	AGENDA ITEM EXECUTIVE SUMMARY	Agenda Item Number: 4d
	Title:	Consideration of a request to grant a Waiver of the Right of First Refusal and Assignment of a License regarding 201 E. Main St.
	Presenter:	Russell Colby

Meeting: Planning & Development Committee **Date**: September 13, 2021

Proposed Cost:	Budgeted Amount:	Not Budgeted: ☐

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

The building at 201 E. Main Street is the location of The Office Dining and Spirits restaurant. The City owns the adjacent property on the block, including the Norris Parking Deck to the south and History Museum to the east.

The current owners of the property, 2nd and Main Partners, LLC, are planning to sell the property to H&C Hospitality, LLC (Mike Carney and Colm Headley). H&C Hospitality, LLC recently received liquor license approval from the City to operate The Office.

In connection with the proposed property sale, the owners are seeking City approval of two items related to the future use and ownership of the building:

Waiver of Right of First Refusal- to allow the sale of the outdoor dining lot to the prospective owner:

In 2010, the City sold the owners a portion of then vacant property located directly east of the 201 building. This property was improved for use as an outdoor dining area for the restaurant.

At the time of the property conveyance, the City and owner entered into a Right of First Refusal Agreement, which provides the City with the opportunity to purchase back the property for the same terms and conditions of a purchase offer received by the owner. The Right of First Refusal agreement terminates on September 1, 2025.

Assignment of Pedestrian Walkway License to the prospective owner:

In 1999, the City entered into a 99-year license agreement with the owner to allow for the construction of an elevated pedestrian walkway that connects the second floor of the building with the City parking deck structure. The license can be assigned with written consent of the City. The assigned licensee would continue to be subject to the same terms and conditions of the license agreement.

Attachments (*please list*)**:**
Aerial photo & plat, Request Email, Right of First Refusal Agreement, License Agreement

Recommendation/Suggested Action (briefly explain):

Preliminarily, staff has no objection to these requests, subject to review of the documents by staff and the City Attorney prior to City Council action.

If the Committee agrees to the requests, provide a recommendation for approval, subject to review of the final documents prior to City Council action.

City of St. Charles, Illinois

Precision GIS

Two East Main Street St. Charles, IL 60174-1984
Phone: 630-377-4400 Fax: 630-377-4440 - www.stcharlesil.gov

Data Source:
City of St. Charles, Illinois
Kane County, Illinois
DuPage County, Illinois

Projection: Transverse Mercator
Coordinate System: Illinois State Plane East
North American Datum 1983

Printed on: September 3, 2021 02:04 PM

0 17 33 Feet

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Powered by Precision GIS

PLAT OF SURVEY

OF

PARCEL 1: THE NORTHERLY 68.00 FEET OF LOT 4 AND THE NORTHERLY 68.00 FEET OF THE WESTERLY 3.00 FEET OF LOT 3 IN BLOCK 4 OF THE ORIGINAL TOWN OF ST. CHARLES, IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS.

PARCEL 2: THAT PART OF LOT 3 (EXCEPT THE NORTHERLY 68.00 FEET OF THE WESTERLY 3.00 FEET THEREOF) AND THAT PART OF LOTS 2 IN BLOCK 4 OF THE ORIGINAL TOWN OF ST. CHARLES IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID BLOCK 4; THENCE ON AN ASSUMED BEARING OF NORTH 78 DEGREES 36 MINUTES 39 SECONDS EAST, 53.19 FEET ALONG THE NORTHERLY LINE THEREOF TO THE EASTERLY LINE OF THE WESTERLY 3.00 FEET OF LOT 3 AND TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 78 DEGREES 36 MINUTES 39 SECONDS EAST, 50.58 FEET MEASURED (50.79 FEET DEED) ALONG THE NORTHERLY LINE OF SAID LOTS 3 AND 2 TO THE NORTHERLY EXTENSION OF THE WESTERLY LINE OF A CONCRETE AND STONE RETAINING WALL; THENCE SOUTH 11 DEGREES 43 MINUTES 59 SECONDS EAST, 54.88 FEET ALONG THE SAID RETAINING WALL; THENCE SOUTH 78 DEGREES 20 MINUTES 14 SECONDS WEST, 37.95 FEET; THENCE SOUTH 11 DEGREES 39 MINUTES 46 SECONDS EAST, THENCE SOUTH 78 DEGREES 20 MINUTES 14 SECONDS WEST, 12.98 FEET TO THE EASTERLY LINE OF THE WESTERLY 3.00 FEET OF SAID LOT 3; THENCE NORTH 11 DEGREES 25 MINUTES 38 SECONDS WEST, 69.62 FEET ALONG SAID EASTERLY LINE TO THE POINT OF BEGINNING.

N

SCALE: 1" = 15'

Prepared for: 2nd and Main Partners

Job No. 10-9382

Address: 200 E. Main Street, St. Charles

FOR BUILDING RESTRICTIONS AND EASEMENTS NOT SHOWN HEREON, REFER TO YOUR ABSTRACT, DEED, GUARANTEE POLICY, AND LOCAL ORDINANCES.

○ IRON PIPE SET R=RADIUS

● IRON PIPE FOUND A=ARC LENGTH

COMPARE ALL POINTS BEFORE BUILDING AND REPORT ANY DIFFERENCES AT ONCE.

FJM LAND SURVEYING

TELEPHONE: (630) 587-8060

FACSIMILE (630) 587-8061

EMAIL: FJMSURVEY@AOL.COM

6 N 566 WILLOWBROOK DRIVE

ST. CHARLES, ILLINOIS 60175

State of Illinois)
) S. S.
County of Kane)

I, Frank J. McDaniel, an Illinois Professional Land Surveyor, No. 3256, do hereby certify that the Plat shown hereon is a correct representation of a survey performed at and under my direction. This professional service conforms to the current Illinois minimum standards for a boundary survey.

All dimensions shown in feet and decimal parts thereof.

