

 <p>CITY OF ST. CHARLES ILLINOIS • 1834</p>	AGENDA ITEM EXECUTIVE SUMMARY		Agenda Item number: 4i
	Title:	A Resolution Authorizing the Mayor and City Council to Execute a Temporary License Agreement between the City of St. Charles and STC Arcada LLC	
	Presenter:	Derek Conley, Economic Development Director	
Meeting: Planning & Development Committee		Date: March 11, 2024	
Proposed Cost: \$		Budgeted Amount: \$	Not Budgeted: <input type="checkbox"/>
TIF District: None			
Executive Summary (if not budgeted, please explain):			
<p>Background:</p> <p>This executive summary pertains to items c. and d. as each item needs to be considered in conjunction. An aerial map has been attached to assist in explaining each item. Flagship on the Fox (100 Riverside Ave.) has expressed interest in continuing use of public space for outdoor café areas during the 2024 season. In order for the City to accommodate this request the following resolutions/agreements need to be approved:</p> <ul style="list-style-type: none"> g. Temporary Closure of Walnut Avenue from April 15, 2024 through October 31, 2024The temporary closure of Walnut Avenue needs to be approved before the City can enter into a subsequent agreement with Flagship on the Fox (C&A Management Group, LLC) to allow for outdoor dining on the street. The area of the proposed closure is identified on Exhibit A. h. License Agreement for Outdoor Dining with C&A Management Group, LLC (Flagship on the Fox- 100 Riverside Ave.) The license agreement with Flagship on the Fox would grant the restaurant access to Walnut Avenue for the purpose of providing an outdoor dining patio. The layout of the outdoor dining patio would be the same as 2022. The license agreement was not approved in 2023. The license would be based upon the same timeframe and fees being imposed for use of the First Street plazas (\$40 per seat for entire period). i. Temporary License Agreement for Bus Parking and Loading Zone with STC Arcada LLC (Arcade Theatre- 101 E Main St.) The license agreement with STC Arcada LLC, better known as Frontier Development, and would grant the Arcada Theatre exclusive access to parking spaces on Walnut Avenue for the purpose of providing a bus parking in for theatre events. The licensee would be subject to an annual fee of \$456.25. 			
Attachments (please list):			
Draft license agreement (Including Aerial Map – Exhibit C.)			
Recommendation/Suggested Action (briefly explain):			
Recommendation to Approved A Resolution Authorizing the Mayor and City Council to Execute a Temporary License Agreement between the City of St. Charles and STC Arcada LLC			

**City of St. Charles, Illinois
Resolution No. 2024- __**

**A Resolution Authorizing the Mayor and City Council to Execute a
Temporary License Agreement between the City of St. Charles and STC
Arcada LLC (Arcada Theatre - 101 E Main Street)**

**Presented & Passed by the
City Council on _____**

BE IT RESOLVED by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, that the Mayor and City Clerk are hereby authorized to execute that certain Temporary License Agreement, in substantially the form attached hereto and incorporated herein as Exhibit "A" by and on behalf of the City of St. Chares.

PRESENTED to the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, this ____ day of March, 2024.

PASSED by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, this ____ day of March, 2024.

APPROVED by the Mayor of the City of St. Charles, Kane and DuPage Counties, Illinois, this ____ day of March, 2024.

Lora A. Vitek, Mayor

Attest:

City Clerk/Recording Secretary

Voice Vote:

Ayes:

Nays:

Absent:

Abstain:

Exhibit "A"
**Temporary License Agreement between the City of St. Charles and STC Arcada
LLC**

TEMPORARY LICENSE AGREEMENT

This TEMPORARY LICENSE AGREEMENT (hereinafter the "*Agreement*") is made and entered into as of this ___ day of _____, 2024, by and between the City of St. Charles, an Illinois Municipal Corporation, Kane and DuPage Counties, Illinois (hereinafter "*City*"), and STC Arcada LLC, an Illinois Limited Liability Corporation (hereinafter "*Licensee*"); the City and Licensee are sometimes hereinafter collectively referred to as the Parties ("*Parties*") or individually as the Party ("*Party*").

