



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: *4a

Title:	Recommendation to approve a Parking Deck Easement and Operating Agreement between the City of St. Charles and First Street Development II, LLC and Sterling Bank regarding First Street Building #3.
Presenter:	Russell Colby

Meeting: Planning & Development Committee

Date: June 10, 2019

Proposed Cost: N/A

Budgeted Amount: N/A

Not Budgeted:

Executive Summary (if not budgeted please explain):

A draft of this agreement was presented to the P&D Committee in December 2018. The agreement has now been finalized and signed by First Street Development II and Sterling Bank. Sections of the agreement needed to be revised to reflect the joint ownership and private easement agreements governing the use and maintenance of Building #3. However, with respect to the City’s interests, the terms are unchanged. The agreement has been reviewed by the City Attorney.

Background from December 2018:

A parking deck easement and operating agreement between the City and the owners of the First Street Building #3 (First Street Development II, LLC, and Sterling Bank) is being presented for consideration.

This agreement follows the same terms as the agreement entered by the City for Building #1.

The City previously granted an access easement for vehicular and pedestrian ingress/egress purposes to the owners of the lots surrounding the parking deck. This agreement addresses operations and maintenance between the Parking Deck and Building #3.

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 #3 control room for streetscape irrigation controls.
- Granting Building #3 owners access to utility services or equipment connected to or through the parking deck.

Attachments (please list):

Parking Deck Easement and Operating Agreement

Recommendation/Suggested Action (briefly explain):

Recommendation to approve a Parking Deck Easement and Operating Agreement between the City of St. Charles and First Street Development II, LLC and Sterling Bank regarding First Street Building #3.

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 _____, 2019, 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 ("Commercial Property Owner") and Sterling Bank, a Missouri Banking Corporation ("Bank Property Owner") (the Commercial Property Owner and Bank Property Owner are 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 Commercial Property Owner 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; Second Amendment to City of St. Charles Central Downtown Tax Increment Financing Development Agreement, dated February 21, 2017; and Third Amendment to City of St. Charles Central Downtown Tax Increment Financing Development Agreement, dated November 6, 2017.

WHEREAS, pursuant to Section 4.4 of the RDA, the City has constructed, as part of and in conjunction with the development, 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 residential building (the "Building") on Lot 3 legally described on Exhibit B ("Lot 3").

WHEREAS, neither the Public Deck nor the Building 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 Lot 3. The City Deck Property and Lot 3 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 City Deck Property and Lot 3 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 3 or of any portion(s) thereof or interest or estate therein, and (2) certain easements, covenants and restrictions against and affecting Lot 3 which will be binding upon the owners from time to time of the

Lot 3 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 the 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 of the Public 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 mean the facilities depicted on the City Deck Property on Exhibit C and the facilities depicted on Lot 3 on Exhibit D, and any replacements of such Facilities.

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 and the City, and their successors in interest, 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 Building.

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 3 which shall, for the purpose of this Article 2, be deemed to be the servient tenement. Where only a portion of Lot 3 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 portion of the Building and of its business in such Building and any security system for the Building or any portion of the Building. In imposing limitations or controls, Lot Owners 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 3 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 the Facilities described on Exhibit D over, on, across and through the garage level and water/sprinkler room of the Building, to the extent necessary to permit the Maintenance, restoration or reconstruction of Facilities described on Exhibit D 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 and shall be subject to the reasonable prior consent of the Lot Owners.

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 Lot 3 and the Building as are, and only to the extent, reasonably necessary to permit the Maintenance of any Facilities described on Exhibit D 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. The Lot Owners hereby grant to the City a utility and access easement in, over, on, across and through ten (10) foot wide strip of land on Lot 3 immediately adjacent to and extending along the entire west side of the Building for the purpose of Maintenance of the Facilities described on Exhibit D as provided for in this Agreement.

ARTICLE 3

EASEMENTS APPURTENANT TO LOT 3

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 City and its successors and assigns.

The Lot Owners are the grantees of the Easements described in this Article 3. The Easements shall benefit the Lot Owners, and their respective successors and 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 3, which shall, for the purpose of this Article 3, be deemed to be the dominant tenement. Where only a portion of Lot 3 is so benefited, only that portion shall be deemed to be the dominant estate. No property other than Lot 3 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 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.