Given under my hand and seal in St. Charles, Illinois, this 20th day of December, A.D. 2010

Frank J. McDaniel, P.L.S. #3256

License Renewal/Date of Expiration: 11/30/2012

From: John Hoscheit [mailto:jh@hmcpc.com]
Sent: Monday, August 30, 2021 8:59 AM
To: Nicholas S. Peppers
Subject: Sale of 201 E Main Street

Good morning,

This letter will follow up on our discussion regarding the proposed sale of the property at 201 E. Main Street. The sale price offered for the property is One Million Dollars and the Purchaser is H & C Hospitality, LLC. The principals of H & C Hospitality, LLC are Michael Carney Colm Headley and they have already appeared in front of the City for the issuance of a liquor license in their name at this site. In connection with the property we would request the cooperation of the City on two fronts:

1. There was a Right of First Refusal established when we acquired the property. Attached is a copy of that Right of First Refusal. The Right of First Refusal on its face expires in 2025. The purpose of the Right of First Refusal was in large part to address then Alderman Jim Martin's concerns that the property be developed with the standards for development of the restaurant itself. I think history will show that that goal was accomplished.
2. At the time The Office itself was developed the City entered into a 99 year Lease for the property directly to the south for ingress and egress, as well as access to the parking deck. Attached you will find a copy of Document 1999K118674 which documents the approval of the City of that Lease Agreement. We would simply ask that the City consider an Assignment of that Lease to our proposed Buyer.

By this letter I am requesting that you let me know if you could begin the process of presenting to the City the following:

A. A waiver of the Right of First Refusal in advance of our anticipated sale so that that issue could be cleared for a closing; and,
B. An approval of the Assignment of the Lease to our prospective Buyer.

Thank you for your cooperation.

Very truly yours,
John J. Hoscheit
Hoscheit, McGuirk, McCracken & Cuscaden, P.C.
1001 East Main Street, Suite G
St. Charles, Illinois 60174-2203
Phone: (630) 513-8700
Fax: (630) 513-8799

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2100331291881942

Prepared by and
After recording, return to:
Robin N. Jones
Gorski & Good, LLP
211 S. Wheaton Avenue, Suite 305
Wheaton, Illinois 60187
Phone (630)665-7500

This space reserved for Recorder's use only.

RIGHT OF FIRST REFUSAL AGREEMENT

THIS RIGHT OF FIRST REFUSAL AGREEMENT ("Agreement"), is made as of this 16th day of August, 2010, by and between the City of St. Charles, an Illinois municipal corporation ("City") and 2nd and Main Partners, L.L.C., an Illinois limited liability company ("Owner").

WITNESSETH:

WHEREAS, the Illinois Constitution, 1970, Article VII, Section 10, authorizes units of local government to contract or otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance; and,

WHEREAS, the Owner holds title to a parcel of real property commonly known as 201 East Main Street, St. Charles, Illinois 60174 and has acquired from the City a certain contiguous parcel of land in the corporate limits of the City of St. Charles, Kane County, Illinois; said parcels are legally described on Exhibit "A" attached hereto and made a part hereof ("Subject Realty"); and,

WHEREAS, the City desires to retain a right of first refusal regarding any subsequent sale of the Subject Realty, and the Owner is willing to grant such right, all as hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing recitals and of the covenants and conditions hereinafter contained, the adequacy and sufficiency of which the parties hereto hereby acknowledge, the parties hereto agree as follows:

1. INCORPORATION OF RECITALS: The provisions of the recitals set forth above are hereby incorporated herein by reference as substantive provisions of this Agreement.

2. OFFER TO PURCHASE: In the event that the Owner receives an offer (the "Offer") to purchase the Subject Realty, which the Owner is prepared to accept, then the Owner shall

forthwith send to the City notice in writing of its desire or intention to sell the Subject Realty accompanied by a copy of the Offer.

3. RIGHT OF FIRST REFUSAL: Upon receipt of notice in accordance with Section 2, the City shall have sixty (60) days from the date of receipt within which to give the Owner notice ("Intent to Buy") that it desires and agrees to so purchase the Subject Realty on the same material terms and conditions as are contained in the Offer, provided that:

(a) If the City shall have given an Intent to Buy, the City shall purchase the Subject Realty and the Subject Realty shall be conveyed as-is to its environmental condition; provided, however, that the environmental indemnity from Mobil Oil Corporation to the City relating to a portion of the Subject Realty, which is being assigned to the Owner, shall be assigned or released back to the City;

(b) If the City shall not have given an Intent to Buy within the time provided, then the City shall be deemed for all purposes to have refused to purchase the Subject Realty; and

(c) In the event that the City elects not to purchase or is deemed to have refused to purchase the Subject Realty, then the Owner may accept the Offer and proceed to sell the Subject Realty, but only at the price and on and in accordance with the terms and conditions contained in the Offer provided that, if the transaction contemplated by the Offer is not completed within a period of ninety (90) days after the expiration of the last day upon which the City has the right to give an Intent to Buy, then the Owner shall not thereafter sell the Subject Realty unless and until it again complies with the provisions of this Agreement.

4. PURCHASE BY CITY: Any transaction between the Owner and the City effected pursuant to the provisions of this Agreement shall be completed no later than thirty (30) days from the date the City provides notice of its Intent to Buy and thereby becomes obligated to purchase the Subject Realty.

5. TERMINATION: This right of first refusal shall terminate and become null and void on September 1, 2025.

6. MISCELLANEOUS PROVISIONS:

(a) Assignment. Neither party may assign nor transfer its rights, duties and obligations under this Agreement, without the prior written consent of the other.