WITNESSETH:

WHEREAS, the City does maintain, occupy, operate and use a portion of a public right-of-way known as Walnut Avenue ("*Walnut Avenue ROW*"), as depicted on Exhibit A, attached hereto and made a part hereof, which is immediately adjacent to 101 E Main St. ("*101 E. Main St.*"), legally described in Exhibit B attached hereto and made a part hereof; and

WHEREAS, Licensee owns property commonly known as Arcada Theatre located at 101 E Main St. ("*Licensee Property*"), the northerly property line of which abuts a portion of the Walnut Avenue ROW; and

WHEREAS, Licensee proposes the exclusive use of parking stalls as temporary bus parking and loading ("*Bus Parking*"), projecting into the Walnut Avenue ROW, as illustrated on Exhibit C.

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:

1. The Recitals hereinabove are hereby incorporated into and made a substantive part of this Agreement as though they were fully set forth in this Paragraph.

2. The City, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration paid to City, the receipt and sufficiency of which is hereby acknowledged, hereby grants to the Licensee, its successors, grantees and assigns, an exclusive temporary license (hereinafter the "*License*") for the purpose of utilizing and maintaining the Bus Parking solely within the limited area in the Walnut Avenue ROW, in the location illustrated on the attached Exhibit C, subject to the terms, conditions and limitations herein specified together with any exhibits attached hereto and incorporated herein by reference.

3. The annual fee for the License under this Agreement shall be in the amount of Four Hundred Fifty-Six and 25/100 Dollars (\$456.25), due upon execution of this

Agreement by Licensee. In the event that this Agreement does not take effect for a full calendar year, a prorated payment amount, payments during this period calculated at a daily rate of One Dollar and Twenty-Five Cents (\$1.25) for each day of the Agreement's duration.

4. Licensee must install, operate and maintain the Bus Parking in full compliance with the permit and all conditions contained herein or attached hereto by reference.

5. The Bus Parking shall not in any manner be operated, modified, expanded, added to or enlarged beyond the extent of described herein and shown in Exhibit C, without the prior written consent of the City.

6. This Agreement shall commence upon execution of this Agreement by both parties and expire on December 31, 2024, the date the insurance required hereunder expires, or as otherwise provided for in this Agreement, whichever comes first. This Agreement may be renewed only through the action of the City. Licensee may terminate this Agreement immediately by providing written notice to City. Except for the immediate termination in the event of an emergency, as declared by City in its sole discretion, City may terminate this Agreement at any time during the term of this Agreement by notifying Licensee of its intention, with at least three (3) business days prior written notice.

7. Licensee understands and agrees that the Bus Parking shall remain in good condition at all times and that the City Parking Lot shall not be compromised in any unsafe or adverse manner, at all times complying with all local codes and ordinances.

8. Licensee acknowledges and agrees that the use of the Bus Parking area is restricted solely to bus parking, for trucks involved in unloading equipment or materials, and for vehicles dropping off, picking up or waiting for entertainers for events held at the Arcada Theatre. No passenger vehicles shall be parked in the Bus Parking Area longer than three hour. Any authorized vehicle shall be identified as an Arcada Theatre vehicle via signage. No passenger vehicles unaffiliated with the Arcada Theatre shall be stopped or parked with the Bus Parking area at any time.

Buses may not stop to temporarily park or unload at any other location on-street location or within a public parking lot.

9. The Licensee acknowledges and agrees that no public parking spaces outside of the designated bus parking area shall be obstructed or marked off with cones for exclusive use by the Arcada Theatre or any other entity unless specifically and properly permitted.

10. The Licensee agrees to complete and deliver a traffic control plan to the City, which shall include traffic control measures that will be implemented, such as barricades, cones, signage, flaggers, and temporary traffic signals. These measures should

be designed to safely guide traffic around the closure, prevent unauthorized access and meet Manual on Uniform Traffic Control Devices (MUTCD) standards.

11. The Licensee acknowledges and agrees that under no circumstances shall the northern Walnut public sidewalk between Riverside and 2nd Ave be obstructed with equipment, including the permanently installed lift, except during the times of unloading. When not in use for unloading, the lift shall be retracted so that the sidewalk is passable without need to step onto, over or around the lift platform.

