 CITY OF ST. CHARLES ILLINOIS • 1834	<b>AGENDA ITEM EXECUTIVE SUMMARY</b>		<b>Agenda Item number: 6.a</b>
	<b>Title:</b>	Recommendation to Approve and Execute a Resolution for a License Agreement with CIBC Bank USA	
	<b>Presenter:</b>	<b>Derek Conley, Economic Development Director</b>	
<b>Meeting:</b> Government Operations Committee		<b>Date:</b> June 5, 2023	
<b>Proposed Cost:</b> \$		<b>Budgeted Amount:</b> \$	<b>Not Budgeted:</b> <input type="checkbox"/>
<b>TIF District:</b> TIF 4 - First Street (VOTING RESTRICTION)			
<b>Executive Summary</b> (if not budgeted, please explain):  <p>In March 2002, the City entered into an agreement with The Private Bank and Trust Company, now known as Canadian Imperial Bank of Commerce (CIBC). This agreement allowed CIBC to construct and operate a convenient drive-up banking facility on City-owned property. The annual license fee was determined by adjusting it annually based on the Consumer Price Index, with a maximum increase of 5%. CIBC assumed responsibility for the maintenance and insurance of the property. Initially valid for 20 years, the agreement has now expired but continues on a month-to-month basis.</p> <p>The drive-up window has become an essential service for the bank, and its management is seeking a new agreement to continue its operation. Under the proposed agreement, the payment schedule would remain unchanged. CIBC would pay an initial annual sum of \$9,296.40, divided into equal monthly installments of \$774.70. The annual license fee would be adjusted annually based on the Consumer Price Index or a maximum 5% increase. Both parties retain the right to terminate the agreement with 180 days' notice. In the event of termination, CIBC is responsible for removing equipment and restoring the premises to their original condition.</p>			
<b>Attachments</b> (please list): License Agreement			
<b>Recommendation/Suggested Action</b> (briefly explain): Recommendation to Approve and Execute a Resolution for a License Agreement with CIBC Bank USA			

**City of St. Charles, Illinois**  
**Resolution No. \_\_\_\_\_**

**A Resolution Authorizing the Mayor and City Clerk of the City of St. Charles to  
Execute a License Agreement with CIBC Bank USA**

**Presented & Passed by the  
City Council on June 19, 2023**

BE IT RESOLVED by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, that the Mayor and City Clerk be and the same are hereby authorized to execute certain a License Agreement with CIBC Bank USA. The agreement is attached hereto and incorporated herein on behalf of the City of St. Charles.

**Presented** to the City Council of the City of St. Charles, Illinois this 19<sup>th</sup> day of June, 2023.

**Passed** by the City Council of the City of St. Charles, Illinois this 19th day of June, 2023.

**Approved** by the Mayor of the City of St. Charles, Illinois this 19th day of June, 2023.

\_\_\_\_\_  
Lora A. Vitek, Mayor

ATTEST: \_\_\_\_\_

City Clerk

COUNCIL VOTE:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Abstain: \_\_\_\_\_

Absent: \_\_\_\_\_

## **LICENSE AGREEMENT**

THIS LICENSE AGREEMENT is effective as of April 1, 2023 (“*Agreement*”), by and between CIBC BANK USA, an Illinois banking corporation (hereinafter referred to as “*Licensee*”), and the CITY OF ST. CHARLES, an Illinois municipal corporation (hereinafter referred to as “*Licensor*”).

### **WITNESSETH**

WHEREAS, Licensee owns and operates a retail walk-in banking facility open to the public, located at 24 South Second Street, St. Charles, Illinois 60175 (“*Retail Bank Facility*”); and

WHEREAS, Licensor proposes to grant a license to Licensee, enabling the operation of a drive-up banking facility over a portion of a public parking lot, in the City of St. Charles, Kane County, Illinois (hereinafter referred to as “*Premises*”), as depicted in Exhibit A, attached hereto and incorporated herein by reference; and

WHEREAS, all of the Premises are owned by Licensor; and

WHEREAS, the parties have agreed that for and in consideration of the payment of the fees set forth herein and the performance of certain other conditions, the portion of the Premises owned by the Licensor may be used by Licensee for the operation of a drive-up banking facility as generally depicted in attached Exhibit B or pursuant to such other design as is approved by Licensor from time to time; and

WHEREAS, Licensor is agreeable to granting a license to Licensee for the use of the Premises for the operation of a drive-up banking facility.

