ST. CHARLES SINCE 1834	**AGENDA ITEM EXECUTIVE SUMMARY**	Agenda Item number: IA
	Title:	Motion to accept An Ordinance Approving and Authorizing Execution of a Purchase and Sale Agreement for the Acquisition of the Property Commonly described as One West Main Street.
	Presenter:	Mark Koenen

Meeting: City Council	Date: January 6, 2020	
Proposed Cost: $ 1,000,000	Budgeted Amount: $ 1,000,000	Not Budgeted: ☐

Executive Summary (*if not budgeted please explain*)**:**
One West Main Street is property located at the southeast corner of Main Street and S. 1st Street (former Manor Restaurant site). This property is currently held in two trusts (Chicago Title Land Trust Company, trust no. 12-12591 and West Suburban Bank, trust no. 12635).

The City has engaged with the property owner for some time discussing opportunities to complete the east side of 1st Street south of Main Street. The conclusion of this discussion included parties reaching a mutual understanding documented in the "Purchase and Sale Agreement" attached hereto.

The 1st Street Plaza-East Phase 1 construction is generally in final form (see attachment). Acquisition of the One West Main Street property will allow for expansion of the plaza northward to Main Street, and is referred to as Phase 2 (see attachment). NOTE- completion of Phase 2 will create an inviting entrance gateway to 1st Street and will be the final phase of this project which runs along the Fox River, between Main Street and Illinois Street.

The expansion of the 1st Street Plaza- East project is being funded in part with the financial support from Exelon. Exelon has partnered with the City and generously provided $600,000. The City is appreciative of this financial partner. The *St Charles Initiative*, a fund with the Community Foundation of the Fox River Valley, continues to seek partners for the 1st Street Plaza project and encourages interested individuals or corporations to see our webpage:
https://www.communityfoundationfrv.org/profile/1st-street-east-plaza-fund/

Attachments (*please list*)**:**
Ordinance including Exhibit A, Purchase and Sale Agreement.
Design renderings for Phase 1 and Phase 2.

Recommendation/Suggested Action (*briefly explain*)**:**
Recommendation is to accept An Ordinance Approving and Authorizing Execution of a Purchase and Sale Agreement for the Acquisition of the Property Commonly described as One West Main Street.

City of St. Charles, Illinois
Ordinance No. 2020-M-_____

An Ordinance Approving and Authorizing Execution of a Purchase and Sale Agreement for the Acquisition of the Property Commonly Described as One West Main Street, St. Charles, Illinois

WHEREAS, the City of St. Charles ("City") desires to purchase that certain property commonly described as One West Main Street, St. Charles, Illinois ("Property"), pursuant to that certain Purchase and Sale Agreement, attached hereto as Exhibit A and made a part hereof ("PSA"); and

WHEREAS, the corporate authorities deem it advisable and necessary for the health, safety and welfare of the residents of the City and to approve and authorize execution of the PSA and to perform the obligations under the PSA to acquire the Property, including but not limited to expenditure of funds to acquire the Property, enter into a restrictive covenant ("Covenant") on the Property, and grant a right of first refusal in favor of the Seller, or its affiliates, of the Property ("ROFR").

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of St. Charles, Kane and Du Page Counties, Illinois:

Section 1. The corporate authorities of the City hereby determine that it is advisable, necessary and in the best interests of the public health, safety and welfare and the orderly development of the City that the City purchase the Property and to enter into the Covenant and ROFR, in substantial accordance with the terms and provisions set forth in the PSA, attached hereto and made a part hereof as Exhibit A.

Section 2. The Mayor is hereby authorized to execute the PSA in substantially the form appended to this Ordinance as Exhibit A, with such changes therein as shall be approved by the Mayor, his execution thereof to constitute conclusive evidence of his approval of any and all changes or revisions therein from and after the execution and delivery of such PSA.

Section 3. The officials, officers and employees of the City are hereby authorized to take such further actions as are necessary to carry out the intent and purpose of this Ordinance and of the attached PSA.

Section 4. This Ordinance shall be in full force and effect upon and after its passage, approval and publication in accordance with law.

