pursuant to a lease, license or similar agreement), then (a) such Owner shall be entirely freed and relieved of any and all covenants and obligations arising under this Agreement which accrue under this Agreement from and after the date such Owner shall so sell, assign, transfer, convey or otherwise dispose of its interest in such portion of the Property, and (b) the person who succeeds to such Owner's interest in such portion of the Property shall be deemed to have assumed any and all of the covenants and obligations arising under this Agreement of such Owner which accrue under this Agreement from and after the date such Owner shall so sell, assign, transfer, convey or otherwise dispose of its interest in such Property, provided, however, the transferring Owner shall not be relieved of any obligation under this Agreement arising prior to the effective date of such sale, assignment, conveyance or other transfer.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written

MAC Partners, LLC
an Illinois limited liability company

By: _____

Printed Name: Robert Zimmers
Title: Manager

First Street Development II, LLC
an Illinois limited liability company

By: _____

Printed Name: Keith Kotche
Title: Manager

**CITY OF ST. CHARLES,
a Municipal Corporation, Kane and DuPage Counties, Illinois**

By: _____
Mayor

ATTEST:

City Clerk

EXHIBIT A
CITY DECK PROPERTY LOT 4
LEGAL DESCRIPTION

LOT 4 OF THE RESUBDIVISION OF THE RESUBDIVISION OF PHASE III FIRST STREET REDEVELOPMENT SUBDIVISION OF PART OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 27 AND THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 40 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 4, 2016 AS DOCUMENT 2016K053789 AND CERTIFICATE OF CORRECTION RECORDED OCTOBER 14, 2016 AS DOCUMENT 2016K056016

EXHIBIT B

LOT OWNERS PROPERTY
LEGAL DESCRIPTION

Lot 1 of the Resubdivision of Phase III First Street Redevelopment Subdivision of part of the East Half of the Southwest Quarter of section 27 and the East Half of the Northwest Quarter of Section 34, Township 40 North, Range 8, East of the Third Principal Meridian, all in Kane County, Illinois according to the plat thereof recorded July 27, 2015 as document 2015K039582.

CURBS AND GUTTER
 8
 3 AND GUTTER PHASE

ST. STREET
 MAJOR
 CURB
 MAINTAINED
 20' CURB
 OXY PAINT
 SLIDE A
 OF:
 E TO
 40'
 TING- 2'
 1/2" SHALL
 1/2" CP

FO 10'

