 <p>CITY OF ST. CHARLES ILLINOIS • 1834</p>	<b>AGENDA ITEM EXECUTIVE SUMMARY</b>		<b>Agenda Item number: 5f</b>
	Title:	Recommendation to Approve Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements (300 S. 2nd St. & First Street Redevelopment Lots 6 & 14)	
	Presenter:	<b>Derek Conley, Economic Development Director</b>	

**Meeting:** Planning & Development Committee

**Date:** June 12, 2023

**Proposed Cost:** \$

**Budgeted Amount:** \$

**Not Budgeted:**

**TIF District:** TIF 4 - First Street & TIF 7 - Central Downtown (VOTING RESTRICTIONS)

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

In Spring 2022, the Blue Goose grocery store located at 300 South Second Street, permanently closed. The Blue Goose was a downtown anchor for over 90 years in St. Charles. The closure has left many downtown area residents without a convenient option to purchase groceries or other household goods. Many community members have expressed to the City their desire for the vacant building to return as grocery store.

A few months following the Blue Goose's closure, Fort Union, a regional development company, expressed to City staff their interest in purchasing, developing, and attracting a premium grocer site. In March 2023, Fort Union informed City staff they had conditionally signed a lease with a premier national grocer and had placed the subject property under contract. Fort Union has, from the initial discussions, indicated that in order to attract a premium grocer, expanded parking rights may be needed to accommodate parking demands for a national grocer tenant.

This declaration does not sell any current city-owned property to the developer or grocer tenant, rather it modifies the terms for the shared use of city-owned parking lots adjacent to the store parcel.

**Amended and Restated Declaration**

On March 7, 2007 the City entered into a declaration with Blue Goose property owner which created reciprocal easement rights between the City and the Blue Goose property. The easements were in relation to ingress, egress, utility and drainage. The declaration also permitted the Blue Goose property to utilize 31 parking stalls on the City-owned parking lot. The declaration was created in conjunction with the relocation of the Blue Goose grocery store to the site and a potential building on the City-owned temporary parking lot which never came to fruition.

The Amended and Restated Declaration expands parking rights to the owner of the Blue Goose property to accommodate the parking demand of a national grocer tenant. There are a number of scenarios which are outlined below. A site plan of each scenario can be viewed as EXHIBIT D of the Amended and Restated Declaration.

1. If a lease with the national grocer tenant is in effect, then the grocer shall have exclusive rights to the city-owned parking lots depicted as Exclusive Parking Area A, which is a total of 68 parking stalls. The remaining portion of the City-owned parking lot would be retained for Public Parking, which is depicted as Public Parking Area A, a total of 30 parking spaces.
2. In the event the national grocer tenant permanently closes, the existing lease is terminated, and the Blue Goose building is vacant, then the all the parking on the city-owned lots can be utilized by the general public.

3. If the lease with national grocer tenant is not in effect, however, a new tenant has opened in the building, then the new tenant shall have the rights to parking stalls in Exclusive Parking Area B, which is 46 parking stalls. In this case, the public parking area would expand to Public Parking Area B, which is 52 parking stalls.

**Other Miscellaneous Items**

- The driveways, pavement, signage and lighting located on the private parking lot, the Exclusive Parking Areas and the Public Parking Areas shall be maintained in good order and repair by Grocery Parcel Owner at all times during the term of this Agreement.
- The City nor the Blue Goose Property owner may erect a permanent structure, such as a building, which would obstruct the visibility or access of any of the Parcels from South First Street, South Second Street (Illinois Route 31), and Illinois Street.
- The City-owned parking lots are located within a TIF District, and in accordance with the requirements of the state TIF statute, the City has published a notice regarding consideration of the Amended and Restated Declaration, with an opportunity for alternate proposals for the subject property to be submitted to the City by June 16. Any proposals received would be presented to City Council prior to final action on the Declaration.

**Attachments (please list):**

Amended and Restated Declaration

**Recommendation/Suggested Action (briefly explain):**

Recommendation to Approve Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements

Revised: May 18, 2023

**Prepared by, and after recording**

**return to:**

The Hull Law Group LLC  
444 North Michigan Avenue, Suite 3450  
Chicago, IL 60611

**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS**

**THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS** (this “*Agreement*”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between **SDGFTU 300 LLC, an Illinois limited liability company (“Grocery Parcel Owner”)**, and the **CITY OF ST. CHARLES, St. Charles, Illinois (“City”)**. Grocery Parcel Owner and City are sometimes referred to herein collectively as the “*Parties*” and, individually, as a “*Party*.”