PRESENTED to the City Council of the City of St. Charles, Illinois, this 6th day of January, 2020.

PASSED by the City Council of the City of St. Charles, Illinois, this 6th day of January, 2020.

APPROVED by the Mayor of the City of St. Charles, Illinois, this 6th day of January, 2020.

_____
Raymond P. Rogina, Mayor

ATTEST:

_____
Charles Amenta, City Clerk

Council Vote:
Ayes:
Nays:
Absent:
Abstain:

EXHIBIT A

PURCHASE AND SALE AGREEMENT

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into this _____ day of January, 2020, by and between CHICAGO TITLE LAND TRUST COMPANY AS TRUSTEE UNDER A TRUST AGREEMENT DATED MAY 8, 2012, KNOWN AS TRUST NO. 12-12591 ("Seller") as to 09-27-378-006, and WEST SUBURBAN BANK AS TRUSTEE UNDER TRUST AGREEMENT DATED OCTOBER 26, 2004, KNOWN AS TRUST NO. 12635 ("Seller") as to 09-27-378-007 (collectively referred to as "Seller" or "Sellers"), and THE CITY OF ST. CHARLES, an Illinois Municipal Corporation ("Purchaser").

RECITALS

Sellers are the owners of certain parcels commonly known as 1 W. Main Street, St. Charles, Kane County, Illinois 60174 (Permanent Index No.: 09-27-38-006 and 09-27-37-800) and further identified on Exhibit A attached hereto, which parcels together with all structures and appurtenances herein described are hereinafter collectively referred to as the "Real Property."

Sellers desire to sell and Purchaser desires to purchase the Real Property, pursuant to the terms, provisions and conditions herein.

Sellers have granted Purchaser an opportunity to review and study the condition of the Real Property and that inspection and review has been completed.

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements set forth herein, and other good and valuable consideration, the adequacy, sufficiency and receipt of which the parties hereby conclusively acknowledge, the parties agree as follows:

1. PURCHASE AND SALE OF REAL PROPERTY.

1.1 Sellers agree to sell and Purchaser agrees to purchase the above-described parcels and all rights appurtenant thereto, including but not limited to: all improvements on and to said parcels; all mineral, oil, and gas rights and profits, water rights; subterranean rights; all sewer and utility rights allocated to the parcels; all right, title, and interest of Sellers in and to any roads, streets, highways, all easements for the benefit of the parcel; (all of the foregoing, together with the parcels, being referred to herein as the "Real Property").

2. PURCHASE PRICE AND DEPOSIT.

2.1 The purchase price for the Real Property shall be ONE MILLION DOLLARS ($1,000,000.00) (hereinafter the "Purchase Price").

2.2 Purchaser shall deliver to the Geneva office of Premier Title Company, as Escrow Agent, an earnest money deposit (hereinafter the "Earnest Money" or "Deposit")

in the amount of Ten Thousand and no/100 Dollars ($10,000.00) within five (5) business days of execution of this Agreement pursuant to an Escrow Agreement in substantially the form attached hereto as Exhibit B which the parties shall execute immediately upon execution of this Agreement. Upon receipt of a fully signed Escrow Agreement, Escrow Agent will hold the Earnest Money under such terms and conditions as Purchaser shall direct.

2.3 At Closing, as hereinafter defined, the Deposit shall be applied to the Purchase Price and paid to Sellers. If this Agreement is terminated pursuant to Paragraphs 3 and/or 4, the Deposit shall be returned to Purchaser.

3. TITLE.

3.1 Title to the Real Property shall be conveyed to Purchaser at Closing in fee simple by a Warranty Deed in recordable form, free and clear of any and all liens, claims, encumbrances, mortgages, deeds of trust, and security interests of all kinds except for the lien of general real estate taxes not then due and payable, subject to the "Permitted Exceptions" as that term is hereinafter defined.