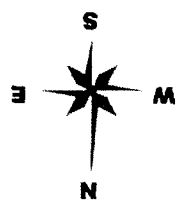
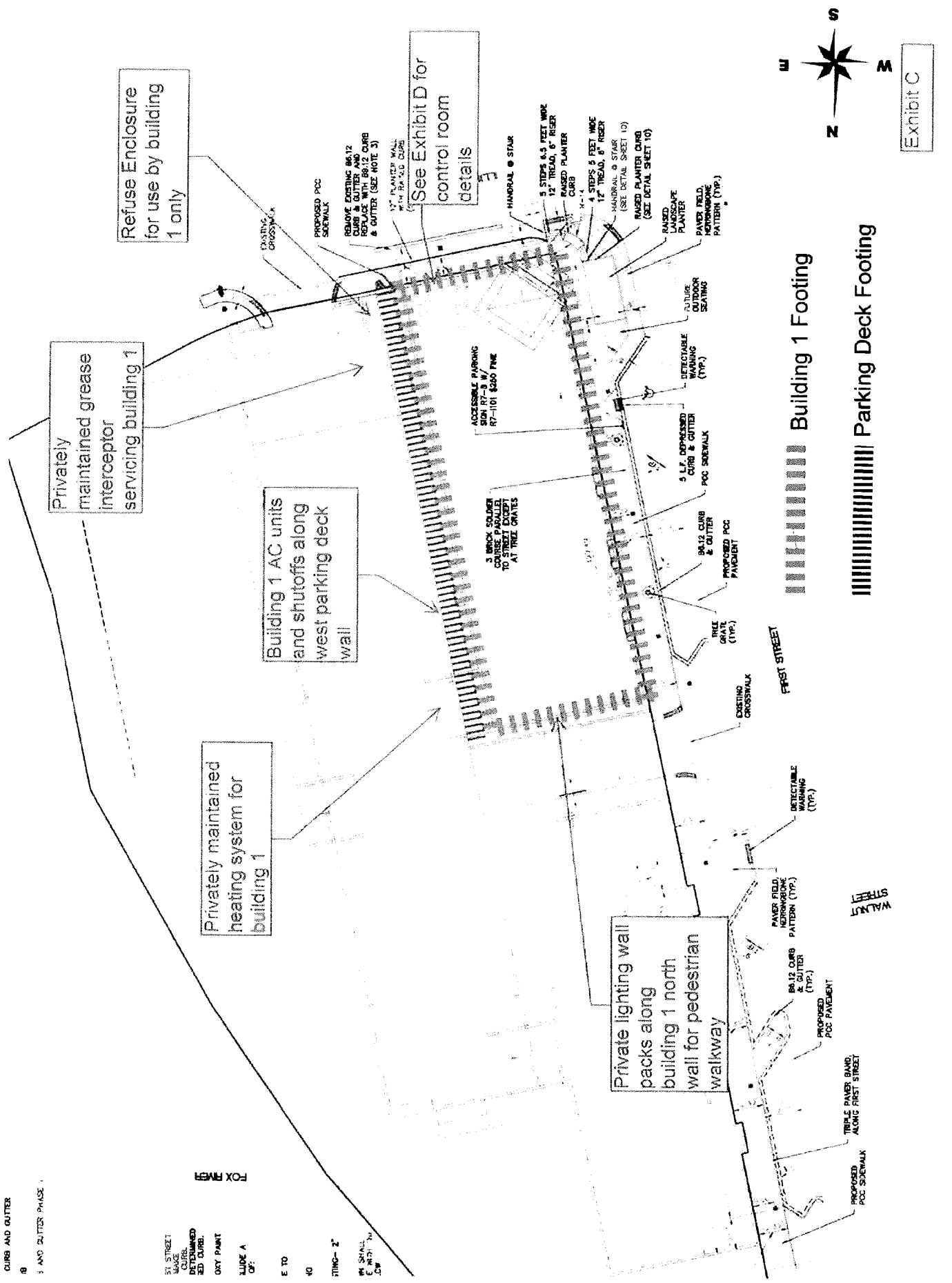


Exhibit C

Building 1 Footing

Parking Deck Footing

Refuse Enclosure
 for use by building
 1 only

Privately
 maintained grease
 interceptor
 servicing building 1

Building 1 AC units
 and shutoffs along
 west parking deck
 wall

Privately maintained
 heating system for
 building 1

Private lighting wall
 packs along
 building 1 north
 wall for pedestrian
 walkway

See Exhibit D for
 control room
 details

REPLACE EXISTING 8x12
 CURB WITH 8x12 CURB
 & GUTTER (SEE NOTE 3)

5 STEPS 6.5 FEET WIDE
 12" TREAD, 6" RISER
 RAISED PLANTER
 CURB

4 STEPS 5 FEET WIDE
 12" TREAD, 6" RISER
 RAISED PLANTER CURB
 (SEE DETAIL SHEET 10)

RAISED LANDSCAPE
 PLANTER
 PAPER FIELD
 HERRINGBONE
 PATTERN (TYP.)

ACCESSIBLE PARKING
 SIGN R7-3 1/2
 R7-101 8245 PINE

3 BRICK SOLID
 COURSE PARALLEL
 TO STREET EXCEPT
 AT TREE GRATES

5 L.F. DEPRESSION
 CURB & GUTTER
 PCC SNEWALK

8x12 CURB
 & GUTTER
 PROPOSED PCC
 PAVEMENT

TRIPLE
 PAVEMENT
 BAND
 (TYP.)

EXISTING
 CROSSWALK

DETECTABLE
 WARNING
 (TYP.)

DETECTABLE
 WARNING
 (TYP.)

8x12 CURB
 & GUTTER
 (TYP.)
 PROPOSED
 PCC PAVEMENT

TRIPLE PAVEMENT BAND
 ALONG FIRST STREET
 PROPOSED
 PCC SIDEWALK

WALKWAY

TRIPLE PAVEMENT BAND
 ALONG FIRST STREET
 PROPOSED
 PCC SIDEWALK