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. Licensor grants Licensee, and its successors and/or assigns, for the following stated term, the exclusive right, license, and privilege (“*License*”) to use and occupy the real estate depicted in Exhibit A and legally described in Exhibit C, attached hereto and made a part hereof,

for the operation of a drive-up banking facility which has been built in substantial conformity to Exhibit B.

3. In consideration for this License, Licensee shall pay Licensor the initial annual sum of \$9,296.40 payable in equal monthly installments of \$774.70 monthly in advance, beginning on April 1, 2023 ("*Commencement Date*"). Each subsequent year during the term of this License, the annual license fee shall be increased by the lesser of increase in the Consumer Price Index (All Items) over the prior year or 5% and the monthly license payments shall be adjusted accordingly.

4. This License shall be effective as of the Commencement Date and shall be for a term of four (4) years from and after the Commencement Date, subject to being terminated earlier as provided below ("*Term*"). Either party shall have the right to terminate this License, upon at least one hundred eighty (180) days advance notice to the other of the intent to terminate. Upon such notice and prior to termination, Licensee shall have the duty and responsibility to remove Licensee's equipment, signs, and appurtenances and to restore the Premises to a condition suitable for use as a parking lot (the "*Restoration Work*"). This Agreement shall automatically terminate in the event that Licensee ceases operation at the Retail Bank Facility or if the Retail Bank Facility is ever damaged or destroyed to the extent that requires replacement or relocation. The Licensor may terminate this License for cause without liability by giving no less than ten (10) days written notice of termination, which termination shall be effective on the effective date for termination set forth in that termination notice. For the purposes of this provision, "for cause" shall include but not be limited to the Licensee's failure to comply with any of the terms or conditions set forth herein, including non-payment of the required license fees provided for herein. Termination of this License shall not be the Licensor's exclusive remedy. Nothing contained herein shall preclude the Licensor from enforcing any provision of the St. Charles Municipal Code against the Licensee in any administrative or judicial proceeding. Upon termination of this Agreement, the Licensee shall complete the Restoration Work (a) prior to termination in connection with either party providing one hundred eighty (180) days advance notice, and (b) within ninety (90) days following termination in all other cases.

5. AS IS. AS A MATERIAL PART OF THE CONSIDERATION FOR THIS AGREEMENT, THE PARTIES AGREE THAT THE LICENSEE ACCEPTS THE PREMISES "AS IS," "WHERE IS," WITH ALL FAULTS AND DEFECTS, LATENT AND PATENT, AND THE LICENSEE ACKNOWLEDGES AND AGREES THAT THE LICENSOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY

KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE CONDITION OF OR MATTERS RELATING TO TITLE OF THE PREMISES, (B) THE NATURE, QUALITY OR CONDITION OF THE PREMISES, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL, AND GEOLOGY, OR THE PRESENCE OR ABSENCE OF ANY POLLUTANT, HAZARDOUS WASTE, TANKS, PIPES, GAS OR SUBSTANCE OR SOLID WASTE ON OR ABOUT THE PREMISES, AND (C) IN ALL RESPECTS THE SUITABILITY OF THE PREMISES FOR ANY AND ALL ACTIVITIES AND USES WHICH THE LICENSEE MAY INTEND TO CONDUCT THEREON.

6. 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 operating a drive-up banking facility.

(b) The Premises shall be maintained in compliance with the Americans with Disabilities Act.

(c) 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.