(b) Notices. All notices required or desired to be given hereunder shall be deemed given if and when delivered personally, or on the next business day after being deposited with a national overnight courier service, or on the third business day after being deposited in the United States certified or registered mail, return receipt requested, postage prepaid, addressed to a party

at its address set forth below, or to such other address as the party to receive such notice may have designated to all other parties by notice in accordance herewith:

If to City:

City of St. Charles
Attention: Brian Townsend, City Administrator
2 East Main Street
St. Charles, Illinois 60174

With a copy to:

Gorski & Good, LLP
Attention: Robin N. Jones
211 S. Wheaton Avenue, Suite 305
Wheaton, Illinois 60187

If to Owner:

2nd and Main Partners, L.L.C.
101 S. Third Street
St. Charles, Illinois 60174

With a copy to:

Hoscheit, McGuirk, McCracken & Cuscaden, PC
Attention: John Hoscheit
1001 E. Main Street, Suite G
St. Charles, Illinois 60174

(c) Entire Agreement. This Agreement constitutes the entire agreement between the City and the Owner, and there are no other covenants, agreements, promises, terms, provisions, conditions, undertakings, or understandings, either oral or written, between them concerning the Subject Realty other than those herein set forth. No subsequent alteration, amendment, change, deletion or addition to this Agreement shall be binding upon the City or the Owner unless in writing and signed by both the City and the Owner.

(d) Headings. The headings, captions, numbering system, and the like are inserted only as a matter of convenience and may under no circumstances be considered in interpreting the provisions of this Agreement.

(e) Binding Effect. All of the provisions of this Agreement are hereby made binding upon the personal representatives, heirs, successors and assigns of both parties hereto.

(f) Time of Essence. Time is of the essence of this Agreement.

(g) Unenforceable or Inapplicable Provisions. If any provision hereof is for any reason unenforceable or inapplicable, the other provisions hereof shall remain in full force and effect in the same manner as if such unenforceable or inapplicable provision had never been contained herein.

(h) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original, and all of which are identical.

(i) Applicable Law and Venue. This Agreement shall be construed under and in accordance with the laws of the State of Illinois. Venue of any action arising out of the terms of this Agreement shall be in the Sixteenth Judicial Circuit Kane County, State of Illinois.

(j) Effect. This Agreement is and shall be deemed and construed to be the joint and collective work product of Purchaser and Seller and, as such, this Agreement shall not be construed against either party, as the otherwise purported drafter of same, by any court of competent jurisdiction in order to resolve any inconsistency, ambiguity, vagueness or conflict in terms of provisions, if any, contained herein.

[SIGNATURE PAGE FOLLOWS]

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

OWNER:

2ND AND MAIN PARTNERS, L.L.C., an Illinois limited liability company,

By: _____
Manager

CITY:

CITY OF ST. CHARLES, an Illinois municipal corporation

_____
By: Donald P. DeWitte, Mayor

ATTEST:

_____
Nancy Garrison, City Clerk

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that John Hoscheit, _____ of 2nd and Main Partners, L.L.C., personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____, appeared before me this day in person and acknowledged that __ signed and delivered said instrument as ____ own free and voluntary act, and as the free and voluntary act of said company, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 17 day of August, 2010.

Christine Nilles
NOTARY PUBLIC

"OFFICIAL SEAL"
CHRISTINE NILLES
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 9/21/2013

STATE OF ILLINOIS)
) SS
COUNTY OF KANE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Donald P. DeWitte, Mayor and Nancy Garrison, City Clerk, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of the City of St. Charles, for the uses and purposes therein set forth.

Given under my hand and Notarial seal this 16 day of August, 2010.

"OFFICIAL SEAL"
CHRISTINE NILLES
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 9/21/2013

NOTARY PUBLIC

EXHIBIT A

LEGAL DESCRIPTION OF SUBJECT REALTY

THAT PART OF LOT 3 (EXCEPT THE NORTHERLY 68.00 FEET OF THE WESTERLY 3.00 FEET THEREOF) AND THAT PART OF LOT 2 IN BLOCK 4 OF THE ORIGINAL TOWN OF ST. CHARLES IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID BLOCK 4; THENCE ON AN ASSUMED BEARING OF NORTH 78 DEGREES 36 MINUTES 39 SECONDS EAST, 53.19 FEET ALONG THE NORTHERLY LINE THEREOF TO THE EASTERLY 3.00 FEET OF LOT 3 AND TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 78 DEGREES 36 MINUTES 39 SECONDS EAST, 50.58 FEET MEASURED (50.79 FEET DEED) ALONG THE NORTHERLY LINE OF SAID LOTS 3 AND 2 TO THE NORTHERLY EXTENSION OF THE WESTERLY LINE OF A CONCRETE AND STONE RETAINING WALL; THENCE SOUTH 11 DEGREES 43 MINUTES 59 SECONDS EAST, 54.88 FEET ALONG THE SAID RETAINING WALL; THENCE SOUTH 78 DEGREES 20 MINUTES 14 SECONDS WEST, 37.95 FEET; THENCE SOUTH 11 DEGREES 39 MINUTES 46 SECONDS EAST; THENCE SOUTH 78 DEGREES 20 MINUTES 14 SECONDS WEST, 12.98 FEET TO THE EASTERLY LINE OF THE WESTERLY 3.00 FEET OF SAID LOT 3;THENCE NORTH 11 DEGREES 25 MINUTES 38 SECONDS WEST, 69.62 FEET ALONG SAID EASTERLY LINE TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 2978 SQUARE FEET, MORE OR LESS.

THE NORTHERLY 68.00 FEET OF LOT 4 AND THE NORTHERLY 68.00 FEET OF THE WESTERLY 3.00 FEET OF LOT 3 IN BLOCK 4 OF THE ORIGINAL TOWN OF ST. CHARLES, IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS, CONTAINING 3,617 SQUARE FEET OR 0.083 ACRE, MORE OR LESS.

PIN 09-27-390-006

REFER TO:
MINUTES 11/15/99
PAGE

LICENSE AGREEMENT

THIS LICENSE AGREEMENT made this 11th. day of February, 1999, by and between the 2ND & MAIN PARTNERS, LLC, an Illinois Limited Liability Corporation, (hereinafter referred to as "Licensee"), and the CITY OF ST. CHARLES, an Illinois Municipal Corporation, (hereinafter referred to as "Licensor").