3.2 Within ten (10) business days after receipt of a fully executed copy of this Agreement, Sellers shall deliver to Purchaser a current form ALTA Commitment for Title Insurance (the "Title Commitment") covering the Real Property, dated on or after the date of this Agreement, issued by Premier Title Company (the "Title Insurer") in the full amount of the Purchase Price, and accompanied by legible copies of all Schedule B documents referred to therein. The Title Commitment shall provide that, upon the payment of the requisite premium and upon conveyance of the Real Property to Purchaser, the Title Insurer will insure Purchaser's good and indefeasible fee simple title thereto, subject only to the Permitted Exceptions as defined herein, with full extended coverage over the general exceptions and with the endorsements hereinafter described. Sellers, at their own expense, shall comply with all of the Title Insurer's requirements for the issuance of full extended coverage at Closing for general exceptions. Purchaser shall have five (5) business days from date of delivery within which to provide Sellers with written notice of any exceptions to title set forth in the Title Commitment to which Purchaser objects. Any title exception to which Purchaser fails to object by written notice to Sellers on or before the expiration of said five (5) business day period shall be deemed approved. If Purchaser objects to any such item by timely written notice to Sellers, Sellers shall within five (5) business days after receiving such notice to deliver a revised Title Commitment to Purchaser on which the objected to exceptions are waived by the Title Insurer. In the event Sellers are unable to have the Title Insurer waive any of Purchaser's objections, Sellers shall so notify Purchaser in writing and Purchaser shall have five (5) business days thereafter to terminate this Agreement and receive a full refund of the Deposit. If Purchaser does not terminate this Agreement within five (5) business days after receiving such notice from Sellers, Purchaser shall be deemed to have waived its right to terminate this Agreement due to such objections.

3.3 The term "Permitted Exceptions," as used herein, shall mean (i) the lien of real estate taxes not then due and payable, (ii) all matters revealed in the Title Commitment that are approved in writing by Purchaser, (iii) any existing general utility easements serving the Real Property, provided that such easements shall not underlie any improvements, (iv) all unrecorded Leases, and (v) any title exception created directly by any act or omission of Purchaser.

4. SURVEY.

4.1 Within fifteen (15) business days after the date of execution of this Agreement Sellers shall provide, at its sole cost and expense a Survey of the Real Property and deliver same to Purchaser. The survey shall be dated subsequent to the date hereof, prepared by a Surveyor and/or engineer licensed to prepare the same in the State of Illinois and approved by Purchaser and all boundaries shall be clearly staked. In addition to containing all minimum ALTA standards, the survey shall: (i) be certified to Purchaser and the Title Insurer in compliance with ALTA minimum standards for land title surveys; (ii) show the boundary lines of the Real Property; (iii) locate all permanent improvements to the Real Property; (iv) show all such improvements to be entirely located within the boundary lines of the Real Property; (v) show no encroachments over boundary lines, easements and rights of way; (vii) show access to the Real Property from one or more public rights of way; (viii) show all utilities, including water, sanitary sewer, storm sewer, and gas lines to the point of connection with the public system if such connection exists, or else access to such systems from the Real Property; and (ix) certify the number of square feet lying within the boundary lines of the Real Property. If the survey discloses any encroachments or unpermitted defects, as to which the Title Insurer has not committed to insure, Sellers shall have ten (10) business days from the receipt of said survey to correct such unpermitted exceptions on the survey or to have Title Insurer insure over them. If Sellers fail to correct such unpermitted exceptions on the survey or to have Title Insurer insure over them within said five (5) business days, Purchaser shall have the right to terminate this Agreement or, at its option, to close this transaction subject such unpermitted exceptions.

5. ADDITIONAL COVENANTS OF SELLERS. In addition to all other representations and covenants of Sellers set forth herein, Sellers hereby covenant and agree with Purchaser as follows:

5.1 Sellers shall not, without the prior written approval of Purchaser, (a) make or permit to be made any material changes or alterations to all or any part of the Real Property including any and all structures located thereon; (b) enter into any agreement affecting or granting any rights in or to all or any part of the Real Property, except in the ordinary course of business; (c) permit any liens, mortgages, trust deeds, deeds of trust, or other encumbrances not currently of record to be placed against, or to affect all or any part of the Real Property or title thereto; or (d) sell, lease or agree to sell or lease all or any part of the Real Property.