**W I T N E S S E T H:**

**WHEREAS**, City, The Lencioni Family Partnership LLC, an Illinois limited liability company, the predecessor in title to Grocery Parcel Owner, and First Street Development LLC, an Illinois limited liability company (defined as “Developer” in the Original Declaration, as defined below), established certain reciprocal rights and easements for, among other things, the joint use of walking, driving and parking areas on portions of Building 6, Blue Goose, and City Lot (each as defined in the Original Declaration), including joint rights of access, ingress and egress, and other rights by and through that certain Declaration of Covenants, Conditions, Restrictions and Easements dated March 20, 2007, recorded with the Kane County Recorder of Deeds on March 29, 2007, as Document No. 2007K035552 (the “*Original Declaration*”).

**WHEREAS**, City is the owner in fee simple of that certain parcel of real property located in City of St. Charles, Kane County, Illinois, legally described on **Exhibit A** attached hereto and by this reference made a part hereof (said Parcel is hereinafter referred to as “*City Lot A*”). (For point of reference only, City Lot A was referred to in the Original Declaration as “Building 6”).

**WHEREAS**, City is the owner in fee simple of that certain parcel of real property located in City of St. Charles, Kane County, Illinois, legally described on **Exhibit B** attached hereto and by this reference made a part hereof (said Parcel is hereinafter referred to as “*City Lot B*”) (For point of reference only, City Lot B was referred to in the Original Declaration as the “City Lot”).

**WHEREAS**, City Lot A and City Lot B are sometimes referred to herein collectively as the “*City Lots*”).

**WHEREAS**, Grocery Parcel Owner is the owner in fee simple of those certain parcels of real property and improvements thereon located in the City of St. Charles, Kane County, Illinois, legally described on **Exhibit C** attached hereto and by this reference made a part hereof (said parcels are hereinafter referred to collectively as the “*Grocery Parcel*” and the building located thereon is hereinafter referred to as the “*Building*”) (For point of reference only, a portion of the Grocery Parcel was referred to in the Original Declaration as “Blue Goose”).

**WHEREAS**, City Lot A, City Lot B and the Grocery Parcel are collectively referred to herein as the “**Parcels**” and individually as a “**Parcel**”, as applicable, and are depicted on the site plan attached hereto as **Exhibit D** (the “**Site Plan**”).

**WHEREAS**, the parking lots located on City Lot A, City Lot B, and the Grocery Parcel are sometimes collectively referred to herein as the “**Parking Lots**”. The areas shown on the Site Plan as “**Exclusive Parking Area A**”, “**Exclusive Parking Area B**”, “**Public Parking Area A**”, and “**Public Parking Area B**” are defined herein as such areas.

**WHEREAS**, Grocery Parcel Owner and City (and their respective successors in title to the Grocery Parcel and the City Lots, respectively, are collectively referred to herein as the “**Owners**” and individually as an “**Owner**”, as applicable.

**WHEREAS**, Developer is no longer a party to the Original Declaration, as evidenced by the Mutual Release, Waiver and Termination Agreement by and between City and Developer dated March 5, 2015.

**WHEREAS**, because the initial proposed development and ownership of the Parcels as contemplated by the Original Declaration changed after the recording of the Original Declaration, Grocery Parcel Owner and City desire to amend and restate the Declaration in its entirety to amend and further establish certain reciprocal rights and easements for, among other things, the joint use of walking, driving and parking areas on portions of Grocery Parcel and City Lot A and City Lot B for the mutual and reciprocal benefit of the Parcels and the present and future Owners, mortgagees, tenants and occupants of the Parcels or any part thereof, on the terms and conditions set forth below.

**WHEREAS**, Grocery Parcel Owner has entered into a lease (the “**Grocery Parcel Lease**”) for the Grocery Parcel for operation of a grocery store by [INSERT TENANT NAME] (“**Grocery Parcel Tenant**”) within the Building.

**NOW, THEREFORE**, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other valuable consideration paid by each to the other, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **Recitals.** The Recitals herein contained are true and correct as of the date hereof and are incorporated herein.

2. **Amendment and Restatement of the Original Declaration.** The Original Declaration is hereby rendered null and void and is hereby replaced with this Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements, as more fully set forth below.

3. **Grant of Easements.**

a. **Ingress, Egress, Utility and Drainage Easements: City to Grocery Parcel Owner.** City does hereby establish, give, grant, and convey to Grocery Parcel Owner and its successors, successors-in-title, and assigns, for use by them and their respective tenants, sub-tenants, licensees, assignees, customers, employees, and invitees and burdening the City Lots, a perpetual, non-exclusive easement appurtenant to the Grocery Parcel for (i) the purpose of vehicular ingress and egress to and from the Grocery Parcel and the City Lots over the entrances and drive lanes in the City Lots to and from existing South First Street, existing Illinois Street and from existing South Second Street (Illinois Route 31),

and (ii) the purpose of walking upon and driving vehicles upon and across all those sidewalks, entrances, drive lanes, and parking areas in the City Lots which are now or may hereafter from time to time be used for pedestrian and vehicular traffic, and (iii) the purpose of drainage of surface water over, across, and under the City Lots, and (iv) the purpose of installation, maintenance, and repair of underground utilities serving any portion of the Grocery Parcel.