W I T N E S S E T H:

WHEREAS, Licensor is about to grant a license to 2nd & Main Partners, LLC, an Illinois Limited Liability Corporation, enabling the construction of an elevated pedestrian structure between 201 East Main Street and the City of St. Charles Parking Deck on the east side of Second Avenue in the City of St. Charles, Kane County, Illinois, (hereinafter referred to as "Premises"), as depicted in *Exhibit B* attached hereto and incorporated herein by reference; and

WHEREAS, some portion or all of the Premises may be owned by Licensor; and

WHEREAS, the parties have agreed that for and in consideration of the payment of certain funds and the performance of certain other conditions, the portion of the Premises owned by the Licensor may be used for the construction of said structure described in attached *Exhibit A*; and

WHEREAS, Licensor is agreeable to granting a License for the use of said site and Licensee desires to construct the structure to enable the public to use said site for construction and utilization of one elevated pedestrian walkway.

NOW THEREFORE, in consideration of the sums provided hereinafter and the mutual obligations contained herein, the parties agree as follows:

1. Licensor shall have and retain all rights to the use and occupation of the Premises referred to herein except as herein expressly granted.

2. (a) Licensor grants to Licensee, and its successors, and/or assigns, for the following stated term, the right, license, and privilege ("License") to use and occupy the real estate described in *Exhibit A* attached hereto and made a part hereof (the "Premises") for the construction of one elevated pedestrian structure.

(b) Licensor grants to Licensee, and its successors, and/or assigns, for the following stated term, the right, license, and privilege to use and occupy the real estate described in *Exhibit B* attached hereto and made a part hereof (the "Premises") for the utilization of one elevated pedestrian structure approximately five (5) feet in width and thirty-five (35) feet in length, as shown in attached *Exhibit B*.

In consideration thereof, Licensee shall, at its election, pay to Licensor the total sum of One ($1.00) Dollar at the execution of this Agreement.

3. This License shall commence fourteen (14) days after Licensee shall give written notice to Licensor of the Licensee's desire that the License shall commence and the term of the License shall extend for ninety-nine (99) years from and after the announced date of its commencement, but in no event after December 31, 2000.

4. Notwithstanding anything express or implied herein to the contrary, Licensee may terminate this License without the payment of the fee specified in Paragraph 2, above, by the

delivery of written notice thereof to Licensor at any time on or before December 31, 2000, provided Licensee has not received a building permit from the City of St. Charles.

5. Licensee and its successors and assigns agree to the following requirements on its or their part:

(a) The Premises covered by this License shall be used solely for the purpose of constructing and utilizing the pedestrian structure which Licensee contemplates having constructed at the site;

(b) The Premises which is being used by Licensee for construction shall at all times during the license period be securely fenced and/or canopied in conformance with the St. Charles Municipal Code, starting with the commencement of the License and remain so until the structure has been constructed, inspected, and granted a certificate of occupancy;

(c) The Premises shall be in compliance with the American with Disabilities Act;

(d) The Licensee will secure all building permits deemed necessary by Licensor;

(e) Licensee agrees to remove all debris from the Premises, and further agrees to take said material from the Premises owned by Licensor, depositing it in a proper dump site; thereafter, Licensee agrees to promptly pay the sum set forth in paragraph 2, hereof, or alternatively, to restore the Premises after its use thereof to its original condition or better, in accordance with Paragraph 2, above, to be approved by Licensor.

(f) All engineering, architectural, and construction design and costs are the responsibility of the Licensee. All engineering must meet with the approval of the City Engineer of the Licensor, or his designee.

(g) This License is contingent upon review by the St. Charles Historic Preservation Committee and receipt by Licensee of a certificate of appropriateness.

(h) The elevated pedestrian structure shall be owned by 2nd & Main Partners, LLC. All maintenance of the walkway, including painting, snow and ice control, and renovation is the sole responsibility of Licensee. Maintenance of the elevated structure shall not disrupt pedestrian access east or west bound at the street level between 2nd and 3rd Avenues. Any and all debris, whether natural or unnatural, shall be removed from the walkway and not cleared by pushing debris over the side.

(i) If constructed, the elevated pedestrian structure shall be built in general conformity with the blueprint issued by Marshall Architects dated April 8, 1999, attached to this Lease and incorporated herein as *Exhibit D*..

6. Licensee, or its successor and assigns, upon taking possession of the Premises shall acquire and maintain in effect for the term of this License not less than the following coverages in the following minimum amounts, unless otherwise excepted.

(a) Employer's Liability and Workmen's Compensation as prescribed by law in Illinois until a Certificate of Occupancy has been issued and during all subsequent maintenance and repair;

(b) Comprehensive General Liability coverage on an occurrence basis from an insurance company licensed with the State of Illinois having assets in excess of One

Half Billion ($500,000,000.00) Dollars, or other insurer approved by Licensor with at least a Three Million Dollar ($3,000,000.00) single limit coverage on all risks. Licensee shall name the Licensor as additional insured and shall furnish Licensor with duplicate policies or certificates evidencing insurance in force as required herein prior to taking possession of the Premises. Evidence of payment of premiums shall be delivered to Licensor at least thirty (30) days prior to the expiration dates of each existing insurance policy.

7. No waiver by Licensor or any breach, or a series of breaches of this License, shall constitute a waiver of any subsequent breach or waiver of the terms of this License.

8. Any notice hereunder shall be in writing and shall be delivered by personal service or by United States Mail, certified or registered mail, with postage prepaid, addressed to Licensee at 2nd & Main Partners, LLC, Attention of Mr. Sean Williams, with copies to John Hoscheit, Esq., at 1001 East Main Street, St. Charles, Illinois, or to Licensor at Two East Main Street, St. Charles, Illinois 60174, Attention: Mr. Larry W. Maholland, City Administrator, with a copy to Attorney Timothy D. O'Neil, Murphy, Hupp, Foote, Mielke and Kinnally, 8 East Galena Boulevard, Suite 202, Post Office Box 5030, Aurora, Illinois 60507. Either party, by a similar written notice, may change the address to which notices shall be sent.