3.2 Use of Facilities. The City hereby grants to the Lot Owners a non-exclusive easement for the use for their intended purposes of all Facilities described on Exhibit C 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 City Deck Property and Public Deck as are, and only to the extent, reasonably necessary to permit the Maintenance of any Facilities described on Exhibit C.

3.4 Underground Parking Garage Access Easement. The City affirms the easements set forth on plat of Resubdivision recorded as Document 2016 K 053789 on October 4, 2016 with the Kane County Recorder of Deeds (the "Underground Parking Garage Access Easement") and the City's obligation to Maintain such Underground Parking Garage Access Easement.

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 and streetscape located on Lot 3 in good and safe working order and condition, and shall make all repairs or replacements of the Facilities, whether such repairs or replacements are to the interior or exterior of the Facilities, or structural and non-structural components of such Facilities, 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 Facilities.

4.2 Maintenance of Lot Owner Facilities. Subject to the terms and conditions of that certain Easement and Operating Agreement for Building 3 Phase II Downtown Redevelopment recorded on November 8, 2016 in the Recorder's Office of Kane County, Illinois as Document No. 2016 K 061722, as amended by that certain First Amendment to Easement and Operating Agreement for Building 3 Phase II Downtown Redevelopment dated September 20, 2018 and recorded on September 27, 2018 in the Recorder's Office of Kane County, Illinois as Document No. 2018K047419 (as amended from time to time "Easement and Operating Agreement"), Commercial Property Owner shall, at its sole cost and expense, Maintain and keep all Facilities servicing the Building located on the City Deck Property in good and safe working order and condition, and shall make all necessary repairs or replacements of the Facilities, whether such repairs or replacements are to the interior or exterior of such Facilities, or structural and non-structural components of such Facilities, 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 Facilities.

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 as required by the Easement and Operating Agreement. 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 Liability. The City shall (1) insure against public liability claims and losses on a commercial general liability form of insurance with broad form coverage endorsement, 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. The Lot Owners shall maintain commercial general liability insurance as required by the Easement and Operating Agreement.

6.3 Flood and Earthquake. The City, in addition to "all risk" property insurance required under Section 6.1, shall insure the Public Deck 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. The Lot Owners shall maintain flood and earthquake insurance as required by the Easement and Operating Agreement.

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 (vi) 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 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 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. 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 Lot 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 under valid and collectible insurance policies to the extent of any recovery collectible under such insurance policies plus any deductible amounts.

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 Bank Property Owner:

Sterling Bank
Attn: Thomas Russe
Two East Main Street
St. Charles, Illinois 60174
Fax No. (630) 377-4440
Email: Thomas.Russe@sterbank.com

With a copy to:

Armstrong Teasdale LLP
7700 Forsyth Blvd
Suite 1800
St. Louis, MO 63105-1847
Attn: E. Calvin Matthews IV
Fax: 314.552.4877
Email: cmatthews@armstrongteasdale.com

If to the Commercial Property Owner:

First Street Development II, LLC
409 East Illinois Avenue Unit IC
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 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 the multiple owners of the Commercial Property Owner's Property 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 of 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.

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. 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 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 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 8.11 (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 8.11), 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 Commercial Property Owner's Property, 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 Commercial Property Owner. Any action to enforce rights, obligations, burdens and benefits under this Agreement with respect to the Commercial Property Owner 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 Commercial Property Owner may be given by the property manager. The Commercial Property Owner 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

Sterling Bank, LLC

a Missouri Banking Corporation

By: 

Printed Name: Thomas Russe

Title: President - St. Charles

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

[INSERT NOTARY ACKNOWLEDGEMENTS]

STATE OF ILLINOIS }
 } ss.
COUNTY OF KANE }

I, the undersigned, a Notary Public in and for said County and State aforesaid, **DO HEREBY CERTIFY**, that KEITH KOTCHE, is personally known to me to be the Manager of the FIRST STREET DEVELOPMENT II, LLC, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Manager, he signed and delivered the said instrument and, pursuant to authority given by the Members of said limited liability company, as his free and voluntary act, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.



Given under my hand and official seal,
this 3rd day of may, 2019

Notary Public

STATE OF Illinois)

) SS

COUNTY OF Kane)

I, Carrie Johnson, a Notary Public in and for the County and State aforesaid, do hereby certify that Thomas Russe, as President St. Charles of Sterling Bank, Missouri banking corporation, personally known to me to be the same person whose name is subscribed to the foregoing Parking Deck Easement and Operating Agreement, appeared before me this day in person and acknowledged that he/she signed and delivered the Parking Deck Easement and Operating Agreement as his/her own free and voluntary act, and as the free and voluntary act of Sterling Bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 3rd day of May, 2019.