b. Ingress, Egress, Utility and Drainage Easements: Grocery Parcel Owner to City. Grocery Parcel Owner does hereby establish, give, grant, and convey to City, as Owner of the City Lots, and its successors, successors-in-title, and assigns, for use by City and its tenants, customers, employees, and invitees, a perpetual non-exclusive easement appurtenant to the City Lots for (i) the purpose of pedestrian and vehicular ingress and egress to and from the City Lots over the entrances and drive lanes in the Grocery Parcel to and from existing South First Street and existing South Second Street (Illinois Route 31), and (ii) the purpose of walking upon and driving vehicles upon and across all those sidewalks, entrances, drive lanes, and parking areas in the Grocery Parcel which are now or may hereafter from time to time be used for pedestrian and vehicular traffic, and (iii) the purpose of drainage of surface water over, across, and under the Grocery Parcel, and (iv) the purpose of installation, maintenance, and repair of underground utilities serving any portion of the City Lots over and across those portions of the Grocery Parcel upon which no buildings have been constructed.

c. Grocery Parcel Owner and Grocery Parcel Tenant Parking Easements – Exclusive Parking Area A. The provisions of this Paragraph 3.c. shall apply only so long as the Grocery Parcel Lease is in full force and effect. Subject further to Paragraph 3.g. below, City does hereby establish, give, grant and convey to Grocery Parcel Owner and its respective successors and successors-in-title, for use by Grocery Parcel Tenant and its assignees, subtenants, licensees, customers, employees, and invitees, a perpetual (subject to Paragraph 3.g. below), exclusive easement appurtenant to the Grocery Parcel and burdening those portions of City Lot A and City Lot B designated on the Site Plan as Exclusive Parking Area A, comprised of sixty-eight (68) parking spaces, for the following purposes:

i. Grocery Parcel Owner and Grocery Parcel Tenant (and their respective assignees, subtenants, licensees, customers, employees and invitees) may use Exclusive Parking Area A for parking full-size and compact vehicles during normal business hours (overnight parking in Exclusive Parking Area A shall be prohibited except for parking therein by employees of Grocery Parcel Tenant who are working in the Building at night). Exclusive Parking Area A shall be reserved for the exclusive use of Grocery Parcel Tenant and its assignees, subtenants, licensees, customers, employees, and invitees.

ii. Grocery Parcel Owner and Grocery Parcel Tenant (and their respective assignees, subtenants, and licensees) may, in that portion of Exclusive Parking Area A located on City Lot B, (A) install (1) signage designating certain short term parking spaces (including signage painted on the surface of the short term parking spaces), (2) way-finding signage providing directions to the short term parking spaces, and (3) equipment (such as cameras, sensors, canopies and touchscreens) for security and pickup and delivery purposes, and (B) designate

parking spaces in reasonable proximity to the short term parking spaces as storage and equipment areas to facilitate customer pickups from the short term parking spaces. Grocery Parcel Owner shall be responsible for maintaining, repairing and replacing any improvements located in that portion of Exclusive Parking Area A located on City Lot B that are installed by Grocery Parcel Owner or Grocery Parcel Tenant (or their respective assignees, subtenants, and licensees) pursuant to this Paragraph 3.c.ii.

iii. Grocery Parcel Owner and Grocery Parcel Tenant (and their respective assignees, subtenants, and licensees) may install and maintain in Exclusive Parking Area A (A) a shopping cart corral system, (B) storage containers, and (C) subject to applicable laws, minor equipment (including, without limitation, magnetic strips placed in such locations within Exclusive Parking Area A selected by Grocery Parcel Owner or Grocery Parcel Tenant, or their respective assignees, subtenants, and licensees) to help prevent cart theft. Subject to applicable laws, Grocery Parcel Owner and Grocery Parcel Tenant (and their respective assignees, subtenants, and licensees) shall also be allowed to store carts outside of the Building in an area within Exclusive Parking Area A designated by Grocery Parcel Owner or Grocery Parcel Tenant (or their respective assignees, subtenants, and licensees). At such time as the Grocery Parcel Lease is no long in full force and effect, such cart corral system shall be immediately removed by Grocery Parcel Owner or Grocery Parcel Tenant, and those areas of the Exclusive Parking Area A containing a shopping cart corral system shall be restored to their original condition.

iv. Subject to applicable laws, Grocery Parcel Owner and Grocery Parcel Tenant (and their respective assignees, subtenants, and licensees) may designate certain parking spaces within that portion of Exclusive Parking Area A located on City Lot A as “Car and Van Pool Parking” reserved parking for vehicles participating in car and van pooling. All spaces in this subparagraph shall be a minimum of 9’ x 18’.