9. If either party institutes any action at law or in equity against the other party to secure or protect its rights under or to enforce the terms of this License, in addition to any Judgment entered in its favor, the prevailing party shall be entitled to recover such reasonable attorney's fees as may be allowed by the court together with court costs and reasonable expenses of litigation.

10. If Licensor shall be subject to any claim, demand, or penalty, or become a party to any suit or other judicial or administrative proceeding by reason of any claimed act or omission by Licensee, its employees or agents, or by reason of any act occurring on the Premises, or by reason of an omission with respect to the business or operation of the site, Licensee shall indemnify and hold Licensor harmless against all judgments, settlements, penalties, and expenses, including attorney's fees, court costs and other expenses of litigation or administrative proceeding, incurred by or imposed on Licensor in connection with the investigation or defense relating to such claim or litigation or administrative proceeding and, at the election of Licensor, Licensee shall also directly defend Licensor against same. The foregoing indemnity shall not apply to negligent or reckless acts of the Licensor, its employees, or agents.

11. All references in this License to the singular shall include the plural where applicable, and all references to the masculine shall include the feminine, and vice-versa. Should either reference shall be declared invalid, such decision shall not affect the validity of any remaining portion, which shall remain in full force and effect.

12. Licensor and Licensee agree that this License is assignable by Licensee, but only to or for the benefit of 2nd & Main Partners, LLC, or its constituent partners, or its subsidiaries. No other assignment, whether directly by Licensee or as a matter of law, shall be valid without the prior written consent of Licensor (which consent shall not be unreasonably withheld or delayed) except that Licensee may assign this License to its lenders as collateral security for its financing for the construction of the walkway upon written notice to Licensor.

13. Licensee agrees that this License supersedes any or all other agreements and representations respecting the use of the site and contains all the terms, obligations, and conditions of the parties with respect to granting this License.

14. Licensee shall have no authority, express or implied, to act as agent of Licensor, for any purpose. Licensee or its successors and assigns are, and shall remain, independent contractors responsible for all obligations and liabilities of, and for all loss or damage to, the Premises, including any personal equipment or fixtures connected therewith, and for all claims or demands based on damage or destruction of property or based on injury, illness or death of any person or persons, directly or indirectly, resulting from the use of the Premises.

15. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16. During the term of this License Agreement, the Licensor shall have first right of refusal to purchase the structure described herein for the sum of One ($1.00) Dollar.

17. During the term necessary to construct the pedestrian structure, the Licensor shall grant to the Licensee a construction easement for purposes of ingress and egress over the described real estate in *Exhibit A*.

18. Miscellaneous: The following miscellaneous terms and conditions apply to the terms of this License Agreement:

(a) Licensee is responsible for opening, closing, and securing the entranceway to the pedestrian structure located at the south end of the structure where the structure meets the City's parking deck. Said entranceway is to be properly locked and secured at all times outside Licensee's normal business operation hours.

(b) Licensee is to provide to Licensor a key for the entranceway to the pedestrian structure for emergency access purposes.

(c) The pedestrian structure shall be kept clean and free from all debris, accumulations of ice, snow, water, or other forms of precipitation, whether natural or unnatural.

(d) The Licensor reserves the right to temporarily close the elevated walkway access for the purposes of maintaining the deck or the stairway elevator tower, or for any other public health and safety purpose.

(e) In fulfillment of the terms of the contract for sale of the Premises, the City conveys an access easement as described in *Exhibit* C, attached hereto and made a part hereof.

IN WITNESS WHEREOF, each of the parties hereto have caused this License Agreement to be executed by its duly authorized representative as of the day and year first above written.