Carrie Johnson
Notary Public

My Commission Expires: 9-7-2021



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 3

LEGAL DESCRIPTION

LOT 3 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 C - Facilities on City Property
 Page 1 of 2

EXHIBIT C

[SEE ATTACHED]

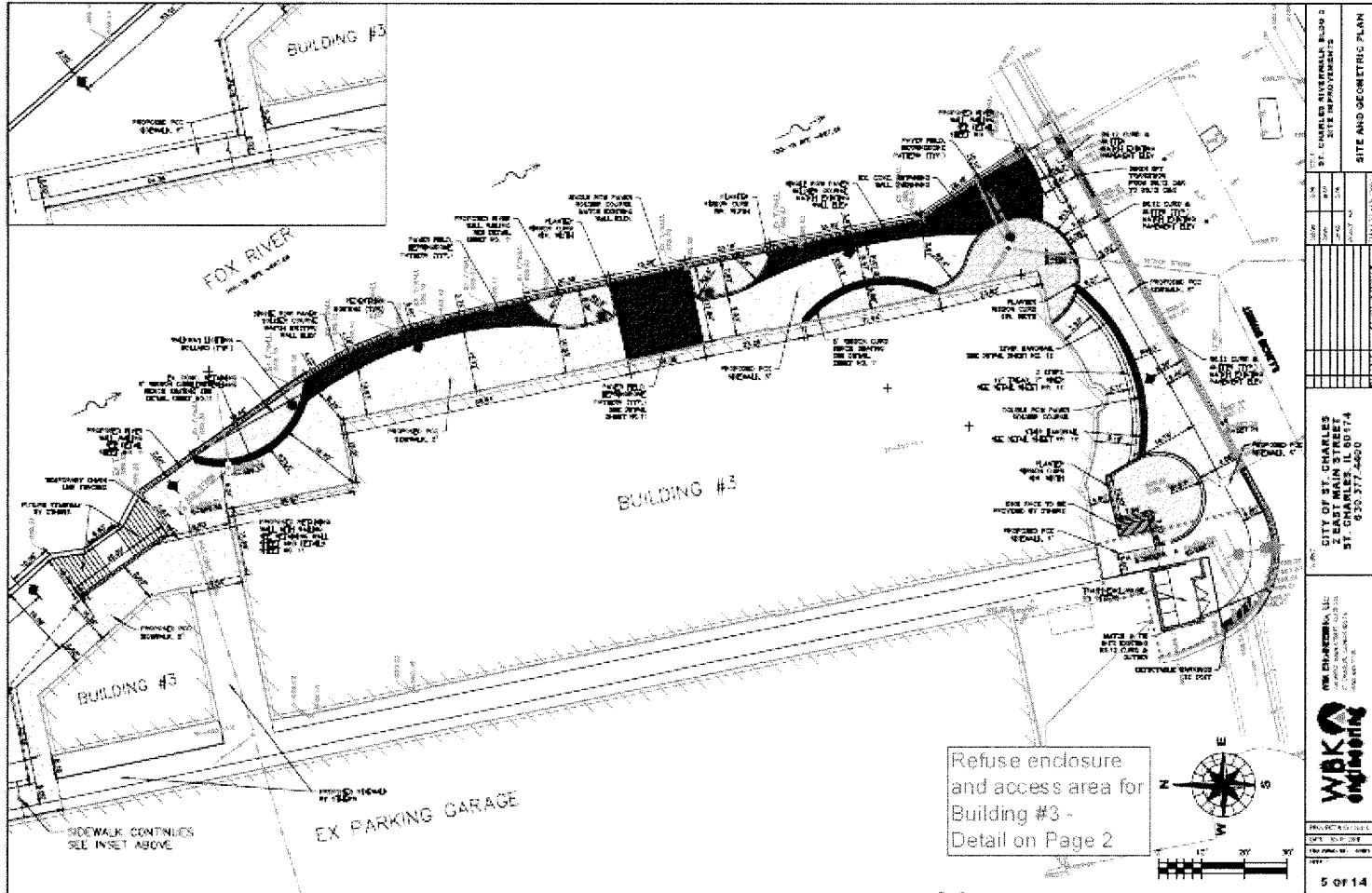