v. Subject to applicable laws, Grocery Parcel Owner and Grocery Parcel Tenant (and their respective assignees, subtenants, and licensees) may temporarily restrict parking in and use portions of Exclusive Parking Area A for charitable events and/or other festivals and events (such as, without limitation, health fairs and customer appreciation events) sponsored by Grocery Parcel Owner or Grocery Parcel Tenant (or their respective assignees, subtenants, and licensees). Grocery Parcel Owner or Grocery Parcel Tenant (or their respective assignees, subtenants, and licensees) shall be required to obtain all permits required by applicable law for any such events.

d. Grocery Parcel Owner Parking Easement – Exclusive Parking Area B. The provisions of this Paragraph 3.d. shall apply only once the Grocery Parcel Lease is no longer in full force and effect. City does hereby establish, give, grant and convey to Grocery Parcel Owner and its successors and successors-in-title, tenants, licensees, customers, employees and invitees, a perpetual, non-exclusive easement appurtenant to the Grocery Parcel and burdening Exclusive Parking Area B, comprised of forty-six (46) spaces, as shown on the Site Plan, for the purpose of parking full-size vehicles during normal business

hours and to limit the time period for parking in the Exclusive Parking Area B, but which shall not allow any overnight parking.

e. Parking Easement – Public Parking Area A. City does hereby establish, give, grant and convey to Grocery Parcel Owner and Grocery Parcel Tenant (and their respective assignees, subtenants, licensees, customers, employees and invitees) a perpetual, non-exclusive easement appurtenant to the Grocery Parcel and burdening that portion of City Lot A designated on the Site Plan as Public Parking Area A for the purpose of parking thirty (30) full size and compact vehicles during normal business hours (overnight parking in Public Parking Area A shall be prohibited). Public Parking Area A shall not be exclusively for the use of Grocery Parcel Owner or Grocery Parcel Tenant (or their respective assignees, subtenants, licensees, customers, employees and invitees), but shall instead be shared with the general public. However, Grocery Parcel Owner or Grocery Parcel Tenant (or their respective assignees, subtenants, and licensees) may limit the time period for parking in the Public Parking Area A to not less than two (2) hours. Subject to and without interfering with the access easements and other rights granted herein, City shall have the right to use all of the Public Parking Area A for public parking and access purposes. Said right shall include, but not be limited to, the ability to provide parking on a public, no fee basis, and to otherwise designate and control the Public Parking Area A parking spaces under such terms and conditions as City shall solely determine, but in no way to otherwise interfere with the easement rights granted hereby.

f. Signage; Towing and Enforcement. While the easements granted herein with respect to Exclusive Parking Area A and Public Parking Area A are in effect, Grocery Parcel Owner and Grocery Parcel Tenant (and their respective assignees, subtenants, and licensees) shall have the right (A) to install within Exclusive Parking Area A and Public Parking Area A signage indicating the parking restrictions in Exclusive Parking Area A and Public Parking Area A that are permitted hereby, and (B) subject to applicable laws, to enforce such parking restrictions, including the right to have violating cars towed. Grocery Parcel Owner shall be responsible for maintaining, repairing and replacing any such signage. At such time as the easements granted herein with respect to Exclusive Parking Area A and Public Parking Area A are no longer in effect, such signs shall be immediately removed by Grocery Parcel Owner.

g. Exclusive Parking Area A Easements Termination. Upon the cessation of any operations by Grocery Property Owner or any of its tenants or other parties in possession of the Property (but, for clarification purposes, not the termination of the Grocery Parcel Lease)(the “Dark Period”), the Exclusive Parking Area A Easement rights and obligations in Section 3.c above shall be suspended and any and all such spaces in Exclusive Parking Area A, during such Dark Period, shall be deemed part and an extension of and utilized as additional Public Parking Area B. At such time as the Grocery Parcel Lease is no long in full force and effect, the Exclusive Parking Area A easement rights and obligations set forth herein shall immediately terminate, and (1) any and all parking spaces in Exclusive Parking Area A shall thereupon be deemed part and an extension of and utilized as additional Public Parking Area B, and (2) Public Parking Area A shall be replaced with Public Parking Area B.

**4. Prohibition of Additional Improvements.** Other than signage, equipment, storage areas, lighting, landscaping, parking aisle barriers, and other improvements allowed by

this Agreement, no other permanent structures shall be erected or maintained by the Owner of any of the Parcels in the Parking Areas which would obstruct the visibility or access of any of the Parcels from existing South First Street, from existing South Second Street (Illinois Route 31), and existing Illinois Street. In addition, no party hereto shall, at any time prior to the termination of the easements herein granted, and except as otherwise is permitted hereby, erect or construct, or cause to be erected or constructed, any fence, wall, curb, or other barrier between Grocery Parcel and City Lots which in any manner interferes with or restricts the full and complete use and enjoyment by any party of the easements herein granted.