LICENSOR:
CITY OF ST. CHARLES, ILLINOIS

BY: Susan L. Klinkhamer
Susan L. Klinkhamer, Its Mayor

ATTEST:
CITY CLERK

LICENSEE:
2ND & MAIN PARTNERS, LLC

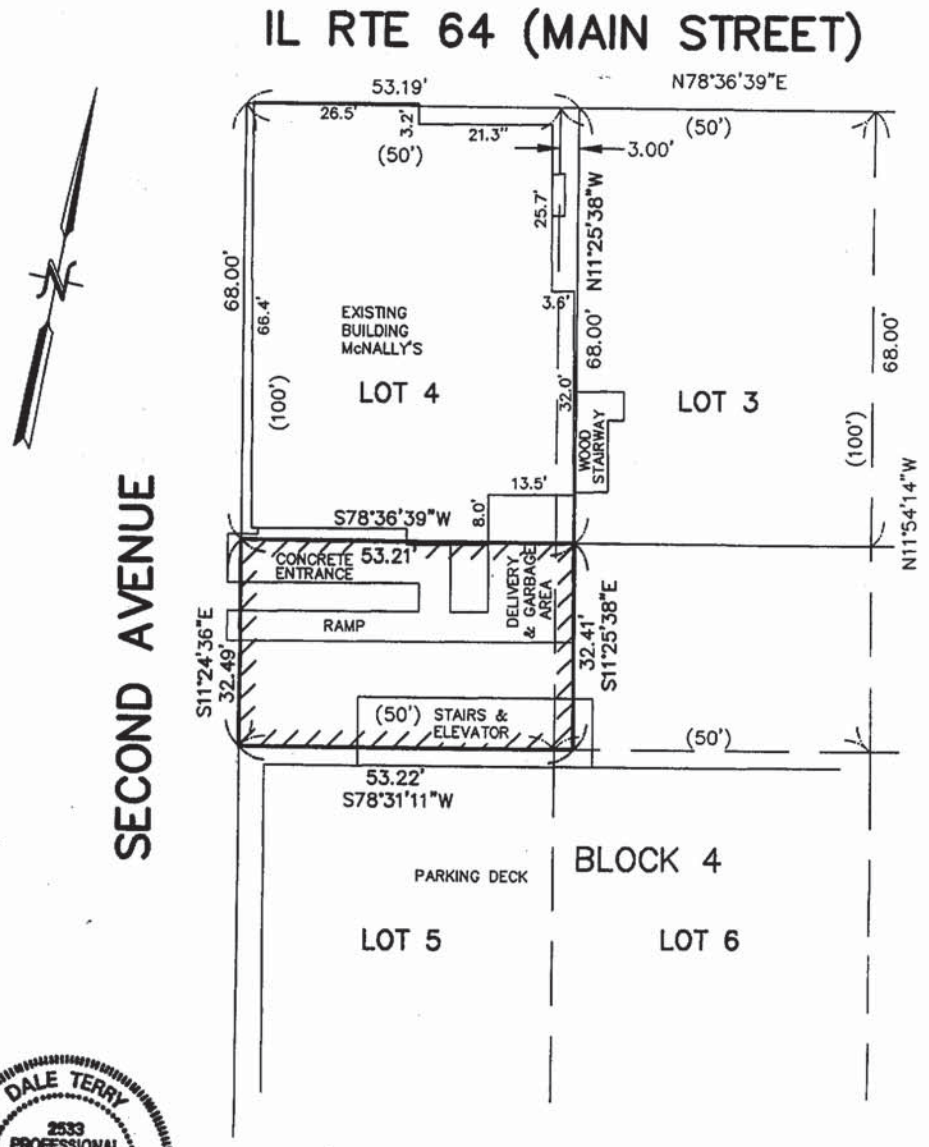
BY: Glen M. Wilk
ITS: manager

PLAT OF SURVEY

OF PROPERTY DESCRIBED AS FOLLOWS:

Lot 4 and the westerly 3.00 feet of Lot 3 in Block 4 of the Original Town of St. Charles in the City of St. Charles, Kane County, Illinois, except the northerly 68.00 feet thereof.

Said parcel contains 1727 square feet or 0.040 acre, more or less.



DALE TERRY
2533
PROFESSIONAL LAND SURVEYOR STATE OF ILLINOIS
ELGIN, IL

THIS IS TO CERTIFY THAT A SURVEY OF THE ABOVE DESCRIBED PROPERTY WAS MADE UNDER MY DIRECTION AND THAT THE PLAT HEREON DRAWN CORRECTLY REPRESENTS SAID SURVEY TO THE BEST OF MY KNOWLEDGE AND BELIEF.

DIMENSIONS ARE GIVEN IN FEET AND DECIMALS THEREOF UNLESS OTHERWISE INDICATED.

DATED THIS 25th DAY OF OCTOBER ,1999 A.D.

Dale A. Terry

DALE A. TERRY – PROFESSIONAL
ILLINOIS LAND SURVEYOR NO. 2533

——— INDICATES PARCEL BOUNDARY
(50') INDICATES RECORD DIMENSION

SCALE: 1 INCH = 20 FEET

OCT 26 19

PREPARED BY:
HAMPTON, LENZINI AND RENWICK, INC.
380 SHEPARD DRIVE
ELGIN, ILLINOIS 60123-7010
(847) 697-6700
ACCOUNT NO. 02-05-1330(a)