Exhibit C - Facilities on City Property
Page 2 of 2

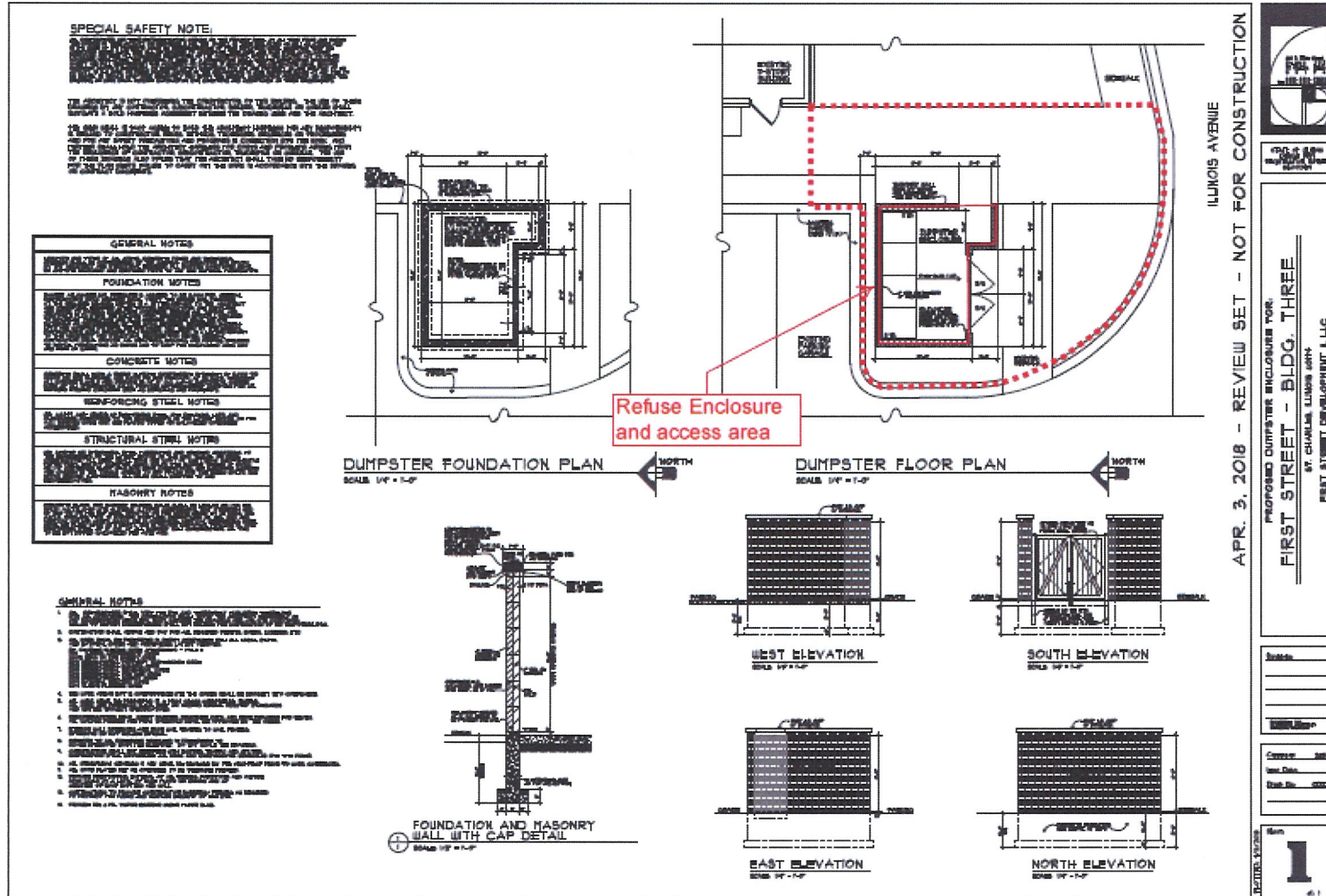
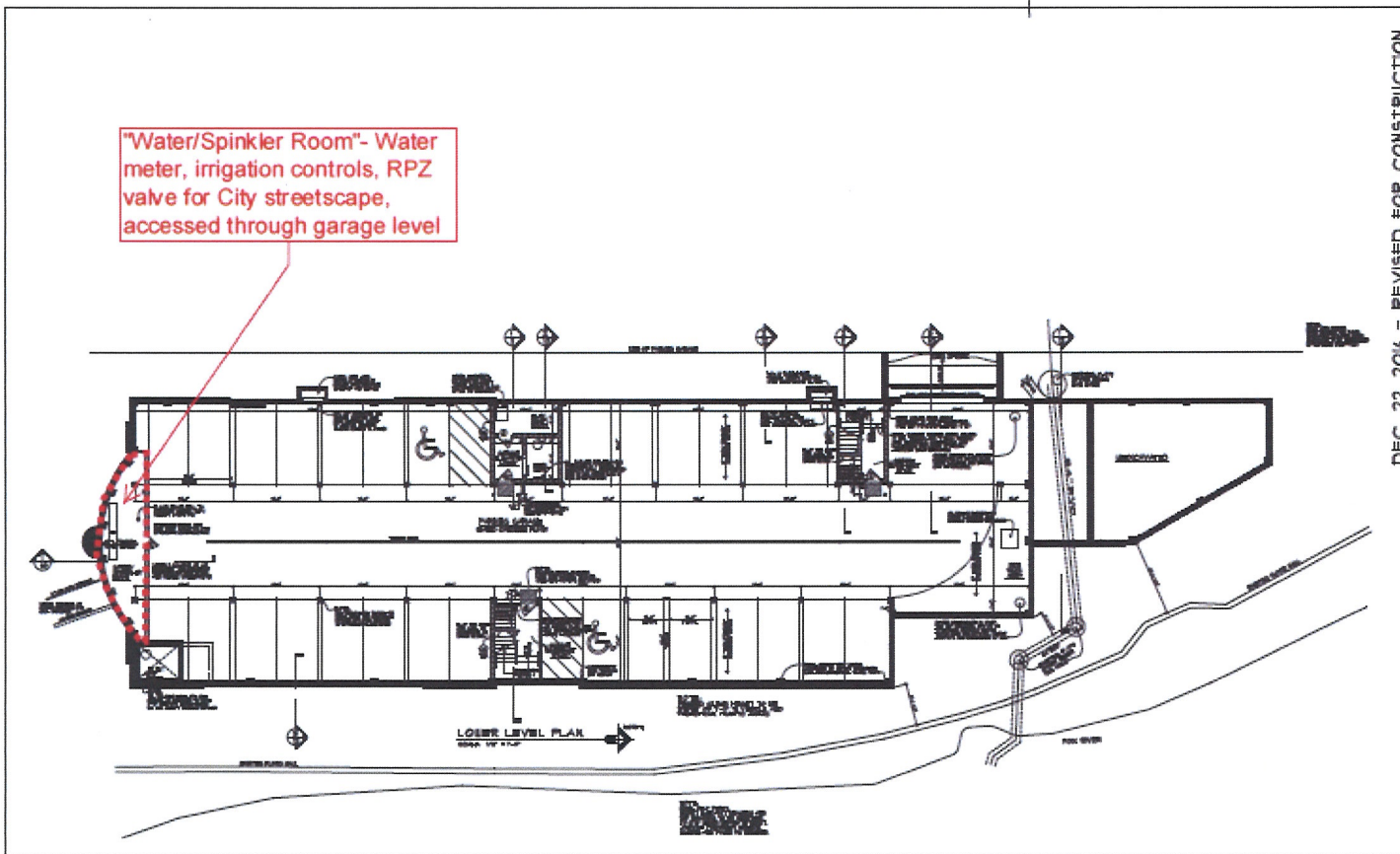