**5. Maintenance, Repair and Replacement of Parking Areas.** The driveways, pavement, signage and lighting located on the Grocery Parcel, the Exclusive Parking Areas and the Public Parking Areas shall be maintained in good order and repair by Grocery Parcel Owner at all times during the term of this Agreement. All such work shall be done promptly and in a good and workmanlike manner. Any portion of the Parcels which are affected by such installation, maintenance, repair or replacement shall be restored to substantially the same condition as existed prior to such work. Said responsibilities of Grocery Parcel Owner shall include, without limitation, restriping, repaving, resealing, and the prompt removal of all paper, debris and refuse. Grocery Parcel Owner shall keep the Grocery Parcel, the Exclusive Parking Areas and the Public Parking Areas lighted and maintained. Grocery Parcel Owner shall also have the responsibility to remove snow and ice from the Grocery Parcel, the Exclusive Parking Areas and the Public Parking Areas. Grocery Parcel Owner may delegate the responsibilities under this Paragraph 5; provided, however, Grocery Parcel Owner shall remain ultimately responsible for such obligations.

**6. Maintenance, Repair and Replacement of Utilities and Improvements.** Grocery Parcel Owner shall be responsible for the installation, maintenance, repair and replacement of utilities serving the improvements permitted upon the Exclusive Parking Areas and Public Parking Areas as permitted by this Agreement and shall insure that such installations, maintenance, or repair is undertaken in a manner so as to minimize the effect on ease of access on the Parcels by persons entitled to such access. All such work shall be done promptly and in a good and workmanlike manner. Any portion of the Parcels which are affected by such installation, maintenance, repair or replacement shall be restored to the same condition as existed prior to such work. Grocery Parcel Owner shall also be responsible for (a) the maintenance of all visible exterior surfaces of all buildings and other improvements, (b) the prompt removal of all paper, debris and refuse from all areas of the Grocery Parcel, the Exclusive Parking Areas and the Public Parking Areas, (c) the operation, maintenance, repair, replacement, cleaning and relamping of all signs and lighting fixtures, and (d) the mowing, watering, fertilizing, weeding, replanting and replacing of all landscaping located within the Exclusive Parking Areas and the Public Parking Areas. Grocery Parcel Owner may delegate the responsibilities under this Paragraph 6; provided, however, Grocery Parcel Owner shall remain ultimately responsible for such obligations.

**7. Taxes on City Lots.** Except as may be provided by law, City shall not take any affirmative action to place City Lots on the real estate tax rolls with the County; provided, however, should the State of Illinois or Kane County levy real estate taxes upon the City Lots, Grocery Parcel Owner (as same may be delegated to Grocery Parcel Tenant or future tenant) shall be solely responsible for the real estate taxes, if any, that may become attributable to or levied upon City Lots.

**8. Closing of Parking Areas; Condemnation Prohibition.** All driveways and entranceways on the Exclusive Parking Areas and on the Grocery Parcel shall be maintained as



herein provided, subject to temporary closings or takings by governmental authorities. Notwithstanding the foregoing, City agrees it may not condemn the City Lots for so long as this Declaration is in full force and effect.

**9. Casualty.** In the event of damage or destruction of any improvements erected or placed on a City Lot, whether by fire or other casualty, Grocery Parcel Owner shall take such action as may be required under applicable municipal ordinances and other Laws with respect to any such damage or destruction. Grocery Parcel Owner shall also be obligated to promptly remove all debris resulting from such damage or destruction and take such action as is necessary to diligently return the damaged area of either City Lot to a visually acceptable, neat, safe condition, with any damaged improvements replaced.

**10. Right of Entry.** Upon ten (10) days prior written notice, except in the event of an emergency, the Parties hereby grant and convey to each other, their successors, successors-in-title, assigns, tenants, contractors, agents or licensees, at any time and from time to time during the term of this Agreement, the right, but not the obligation, to enter upon the other Party's Parcel for the purpose of constructing and installing thereon the driveways, sidewalks, and lighting as more particularly shown on the Site Plan, and maintaining the Parcels and such driveways, sidewalks, and lighting.

**11. Successor Owners.** Each Owner of a Parcel, by the acceptance of a deed of conveyance, whether or not such obligation be so expressed in any such deed of other conveyance for such Parcel, hereby covenants and agrees and shall be deemed to have covenanted and agreed to be bound by this Agreement and to pay all charges as they are levied pursuant to the provisions of this Agreement.