5.2 Sellers shall immediately notify Purchaser of any material changes that occur with respect to any of the matters set forth in Sellers' representations and warranties contained in paragraph 6 below.

5.3 Sellers shall maintain the Real Property prior to closing in at least as good condition as exists as of the date of this Agreement.

6. <u>SELLERS' REPRESENTATIONS AND WARRANTIES.</u> Sellers hereby represent and warrant to Purchaser that as of the date of execution of this Agreement:

6.1 Sellers possess all requisite power and authority to enter into and perform this Agreement and to carry out the transaction provided for herein. The execution of this Agreement by Sellers is the duly authorized and legally binding action of Sellers, and upon execution hereof, Sellers shall be bound by and subject to the terms and provisions of this Agreement.

6.2 No suit, action, arbitration, or legal, administrative, or other proceeding is pending or has been threatened against the Real Property or against the Sellers with respect to the Real Property.

6.3 No bankruptcy, insolvency, rearrangement, composition with or assignment for the benefit of creditors, or similar action or proceeding, whether voluntary or involuntary, is pending or threatened against Sellers, and Sellers have no intention of filing or commencing any such action or proceeding.

6.4 To the best of Sellers' knowledge, there are no outstanding violations of any laws, statutes, ordinances, rules or regulations with respect to the Real Property, nor have Sellers or any agent of Sellers received any notices of any uncorrected violations with respect to the Real Property, and any such violations with respect to the Real Property, and any such notices hereafter issued prior to Closing shall be satisfied prior to Closing by Sellers at Sellers' sole cost and expense.

6.5 Sellers are the sole fee simple owner of the Real Property and neither the consent or any other person nor the execution of conveyance documents by any other person is required to enable Sellers to fully perform the provisions of this Agreement.

6.6 Sellers are not a foreign person [as the term is defined in Section 1445 of the Internal Revenue Code as amended by the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA)] and Sellers shall provide Purchaser with an affidavit to that effect in compliance with FIRPTA at Closing.

6.7 There are no pending eminent domain, demolition, special assessment proceedings, nor has Seller received any Notice of increased assessment applicable to the Real Property affecting or which may affect all or any part of the Real Property, Sellers have received no notice (written or oral) that any such proceedings are threatened or contemplated, and to the best of Seller's knowledge no such proceedings are threatened or contemplated.

6.8 The execution and delivery of this Agreement and the consummation of the transaction provided for herein will not result in a breach of any of the terms or provisions of, or constitute a default under, or conflict with, any agreement, indenture, or other instrument to which Sellers are a party or by which Sellers or the Real Property is bound, or any judgment, decree, order, or aware of any court, governmental body or arbitrator, or any law, rule or regulation applicable to Sellers or the Real Property.

7. PURCHASER'S REPRESENTATIONS AND WARRANTIES. As a material inducement to Sellers to execute this Agreement and consummate this transaction, Purchaser represents and warrants to Sellers that:

(a) Organization and Authority. Purchaser is an Illinois municipal Corporation. Purchaser has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Purchaser at the Closing will be, authorized and properly executed and constitutes, or will constitute, as appropriate, the valid and binding obligation of Purchaser, enforceable in accordance with their terms.

(b) Conflicts and Pending Action. There is no agreement to which Purchaser is a party or to Purchaser's knowledge binding on Purchaser which is in conflict with this Agreement. There is no action or proceeding pending or, to Purchaser's knowledge, threatened against Purchaser which challenges or impairs Purchaser's ability to execute or perform its obligations under this Agreement.

8. RESTRICTIVE COVENANT. Purchaser agrees to execute a covenant that will run with the land providing that the property will be used by the City for public purposes, subject to the ordinances, rules and regulations of the City, and that no hotel/motel, restaurant, bar or banquet facilities shall be constructed or operated on the Real Property. The parties shall record a document separate from this Agreement to evidence this restrictive covenant, in the form attached hereto as Exhibit C and made a part hereof.