(d) Licensee agrees to promptly pay the license fee set forth in paragraph 3 hereof, to restore the Premises after its use thereof to its original condition, in accordance with paragraph 4 above if Licensee exercises its right to early termination.

(e) In the event that the Premises is deemed taxable, the Licensee shall pay said taxes attributable to the period of the Term of this Agreement, as required by the laws of the State of Illinois.

7. Licensee, or its successor and assigns 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 Dollars (\$500,000,000), or other insurer approved by Licensor with at least a Three

Million Dollars (\$3,000,000) single limit coverage on all risks. Licensee shall name the Licensors as additional insured and shall furnish Licensors 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 Licensors at least thirty (30) days prior to the expiration date of each existing insurance policy.

8. No waiver by Licensors 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.

9. Any and all notices, demands, consents and approvals required under this Agreement shall be sent and deemed received: (A) on the third business day after mailed by first class mail, or (B) on the next business day after deposit with a nationally-recognized overnight delivery service (such as Federal Express or UPS) for guaranteed next business day delivery, or (C) by email transmission on the day of transmission, if sent before 6:00 pm. on a business day, or (D) by personal delivery, if addressed to the Parties as follows::

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

If to the Licensee: CIBC Bank USA  
Attn: Jon Bredemeier  
Managing Director – US Corporate Real Estate  
120 South LaSalle Street  
Chicago, Illinois 60603  
[jon.bredemeier@cibc.com](mailto:jon.bredemeier@cibc.com)

10. 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 expenses of litigation. Venue shall be in the Sixteenth Judicial Circuit, Kane County, Illinois.

11. If Licensors 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 act occurring on the Premises, or by reason of an omission with respect to the business or operation of the Premises, Licensee shall indemnify and hold Licensors harmless against all judgments, settlements, penalties,

and expenses, including attorneys' fees, court costs and other expenses of litigation or administrative proceeding, incurred by or imposed on Licensors in connection with the investigation or defense relating to such claim or litigation or administrative proceeding and, at the election of Licensors, Licensee shall also directly defend Licensors against same. The foregoing indemnity shall not apply to negligent or reckless acts of the Licensors, its employees or agents or an action challenging the validity of this License.

12. 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 be declared invalid, such decision shall not affect the validity of any remaining portion, which shall remain in full force and effect.

13. Licensors and Licensee agree that this License is not assignable by Licensee, and no assignment, whether directly by Licensors or as a matter of law, shall be valid without the prior written consent of Licensors.

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

15. Licensee shall have no authority, express or implied, to act as agent of Licensors, for any purpose. Licensee or its successors or assigns are, and shall remain, independent contractors responsible for all obligations and liability 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.

16. 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. All electronic or .pdf signatures shall be treated as original signatures for all purposes.

17. Miscellaneous: The following miscellaneous terms and conditions apply to this License Agreement:

(a) Licensee is responsible for the maintenance and repair of the structure and the improvements in the Premises depicted in Exhibit A. Licensee is responsible for the maintenance of its banking personalty, including but not limited to drop boxes, pneumatic tube transmission devices, signage, etc.

(b) Licensee shall be entitled to maintain existing signage consistent with current applicable zoning.

(c) Licensor shall keep open the existing road and driveways leading to and from the Premises so as to permit ingress and egress from the Premises by Licensee's banking customers.

[SIGNATURE PAGE FOLLOWS IMMEDIATELY]



IN WITNESS WHEREOF, each of the parties hereto has 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: \_\_\_\_\_  
Lora A. Vitek, Its Mayor

ATTEST:

\_\_\_\_\_  
Nancy Garrison, City Clerk

LICENSEE:

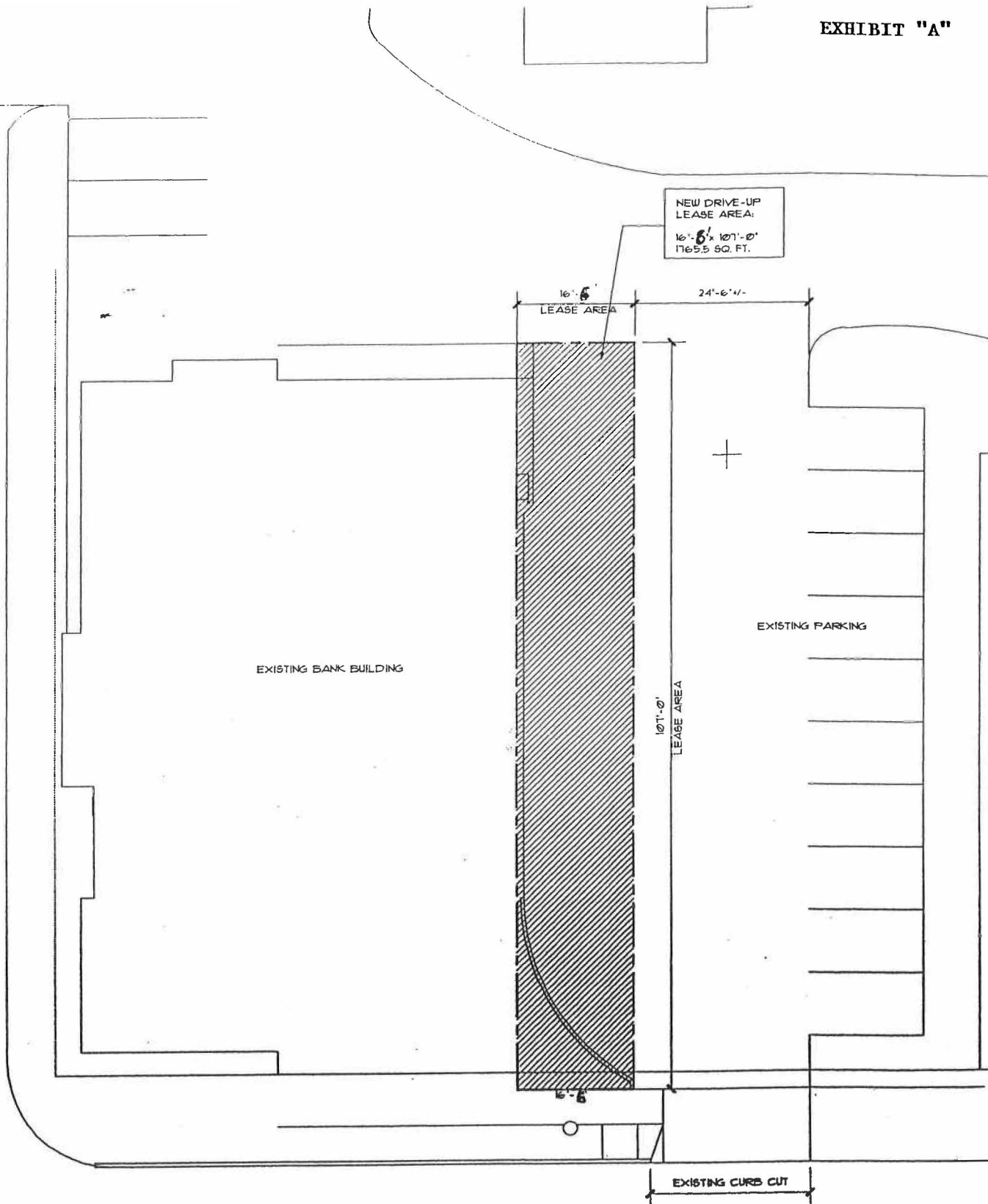
CIBC BANK USA

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**  
**DEPICTION OF PREMISES**

SECOND STREET

EXISTING CURB



**SITE PLAN**

1" = 20'-0"