**12. Conveyance to Trust.** If title to a Parcel subject to any charge hereunder is conveyed to a title-holding trust under the terms of which all of the powers of management, operation and control of the trust remain vested in the trust beneficiary or beneficiaries, then the beneficiary or beneficiaries thereunder from time to time shall be responsible for the payment of all obligations, liens or indebtedness and for the performance of all agreement, covenants and undertakings chargeable or created for the purpose of the payment of the costs assessed against such Parcel. No claim shall be made against any such title-holding trustee personally for payment of any lien or obligation created hereunder and such trustee shall be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon such Parcel and the beneficiaries of such trust notwithstanding any transfer of the beneficial interest of any such trust or any transfer of title to such Parcel.

**13. Successors and Assigns.** The easements, restrictions, and agreements provided for herein (as such easements, restrictions and agreements may be limited by the terms hereof) shall be effective upon execution and recordation of this Agreement with the Kane County Recorder of Deeds,. The easements provided for herein shall run with the land and shall constitute a use for joint benefits to and burdens upon the Grocery Parcel and the City Lots, except as may be expressly provided herein to the contrary. The easements provided for herein shall inure to the benefit of and be binding upon the respective successors, successors-in-title, assigns, heirs, tenants, sub-tenants of each Party hereto and the customers, employees, licensees and invitees of such Parties, and shall remain in full force and effect and shall be unaffected by any change in ownership of Grocery Parcel or City Lots, or any of them, or by any change of use, demolition, reconstruction, expansion,

or other circumstances, except as specified herein. The agreement and undertakings by each Party hereto shall be enforceable by action for specific performance, it being agreed by all Parties hereto that an action for damages would not be an adequate remedy for a breach of this Agreement.

**14. Rights Reserved.** This Agreement is not intended to, and should not be construed to, dedicate the easement areas provided for herein to the general public, nor shall this instrument be construed to restrict the use and development of the Grocery Parcel and City Lots, except as stated herein. Without limiting the generality of the foregoing and subject to the terms, conditions and limitations contained herein, Grocery Parcel Owner shall have the right to expand, alter, modify, or demolish all or part of the Building or develop the Grocery Parcel in any manner it sees fit, subject to any and all laws, regulations and City codes, it being the intent of this instrument to grant joint easements over parking, driveways, entranceways, sidewalks, as provided herein without limiting the right of Grocery Parcel Owner to alter, demolish, or redevelop areas of its Parcel not otherwise affected by this Agreement, except as specified herein.

**15. Estoppel Certificates.** Upon the written request of the Owner of any Parcel, the then Owner of any other Parcel, or any portion thereof, shall execute and deliver, within ten (10) business days after receipt of such request, a certificate certifying that there are no known defaults on the part of any Party to this Agreement or, if there are such defaults, specifying the particulars of such defaults and the action required to remedy it and certifying that there are no setoffs or defenses to the enforcement of the terms of this Agreement, or if there are, specifying the particulars of such setoffs or defenses.

**16. Recording of Agreement.** This Agreement shall be recorded in the public records of County of Kane, State of Illinois and shall be prior in title to any deed or other conveyance which is now or may hereafter be placed upon any Parcel. Grocery Parcel Owner and its tenant may record a short form memorandum of lease upon the City Lots to memorialize the existence of any such lease.

**17. Indemnification.** Each Party hereto agrees to defend, indemnify and hold harmless each of the other Parties and their managers, members, employees, customers, guests and invitees, against all liabilities, damages, claims, costs and expenses for property damage, death personal injury or any other matter whatsoever (including reasonable attorney's fees and court costs at all trial and appellate levels), arising out of or in connection with the use of the respective easements or other rights created by this Agreement. Grocery Parcel and City each agrees to obtain and maintain commercial general liability insurance on the easements appurtenant to its Parcel as created by this Agreement naming City as an additional insured and produce evidence annually of such insurance. Such insurance shall include an "each occurrence" limit of not less than One Million Dollars (\$1,000,000.00) and a general aggregate limit of not less than Two Million Dollars (\$2,000,000.00). Notwithstanding the foregoing, City reserves the right to self-insure for the benefit of the Grocery Parcel and Grocery Parcel Owner to the extent as stated above.

**18. Notices.** All notices given pursuant to this Agreement shall be in writing and shall be given by (a) personal delivery, (b) electronic communications, between 9:00 a.m. and 5:00 p.m. CST Monday through Friday, (c) overnight courier, (d) registered or certified first-class mail, postage, prepaid, return receipt requested, or (e) priority mail with delivery confirmation. The Parties expressly agree that notices given by attorneys on behalf of their client(s) in the manner provided in this subsection are effective and recognized notice pursuant to this Agreement. All notices to Grocery Parcel Owner and City shall be sent to the person and address set forth below:

If to Grocery Parcel Owner: SDGFTU 300 LLC

\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

If to City: City of St. Charles  
2 East Main Street  
St. Charles, Illinois 60174  
Attn: Administrator  
Email: [hmcguire@stcharlesil.gov](mailto:hmcguire@stcharlesil.gov)

or such other address as either party may from time to time designate upon thirty (30) days' prior written notice to the other. Any notice given under this Agreement shall be in writing and deemed received when personally delivered, transmission of e-mail or other electronic transmission, or received by overnight delivery.