12. To the fullest extent permitted by law, Licensee hereby agrees to defend, indemnify and hold harmless the City, its officials, agents, and employee, against all injuries, deaths, loss, damages, claims, patent claims, suits, liabilities, judgments, costs and expenses, specifically including but not limited to, any claim for damages caused by or to the Bus Parking or caused by work performed by the City, or its agents, which may in anywise accrue against the City, its officials, agents, and employees, arising in whole or in part or in consequence of the performance of this Agreement by the Licensee, their agents, invitees, employees, contractors or subcontractors, or which may in anyway result therefrom, except that arising out of the sole legal cause of the City, its agents or employees, the Licensee shall, at their own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefore or incurred in connections therewith, and, if any judgment shall be rendered against the City, its officials, agents and employees, in any such action, the Licensee shall, at its own expense, satisfy and discharge the same. Prior to occupancy, the Licensee shall furnish to the City a certificate of insurance evidencing coverages and limits in conformance to the requirements described herein as Exhibit D. The insurance policy shall be expressly endorsed to include the City as an additional insured, Such certification of insurance shall require the insurer(s) to provide not less than thirty (30) days advance written notice to the City in the event of any cancellation, non-renewal or change in the policy limits, terms or conditions which would cause them to fail to meet the foregoing requirements. Such insurance shall be fully maintained during the term of the License.

13. The City shall have the right, in its sole and absolute discretion, to promulgate and enforce rules and regulations regarding the use of the Bus Parking, including but not limited to the enforcement of the City Municipal Code, to protect the health, safety and welfare of the public utilizing the Walnut Avenue ROW. The Licensee will provide, at its expense (and the City shall have no obligation to provide or pay for), any and all improvements and/or modifications to the Bus Parking to comply with this provision.

14. Licensee accepts the Walnut Avenue ROW, "As-Is," "Where-Is," and in its current condition, and the City makes no representations concerning the condition of the Licensee Property. Licensee further understands and agrees that various third party utility, telecommunication, and T.V. cable companies, including but not limited to Commonwealth Edison, NICOR and AT&T, and their successors and assigns ("*Utility Companies*"), may have certain rights arising in the Walnut Avenue ROW, and that this Agreement does not in any way affect or diminish the rights of those Utility Companies.

Licensee hereby acknowledges and agrees that the Utility Companies have no obligation or responsibility to Licensee.

15. If this Agreement is terminated under any of the provisions contained herein, Licensee shall remove the Bus Parking within thirty (30) days of termination. The site shall be restored to the same general condition as existed before the Bus Parking was installed, unless otherwise agreed to by the City. If the required work is not performed or completed to the City's satisfaction, the City shall have the right to perform or complete such work. Licensee agrees to reimburse the City for performance of such work within thirty (30) days of invoice by the City. Non-payment of invoices shall constitute a lien against the 101 East Main Street property.

16. The Bus Parking when installed does not become a part of or an interest in the Walnut Avenue ROW, the air rights above and below or the underlying property. This Agreement shall not be construed to grant any interest in realty or any other possessory interest beyond the irrevocable, permanent and exclusive license to the Licensee, as provided herein.

17. Licensee is responsible for the cost of installation, maintenance, and removal of such the Bus Parking equipment and is responsible for any damage caused to the Walnut Avenue ROW resulting from such installation, maintenance, and removal.

18. The terms of this Agreement shall inure to the benefit of, and be binding upon, the Parties hereto and their respective successors and assigns.

19. The parties acknowledge that the licensed area is part of the Walnut Avenue ROW and is currently exempt from any tax assessment for real estate or any other taxes. In the event that the Walnut Avenue ROW or any part thereof becomes subject to real estate or other taxes arising out of this License Agreement, the Licensee shall be liable for those real estate or other taxes and will pay said taxes as they become due and owing.

20. This Agreement may be enforced either at law or in equity, with the non-breaching Party entitled to injunctive relief and/or monetary damages. If any action for enforcement of this Agreement is brought, the non-prevailing Party in such action shall reimburse the prevailing Party for its attorneys' fees and related costs in such action.

21. Licensee shall not assign this Agreement or its rights and duties under this License, without the prior written consent of the City, which consent may be withheld in the City's sole and absolute discretion. This Agreement may be modified or amended only by a written instrument executed by the Parties, or their respective permitted successors or assigns.

22. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not

be affected thereby, and each term, covenant and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

[SIGNATURE PAGE FOLLOWS IMMEDIATELY]

Dated this ____ day of _____, 2024.

Licensee:

STC Arcada, LLC
an Illinois Limited Liability Corporation

City:

CITY OF ST. CHARLES,
an Illinois Municipal Corporation

By: _____

By: _____
Mayor

Subscribed and sworn to before me
this ____ day of _____, 2024.

Attest: _____
City Clerk

Notary Public

Subscribed and sworn to before me
this ____ day of _____, 2024.

Notary Public

Exhibit A:
Walnut Avenue ROW Depiction

PART OF WALNUT AVENUE IN THE ORIGINAL TOWN OF ST. CHARLES, ON
THE EAST SIDE OF THE FOX RIVER, BEING DESCRIBED AS FOLLOWS:

[LEGAL TO BE INSERTED]

Exhibit B:
101 E Main St. (Arcade Theatre) Legal Description

PARCEL 1:

THE WESTERLY 9 FEET OF THE SOUTHERLY 12 FEET OF THE PROPERTY DESCRIBED AS FOLLOWS: THAT PART OF LOTS 3 AND 4 IN BLOCK 2 OF THE ORIGINAL TOWN OF ST. CHARLES, ON THE EAST SIDE OF THE FOX RIVER, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 4; THENCE NORTHERLY ALONG THE EASTERLY LINE OF SAID LOT, 29.05 FEET; THENCE EASTERLY, PARALLEL WITH THE SOUTHERLY LINE OF SAID LOT 3, A DISTANCE OF 0.32 FOOT TO THE CENTER LINE OF A 1 FOOT WIDE PARTY WALL; THENCE NORTHERLY ALONG SAID CENTER LINE 37.25 FEET TO A POINT ON THE WESTERLY LINE OF SAID LOT 3 WHICH IS 34 FEET SOUTHERLY OF, AS MEASURED ALONG SAID WESTERLY LINE, THE NORTHWEST CORNER OF SAID LOT; THENCE NORTHERLY ALONG THE CENTER LINE OF SAID 1 FOOT WIDE PARTY WALL TO A POINT ON THE NORTHERLY LINE OF SAID LOT 4 WHICH IS 0.28 FOOT WESTERLY OF THE NORTHEAST CORNER THEREOF; THENCE EASTERLY ALONG SAID NORTHERLY LINE 50.57 FEET TO THE NORTHEAST CORNER OF SAID LOT 3; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID LOT 3, A DISTANCE OF 100.30 FEET TO THE SOUTHEAST CORNER OF SAID LOT; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF SAID LOT, 50.295 FEET TO THE POINT OF BEGINNING; IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT FOR BENEFIT OF PARCEL 1 FOR MAINTENANCE AND REPAIR AND INGRESS AND EGRESS CREATED BY DEED RECORDED APRIL 17 2001 AS DOCUMENT 2001K034378 ON AND OVER THE FOLLOWING: THE SOUTHERLY 12 FEET OF THE FOLLOWING PROPERTY: THAT PART OF LOTS 3 AND 4 IN BLOCK 2 OF THE ORIGINAL TOWN OF ST. CHARLES, ON THE EAST SIDE OF THE FOX RIVER, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 4; THENCE NORTHERLY ALONG THE EASTERLY LINE OF SAID LOT, 29.05 FEET; THENCE EASTERLY, PARALLEL WITH THE SOUTHERLY LINE OF SAID LOT 3, A DISTANCE OF 0.32 FOOT TO THE CENTER LINE OF A 1 FOOT WIDE PARTY WALL; THENCE NORTHERLY ALONG SAID CENTER LINE 37.25 FEET TO A POINT ON THE WESTERLY LINE OF SAID LOT 3 WHICH IS 34 FEET SOUTHERLY OF, AS MEASURED ALONG SAID WESTERLY LINE, THE NORTHWEST CORNER OF SAID LOT; THENCE NORTHERLY ALONG THE CENTER LINE OF SAID 1 FOOT WIDE PARTY WALL TO A POINT ON THE NORTHERLY LINE OF SAID LOT 4 WHICH IS 0.28 FOOT WESTERLY OF THE NORTHEAST CORNER THEREOF; THENCE EASTERLY ALONG SAID NORTHERLY LINE 50.57 FEET TO THE NORTHEAST CORNER OF SAID LOT 3; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID LOT 3, A DISTANCE OF 100.30 FEET TO THE SOUTHEAST CORNER OF SAID LOT; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF SAID LOT, 50.295 FEET TO THE POINT OF BEGINNING; (EXCEPT PART LYING IN PARCEL ONE DESCRIBED ABOVE) IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS.