EXHIBIT D

[SEE ATTACHED]

Exhibit D- Facilities on Lot 3
Page 1 of 3
Building Basement/Garage level

"Water/Spinkler Room"- Water meter, irrigation controls, RPZ valve for City streetscape, accessed through garage level



DEC. 22, 2014 - REVISED FOR CONSTRUCTION



PROPOSED NEW OFFICE/RETAIL/COMMERCIAL

FIRST STREET - BLDG. 3
BY CHARLES KLEIN ARCH
FIRST STREET DEVELOPMENT, LLC

BLDG. 3

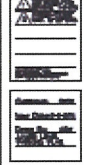
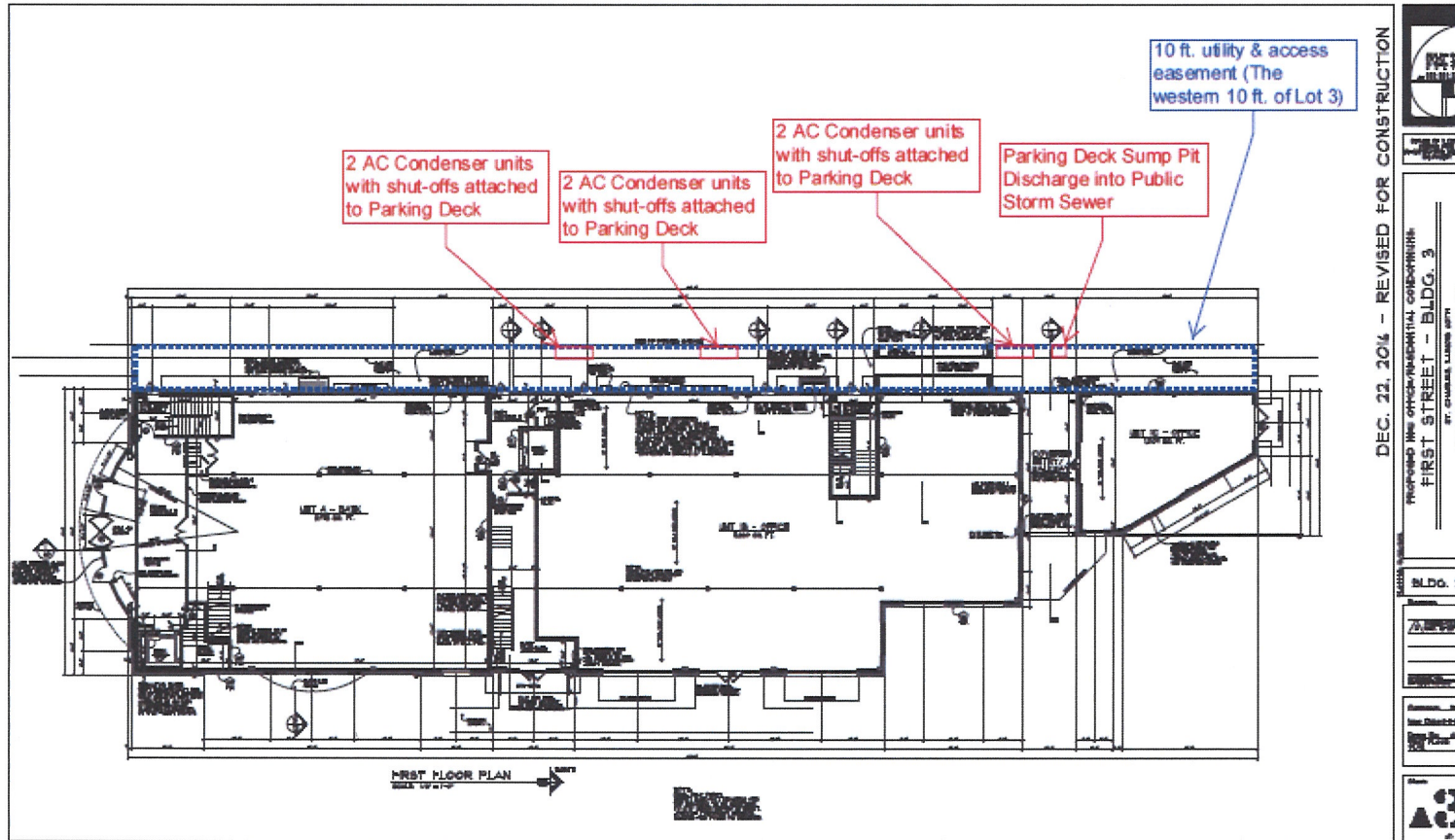


Exhibit D- Facilities on Lot 3

Page 2 of 3

First/Ground Floor Level



DEC. 22, 2014 - REVISED FOR CONSTRUCTION



PROFESSIONAL ENGINEER
FIRST STREET - BLDG. 3

PROFESSIONAL ENGINEER
FIRST STREET - BLDG. 3
ST. CHARLES, ILLINOIS 62256
FIRST STREET DEVELOPMENT, LLC

BLDG. 3



PROFESSIONAL ENGINEER
FIRST STREET - BLDG. 3
ST. CHARLES, ILLINOIS 62256
FIRST STREET DEVELOPMENT, LLC



Exhibit D- Facilities on Lot 3

Page 3 of 3

Subdivision Plat