**19. Miscellaneous.**

a. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

b. The headings of the articles, sections, paragraphs, subparagraphs, subdivisions, and subsections of this Agreement are for the convenience of reference only, are not to be considered a part hereof and do not limit or otherwise affect any of the terms hereof.

c. Wherever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision is ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

d. Whenever the singular or plural number, or the masculine, feminine, or neuter gender is used herein, it legally includes the other.

e. Neither this Agreement nor any provision hereof may be changed, waived, discharged, modified, or terminated orally, but only by an instrument in writing signed by all of the Parties. Further, so long as the Grocery Parcel Lease remains in full force and effect, neither this Agreement nor any provision hereof may be changed, waived, discharged, modified, or terminated without the prior written consent of Grocery Parcel Tenant (or its successor as tenant under the Grocery Parcel Lease).

f. This Agreement does not create an association, partnership, joint venture or a principal and agency relationship between the Parties.

g. The provisions of this Agreement shall run with the land and shall inure to the benefit of and shall be binding upon the Parties hereto and their respective heirs, successors, assigns, and the legal representatives of their estates and the easements, obligations and liabilities granted herein shall be perpetual to the extent permitted by applicable law and shall be a burden upon the Parcels in accordance with the provisions hereof.

h. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

**20. Exhibits.** The following exhibits are attached hereto and made a part hereof:

<b><u>Exhibit A</u></b>	City Lot A
<b><u>Exhibit B</u></b>	City Lot B
<b><u>Exhibit C</u></b>	Grocery Parcel
<b><u>Exhibit D</u></b>	Site Plan

[SIGNATURES AND NOTARY BLOCKS ON FOLLOWING TWO (2) PAGES]

IN WITNESS WHEREOF, the Parties hereto have executed this AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS as of the date first above written.

**CITY:**

City of St. Charles,  
a municipal corporation

By: \_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

**GROCERY PARCEL OWNER:**

SDGFTU 300, LLC,  
an Illinois limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

STATE OF ILLINOIS                    )  
  ) SS  
COUNTY OF KANE                    )

I, a Notary Public, do hereby certify that \_\_\_\_\_, personally known to me to be the Mayor of City of St. Charles, and personally known to me to be the person whose name is subscribed in the foregoing instrument, appeared before me this day in person and acknowledged that (s)he signed and delivered the said instrument as such Mayor of said City, as his/her free and voluntary act, and as the free and voluntary act and deed of said City, for the purposes therein set forth.

Given under my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, 2023.

My commission expires: \_\_\_\_\_  
Notary Public

STATE OF ILLINOIS                    )  
  ) SS  
COUNTY OF COOK                    )

I, a Notary Public, do hereby certify that \_\_\_\_\_, personally known to me to be the Manager of SDGFTU 300, LLC, an Illinois limited liability company, and personally known to me to be the person whose name is subscribed in the foregoing instrument, appeared before me this day in person and acknowledged that (s)he signed and delivered the said instrument as such Manager of said company, as his/her free and voluntary act, and as the free and voluntary act and deed of said company, for the purposes therein set forth.

Given under my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, 2023.

My commission expires: \_\_\_\_\_  
Notary Public

**EXHIBIT A**

**LEGAL DESCRIPTION FOR CITY LOT A**

LOT 6 IN FIRST STREET REDEVELOPMENT SUBDIVISION, IN CITY OF ST. CHARLES,  
KANE COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREON RECORDED MARCH  
29, 2007 AS DOCUMENT NUMBER 2007K035551

**EXHIBIT B**

**LEGAL DESCRIPTION FOR CITY LOT B**

LOT 14 IN FIRST STREET REDEVELOPMENT SUBDIVISION, IN CITY OF ST. CHARLES,  
KANE COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREON RECORDED MARCH  
29, 2007 AS DOCUMENT NUMBER 2007K035551



**EXHIBIT C**

**LEGAL DESCRIPTION FOR GROCERY PARCEL**

PARCEL 1:

LOT 5 OF THE FIRST STREET REDEVELOPMENT SUBDIVISION OF PART OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 27 AND THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 40 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL IN KANE COUNTY, ILLINOIS, ACCORDING TO THE PLAT OF SUBDIVISION RECORDED WITH THE KANE COUNTY RECORDER OF DEEDS ON MARCH 29, 2007 AS DOCUMENT NO. [2007K035551](#), INCLUDING ALL OF THE PORTION OF INDIANA STREET VACATED BY ORDINANCE NO. 2006-M-72 RECORDED DECEMBER 13, 2006 AS DOCUMENT [2006K134903](#) SHOWN LYING WITHIN LOT 5 ON SAID PLAT.