PARCEL 3:

ALL OF LOTS 5 AND 6 IN BLOCK 2 OF THE ORIGINAL TOWN OF ST. CHARLES, ON THE EAST SIDE OF THE FOX RIVER, AND THAT PART OF LOTS 3 AND 4 IN SAID BLOCK 2, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 4; THENCE NORTHERLY ALONG THE EASTERLY LINE OF SAID LOT, 29.05 FEET; THENCE EASTERLY, PARALLEL WITH THE SOUTHERLY LINE OF SAID LOT 3, A DISTANCE OF 0.32 FEET TO THE CENTER LINE OF A ONE FOOT WIDE PARTY WALL; THENCE NORTHERLY ALONG SAID CENTER LINE 37.25 FEET TO A POINT ON THE WESTERLY LINE OF SAID LOT 3 WHICH IS 34 FEET SOUTHERLY OF, AS MEASURED ALONG SAID WESTERLY LINE, THE NORTHWEST CORNER OF SAID LOT; THENCE NORTHERLY ALONG THE CENTER LINE OF SAID ONE FOOT WIDE PARTY WALL TO A POINT ON THE NORTHERLY LINE OF SAID LOT 4 WHICH IS 0.28 FEET WESTERLY OF THE NORTHEAST CORNER THEREOF; THENCE WESTERLY ALONG SAID NORTHERLY LINE 50.05 FEET TO THE NORTHWEST CORNER OF SAID LOT 4; THENCE SOUTHERLY ALONG THE WESTERLY LINE OF SAID LOT 4, A DISTANCE OF 100.30 FEET TO THE SOUTHWEST CORNER OF SAID LOT; THENCE EASTERLY ALONG THE SOUTHERLY LINE OF SAID LOT, 50.295 FEET TO THE POINT OF BEGINNING; IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS.

PARCEL 4:

EASEMENT FOR INGRESS AND EGRESS FOR BENEFIT OF PARCELS ONE AND THREE CREATED BY AGREEMENT RECORDED MAY 2, 1924 AS DOCUMENT 236236 AND BY AGREEMENT RECORDED JUNE 20 1925 DOCUMENT 256715 MADE BY JOE MELSON TO LESTER J. NORRIS FOR THE BENEFIT OF PARCELS ONE AND THREE OVER THE WEST 10 FEET OF THE SOUTH 94.5 FEET OF LOT 7 IN BLOCK 2 OF THE ORIGINAL TOWN OF ST. CHARLES, ON THE EAST SIDE OF THE FOX RIVER, IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS.

PIN 09-27-389-011

Address 101 E Main St,
St. Charles, IL 60174

Exhibit D:
Insurance Requirements

The applicant for an Outdoor Café Permit shall provide at its sole cost and expense, and shall maintain in effect during the entire period of the permit, insurance at a minimum in at least the following manner, or equivalent coverage determined acceptable by the City Administrator:

1. Worker's Compensation Insurance in at least the required statutory limits.
2. Comprehensive General Liability Insurance, including owner's protective liability insurance and contractual liability insurance covering claims for personal injury and property damage with limits of at least two million (\$2,000,000.00) dollars per occurrence, and two million (\$2,000,000.00) dollars for any single injury.
3. Umbrella Liability Insurance with limits of at least one million (\$1,000,000.00) dollars per occurrence.
4. Liquor Liability Coverage for any establishment serving alcohol on public property.
5. Prior to issuance of an Outdoor Café permit, the permittee shall provide the City with copies of the certificates of insurance for the required policies for each type of insurance naming the City as an additional insured party.
6. The required insurance policies shall each provide that they shall not be changed or cancelled during the life of the Outdoor Café Permit until 30 days after written notice of such change has been delivered to the City.