9. RIGHT OF FIRST REFUSAL. If at any time Purchaser determines to sell, transfer or assign all or any part of the Real Property and Purchaser obtains a bonafide, executed written offer, Purchaser shall submit an exact copy of such purchase offer to Joselito Salas shall have the right exercisable within fifteen (15) days of said notice to purchase the Real Property or interest therein upon the same terms and conditions as contained within the written offer. The parties shall record a document separate from this Agreement to evidence this right of first refusal, in the form attached hereto as Exhibit D, and made a part hereof.

10. NON-EXCLUSIVE LICENSE. Purchase agrees to grant the Hotel Baker a non-exclusive right to sell food or beverages on the Real Property by way of a license or licenses granted by the Purchaser in accordance with its normal and customary application process for and subject to the conditions of such licenses.

11. CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLERS AND PURCHASER.

11.1 In addition to all other conditions contained elsewhere herein, the obligations of Sellers to sell and Purchaser to purchase the Real Property are subject to the following subparagraphs:

(a) A final examination of title to the Real Property at Closing shall disclose no title exceptions other than those approved or deemed approved by Purchaser pursuant to the terms hereof;

(b) No material change in the physical condition of the Real Property has occurred from the date of this Agreement until the Closing to which Purchaser has not consented;

(c) Sellers and Purchaser have performed and observed all covenants required under this Agreement;

(d) Sellers have not misrepresented any fact or circumstance and has not become aware of any facts or circumstances inconsistent with any representations and warranties contained herein; and

11.2 In the event that any of the conditions precedent to Purchaser's obligations set forth herein are not satisfied, Purchaser shall have the right in its sole discretion to terminate this Agreement by written notice to Sellers and receive a return of the earnest money including those portions of the earnest money previously released to Sellers, together with all accrued interest thereon. The foregoing shall in no way operate to limit any remedy available under this Agreement in the event of a breach of any covenant of Sellers set forth in this Agreement.

12. CLOSING.

12.1 The consummation of the transaction provided for in this Agreement (the "Closing") shall be held at the offices of Title Insurer located in Geneva, Illinois or at such other location mutually agreed upon by the parties no later than January 17, 2020. At Closing, the Title Insurer shall be responsible for preparing the settlement statement, causing all documents to be recorded, disbursing all closing proceeds, and otherwise conducting settlement.

12.2 At Closing, Sellers shall deliver to Purchaser, in a form and substance satisfactory to Purchaser's counsel, the following:

(a) Recordable Trustee's Deeds, conveying the Real Property in fee simple to Purchaser, or its assignee or nominee;

(b) All required real estate transfer declarations;

(c) ALTA Statement;

(d) FIRPTA Affidavit;

(e) Affidavit of Title;

(f) Bill of Sale;

(g) Any and all other documents, instruments, and agreements necessary or appropriate in the reasonable opinion of Purchaser's attorney to transfer and convey the Real Property and all interest therein to Purchaser in accordance with this Agreement. Such other documents, instruments and agreements shall be furnished to Purchaser's attorney for review not less than five (5) days prior to Closing; and

12.3 Sellers shall pay the cost of preparing the Deeds, all state and county real estate transfer taxes due in connection with the transfer of the Real Property, all title insurance premiums, endorsements and Sellers' attorneys' fees. The escrow fee shall be split equally and real estate taxes shall be prorated between the parties as of the Closing based upon 105% of the most recent ascertainable real estate tax information applicable to the Real Property.

12.4 The delivery of the documents and the payment of the sums to be delivered and paid at the Closing shall be accomplished through an escrow with the Title Insurer, using the Title Insurer's standard form of escrow instructions, modified as necessary to conform to the provisions of this Agreement. Closing shall take place as a "New York" style closing whereby Purchaser receives at Closing a title insurance policy conforming to the terms of this Agreement. The cost of the deed and money escrow and the New York style closing shall be divided equally between Sellers and Purchaser.

12.5 Exclusive possession of the Real Property, shall be delivered to Purchaser immediately upon completion of the Closing.