PARCEL 2:

LOT 9 IN FIRST STREET REDEVELOPMENT SUBDIVISION, IN CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS, ACCORDING TO THE PLAT THERE RECORDED MARCH 29, 2007 AS DOCUMENT NUMBER [2007K035551](#).

PINs: 09-34-128-012; 09-34-132-016; 09-34-132-017; 09-34-132-018

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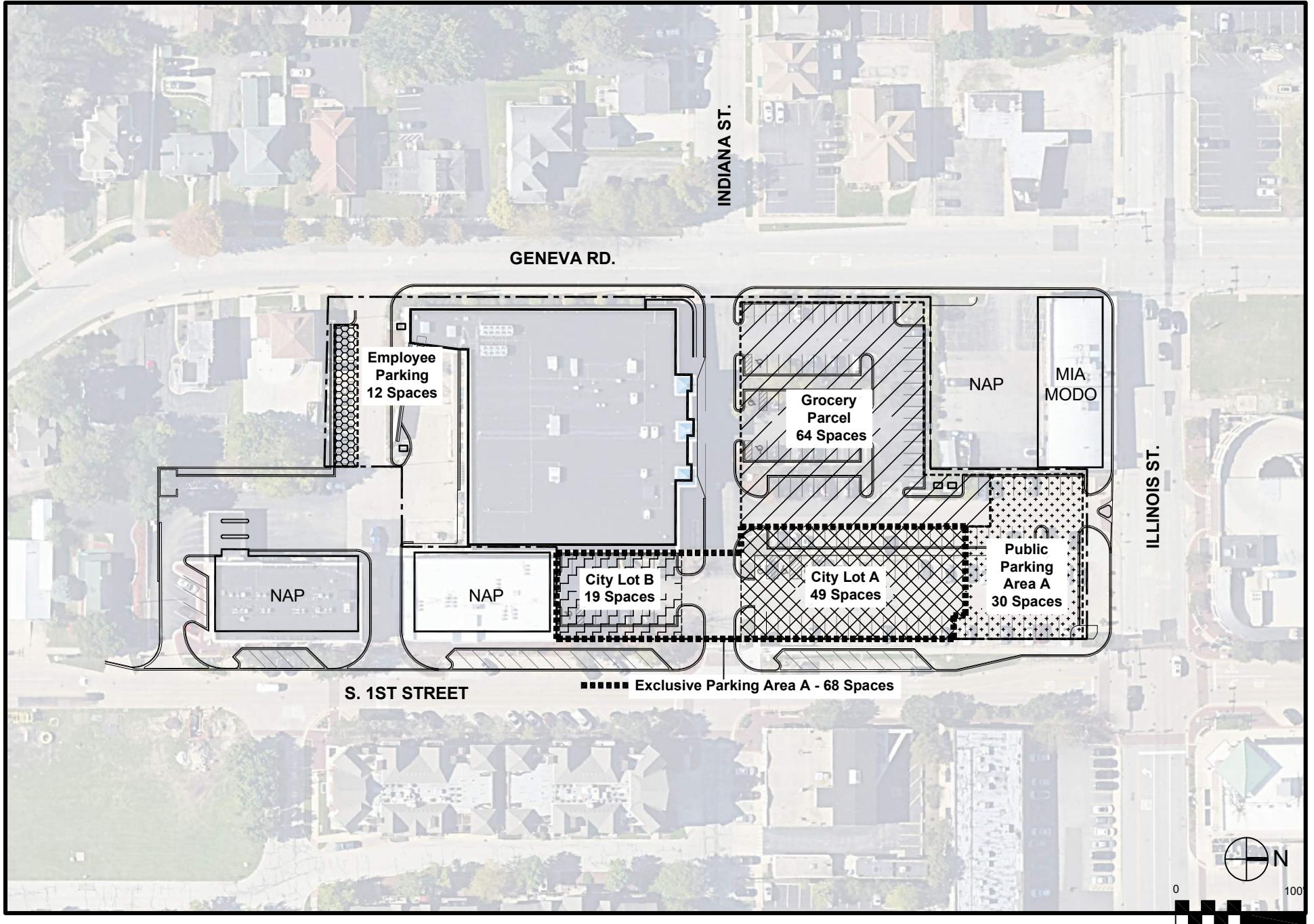
**EXHIBIT D**

**SITE PLAN**

See attached page(s)

# Siteplan - With

MAY 18, 2023



# Siteplan - Without

MAY 18, 2023