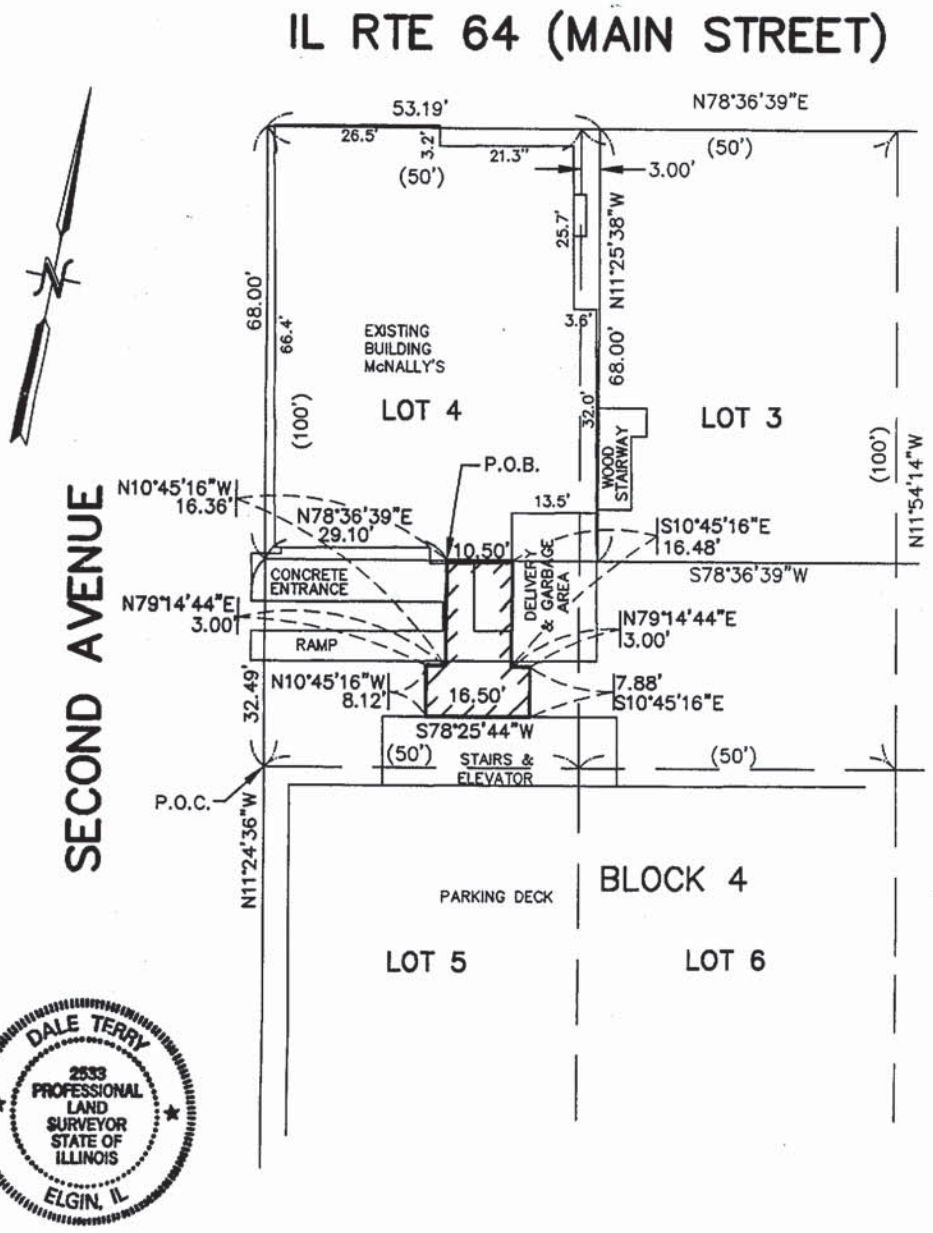
PLAT OF SURVEY

EX B

OF PROPERTY DESCRIBED AS FOLLOWS:

That part of Lot 4 in Block 4 of the Original Town of St. Charles in the City of St. Charles, Kane County, Illinois, described as follows:
Commencing at the southwesterly corner of said Lot 4; thence North 11 degrees 24 minutes 36 seconds West 32.49 feet along the westerly line of said Lot 4 to the southerly line of the northerly 68.00 feet of said lot; thence North 78 degrees 36 minutes 39 seconds East along said southerly line 29.10 feet for the Point of Beginning; thence continuing along said line North 78 degrees 36 minutes 39 seconds East 10.50 feet; thence South 10 degrees 45 minutes 16 seconds East 16.48 feet; thence North 79 degrees 14 minutes 44 seconds East 3.00 feet; thence South 10 degrees 45 minutes 16 seconds East 7.88 feet to the building; thence South 78 degrees 25 minutes 44 seconds West 16.50 feet along said building; thence North 10 degrees 45 minutes 16 seconds West 8.12 feet; thence North 79 degrees 14 minutes 44 seconds East 3.00 feet; thence North 10 degrees 45 minutes 16 seconds West 16.36 feet to the Point of Beginning.

Said parcel contains 304 square feet or 0.007 acre, more or less.



DALE TERRY
2533
PROFESSIONAL LAND SURVEYOR
STATE OF ILLINOIS
ELGIN, IL

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DIMENSIONS ARE GIVEN IN FEET AND DECIMALS THEREOF UNLESS OTHERWISE INDICATED.

DATED THIS 25th DAY OF OCTOBER, 1999 A.D.

Dale A. Terry

DALE A. TERRY – PROFESSIONAL
ILLINOIS LAND SURVEYOR NO. 2533

——— INDICATES PARCEL BOUNDARY
(50') INDICATES RECORD DIMENSION

SCALE: 1 INCH = 20 FEET

OCT 26 1999

PREPARED BY:
HAMPTON, LENZINI AND RENWICK, INC.
380 SHEPARD DRIVE
ELGIN, ILLINOIS 60123-7010
(847) 697-6700
ACCOUNT NO. 02-05-1330(a)

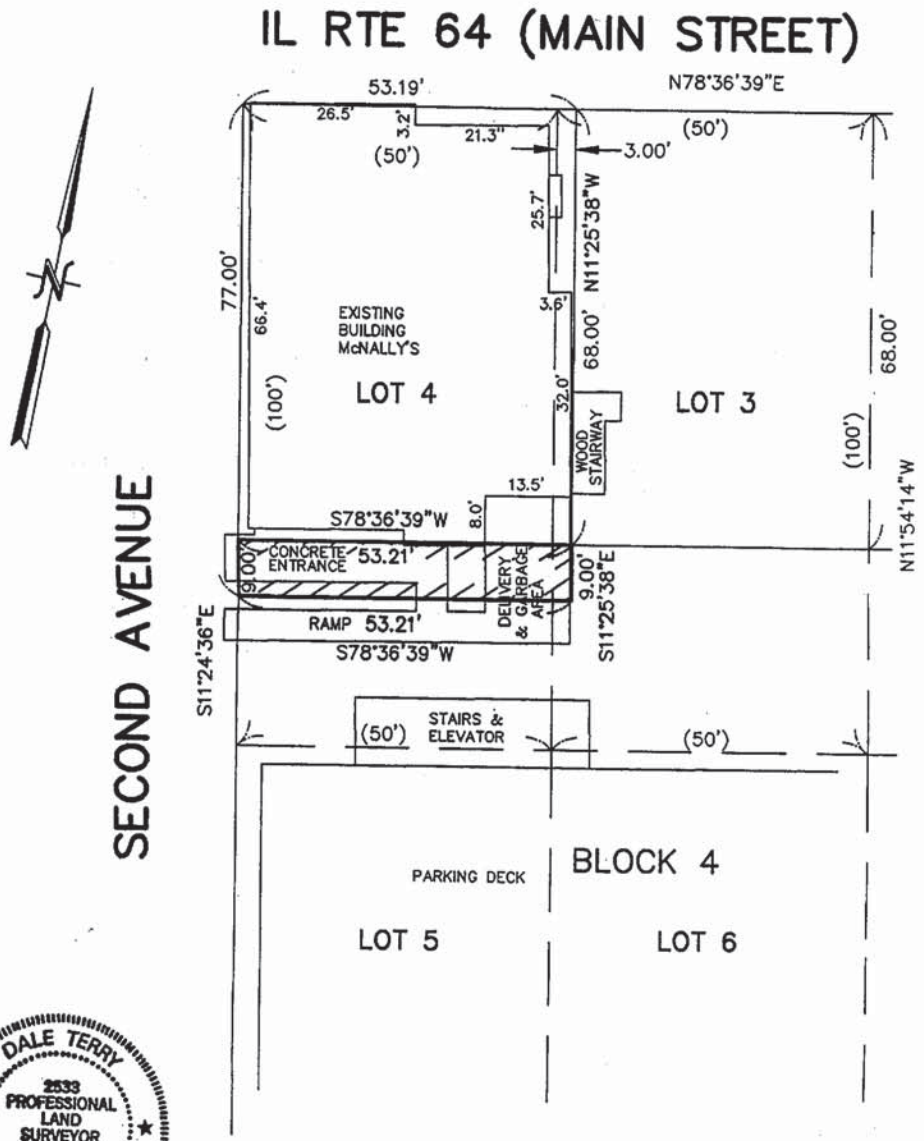
EXC

PLAT OF SURVEY

OF PROPERTY DESCRIBED AS FOLLOWS:

The southerly 9.00 feet of the northerly 77.00 feet of Lot 4 and the southerly 9.00 feet of the northerly 77.00 feet of the westerly 3.00 feet of Lot 3 in Block 4 of the Original Town of St. Charles in the City of St. Charles, Kane County, Illinois.

Said parcel contains 479 square feet or 0.011 acre, more or less.



DALE TERRY
2533
PROFESSIONAL LAND SURVEYOR
STATE OF ILLINOIS
ELGIN, IL

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DIMENSIONS ARE GIVEN IN FEET AND DECIMALS THEREOF UNLESS OTHERWISE INDICATED.

DATED THIS 25th DAY OF OCTOBER, 1999 A.D.

Dale A. Terry

DALE A. TERRY – PROFESSIONAL
ILLINOIS LAND SURVEYOR NO. 2533

——— INDICATES PARCEL BOUNDARY
(50') INDICATES RECORD DIMENSION

SCALE: 1 INCH = 20 FEET

OCT 26

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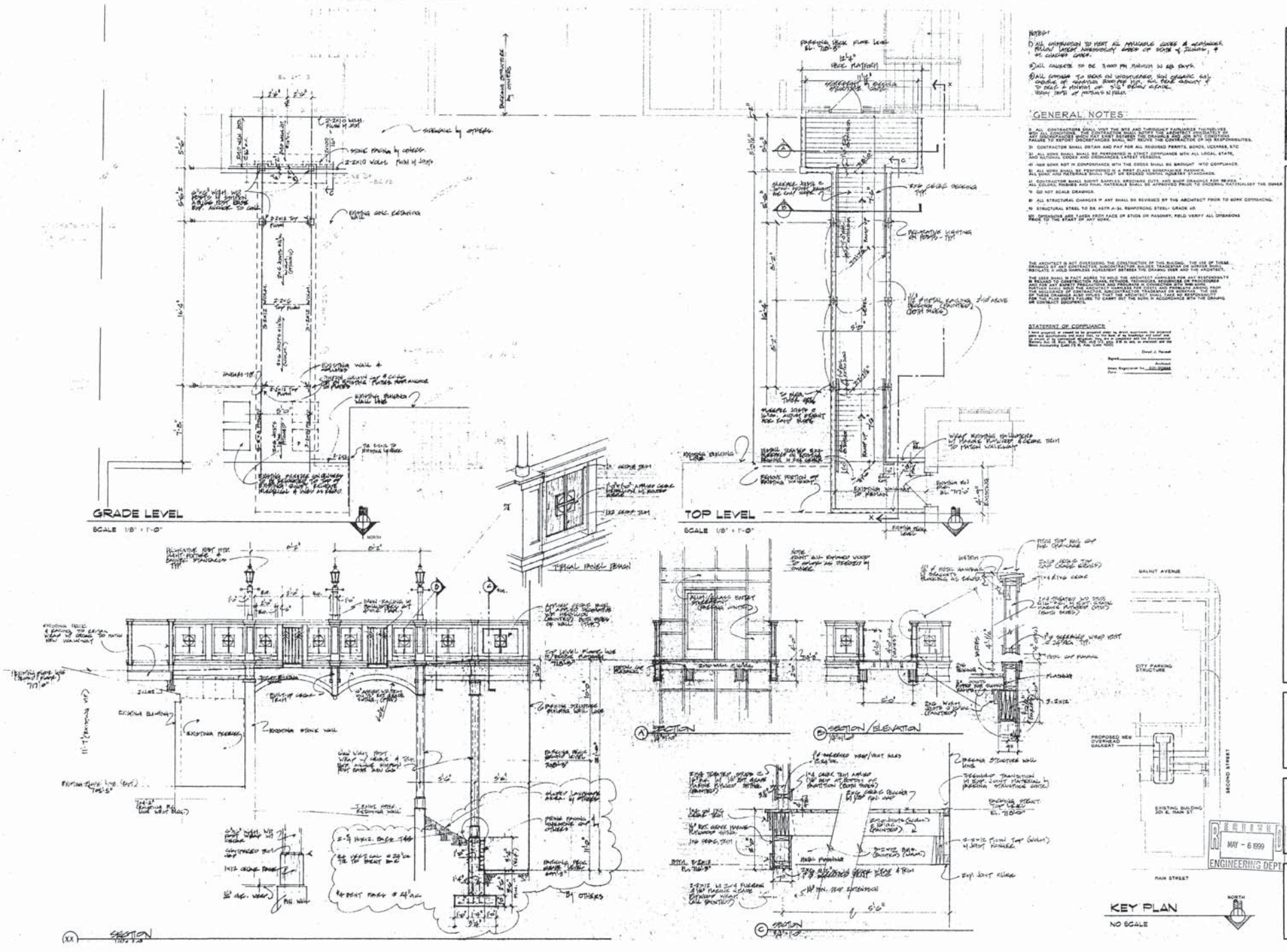
EX D



MARSHALL PROJECTS

PROPOSED WALKWAY FOR
WALNUT STREET PARTNERS

301 E. MAIN STREET
ST. CHARLES, ILLINOIS

Revisions:

Commission: 1471
Issue Date: 4-8-99
Drawn By: DSM

RECEIVED
MAY - 6 1999
ENGINEERING DEPT

Sheet: 1 of: 1