**THE PRIVATE BANK**

24 S. SECOND STREET  
ST. CHARLES, ILLINOIS

2/26/22

**EXHIBIT B**

**DEPICTION OF DRIVE-UP BANKING FACILITY**



A-2

3 SOUTH ELEVATION  
1/4" = 1'-0"

2 NORTH ELEVATION  
1/4" = 1'-0"

1 EAST ELEVATION  
1/4" = 1'-0"

Architect  
TOMORROW'S REALTY, L.L.C.  
1000 OLD MILL LANE  
SUITE 100  
CHANDLER, ARIZONA 85224  
PH: (480) 428-0000  
FAX: (480) 428-0000

Proposed Drive-Up Addition For:  
THE PRIVATE BANK  
14 SOUTH SECOND STREET  
ST. CHARLES, ILLINOIS

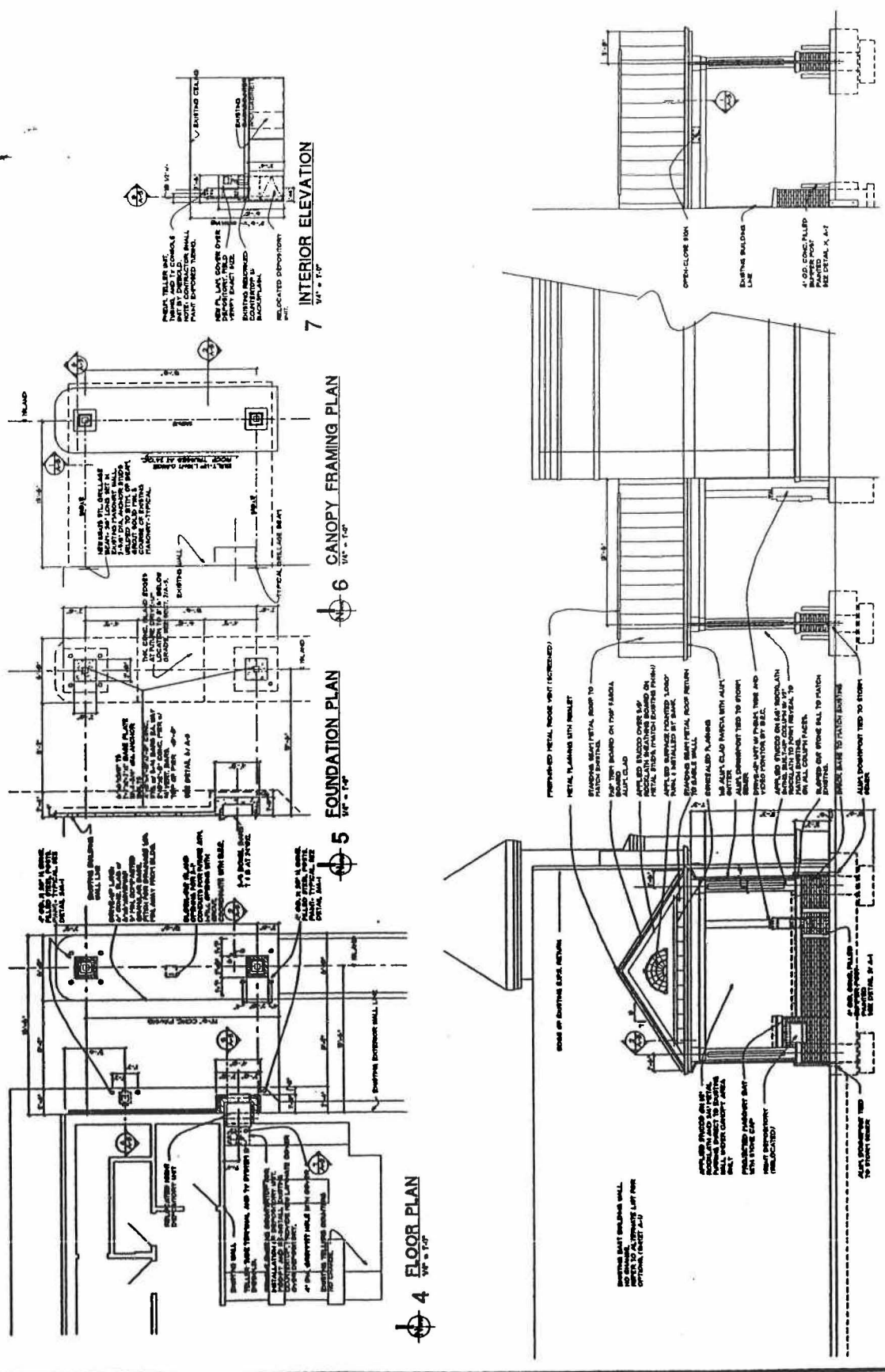
Building Owner:  
TOMORROW'S REALTY, L.L.C.  
1000 OLD MILL LANE  
SUITE 100  
CHANDLER, ARIZONA 85224  
PH: (480) 428-0000

4 FLOOR PLAN  
1/4" = 1'-0"

5 FOUNDATION PLAN  
1/4" = 1'-0"

6 CANOPY FRAMING PLAN  
1/4" = 1'-0"

7 INTERIOR ELEVATION  
1/4" = 1'-0"

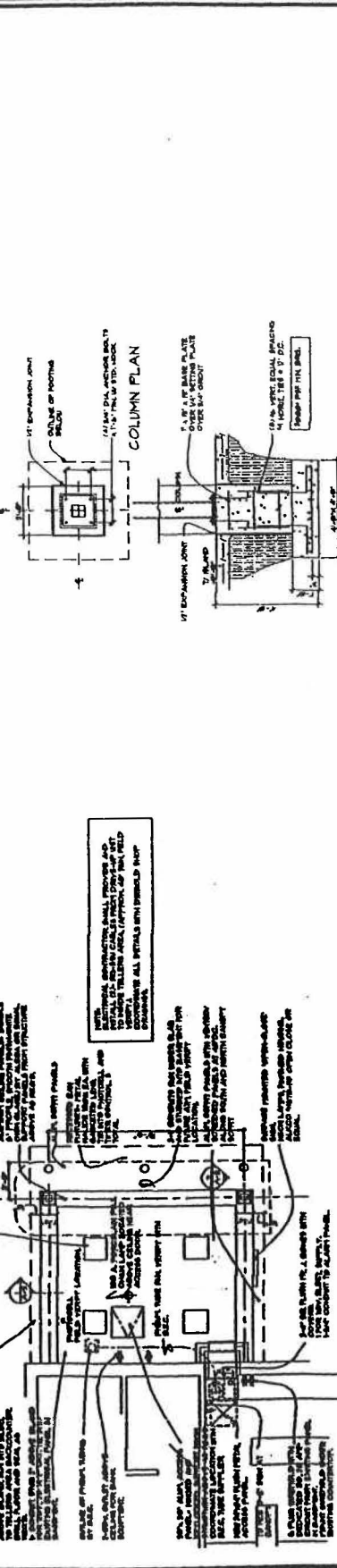
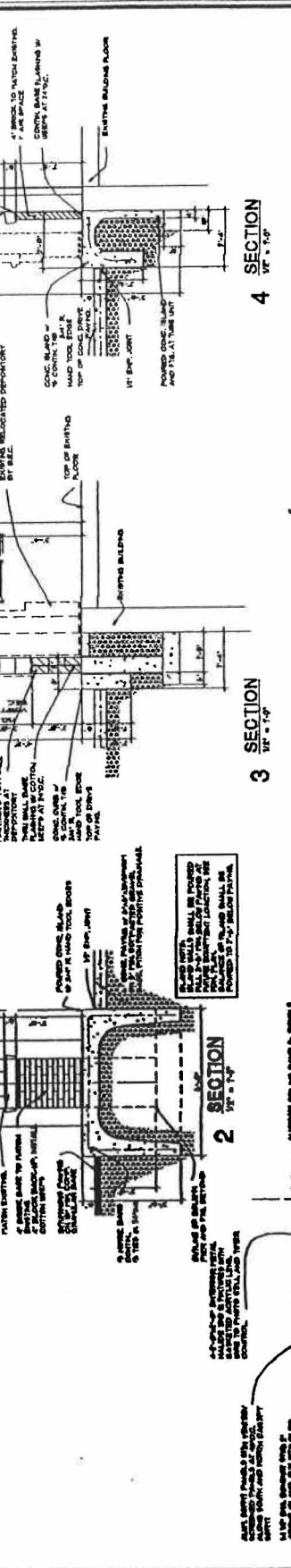
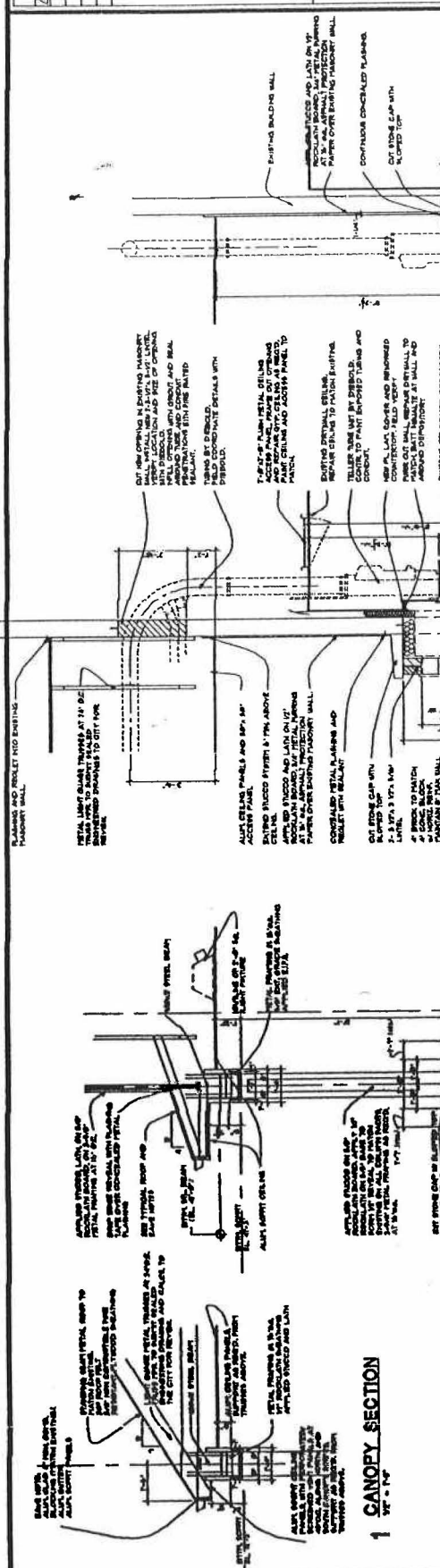


A-3

Architect  
LADDERMAN  
100 OLD MILL LANE  
FALLS CHURCH, VA 22034  
TEL: (703) 438-8870  
FAX: (703) 438-8888

Proposed Drive-Up Addition For:  
THE PRIVATE BANK  
24 SOUTH BROAD STREET  
ST. CHARLES, MISSOURI  
Building Owner:  
TOMMORROW REALTY, L.L.C.  
1444 KEN KIRK DRIVE  
GIBBSVILLE, MISSOURI 63008  
TEL: (314) 542-9008

1 CANOPY SECTION  
1" = 1'-0"



6 FOOTING DETAIL  
1" = 1'-0"

5 REFLECTED CEILING/ELECTRICAL PLAN  
1" = 1'-0"

5 REFLECTED CEILING/ELECTRICAL PLAN  
1" = 1'-0"

**EXHIBIT C**

**LEGAL DESCRIPTION OF PREMISES**

24 South Second Street

THE SOUTHERLY 100.00 FEET OF THE WESTERLY 16.50 FEET OF LOT 6 IN BLOCK 39 OF THE ORIGINAL TOWN OF ST. CHARLES, IN THE CITY OF ST. CHARLES, KANE COUNTY ILLINOIS.