13. RISK OF LOSS. Prior to Closing, Sellers shall bear all risk of loss to the Real Property and any improvements thereon, and all liabilities arising from the Real Property except as otherwise set forth in Paragraph 5.1 hereof. In the event of a condemnation of all or any portion of the Real Property, or the threat thereof prior to Closing, Purchaser shall have the option to terminate this Agreement and receive a return of the entire Deposit, including any amount thereof previously released to Sellers, together with accrued interest thereon, or to proceed to Closing, in which event the entire condemnation award if then available shall be credited to Purchaser, or if such award is

not then available, all rights thereto shall be unconditionally assigned to Purchaser without the amount thereof being deducted from the Purchase Price.

14. REMEDIES.

14.1 In the event Sellers fail to perform or breaches any of its agreements, under this Agreement, Purchaser shall be entitled, as its sole and exclusive remedy to terminate this Agreement and receive a full refund of the Deposit and all interest accrued thereon.

14.2 If Purchaser defaults in its performance of any term, covenant, condition, or obligation under this Agreement, including the obligation of Purchaser to purchase the Real Property and if all conditions precedent to such obligations have been satisfied, Sellers' sole remedy shall be to receive the Deposit as Sellers' complete liquidated damages together with copies of any and all engineering studies, site plans, surveys and similar material owned by Purchaser and prepared by Purchaser or its agents or employees in connection with the contemplated development of the Real Property.

14.3 Any failure by either party to perform any act required by it under this Agreement, other than the requirement to close if all conditions have been met, shall not be deemed a default under this Agreement until such party has received written notice from the other party setting forth the alleged failure, and such failure has not been cured within five (5) business days of receipt of such notice.

14.4 In the event that Sellers are obligated to refund the Deposit to Purchaser and provided all Due Diligence documents have been returned to Sellers, such amounts shall be returned in full by Sellers to Purchaser, by certified check of immediately available federal funds, in accordance with the notice provisions set forth below within five (5) business days after Sellers' receipt of demand from Purchaser.

15. BROKERAGE COMMISSION. Sellers and Purchaser hereby represent that no real estate broker has been involved in this transaction. Sellers and Purchaser will indemnify and hold each other harmless from any claim by a real estate broker for any sales commission.

16. ADDITIONAL PURCHASER'S REPRESENTATIONS AND WARRANTIES.

16.1 To the best of Purchaser's knowledge, except as may be otherwise set forth herein, no consent by anyone, other than Sellers, to the transaction contemplated by this Agreement is required, and Purchaser has the power and authority to execute and deliver this Agreement and all other documents to be executed by it in connection herewith and to perform the obligations hereunder and under such other documents.

16.2 The execution of this Agreement by Purchaser is the duly authorized and legally binding action of Purchaser, and upon execution hereof, Purchaser shall be bound by and subject to the terms and provisions of this Agreement.

17. GENERAL PROVISIONS.

17.1 Sellers shall have no right to assign, transfer or encumber this Agreement or any of Sellers' rights, benefits or obligations hereunder. The immediately preceding sentence of this paragraph 14.1 to the contrary notwithstanding, the terms and conditions of this Agreement shall be binding upon, and inure to the benefit of the parties hereto and their respective heirs, successors, assigns and legal representatives.

17.2 All representations, warranties, and indemnities contained in this Agreement or in any instrument, document or agreement delivered pursuant hereto shall survive the delivery of the Deed and the transfer and conveyance of the Real Property to the Purchaser for a period of one (1) year.

17.3 Any notice required or permitted hereunder shall be deemed to have been received either (a) when delivered in person with or without the party giving such notice receiving a signed receipt thereof, or (b) one (1) business day following the date deposited with Federal Express or otherwise recognized overnight courier for overnight early morning delivery, or (c) one (1) business day following the date sent by telecopy machine or (d) on the third (3rd) business day following the date deposited in the United States mail, by registered or certified mail, return receipt requested, postage prepaid. Electronic mail (e-mail) notices are not permitted and shall be deemed ineffective even if received. Any notices given in the manner hereby permitted shall be addressed as follows (or addressed in such other manner as the party being notified shall have requested by written notice to the other party):

If to the Purchaser: Mark Koenen
City of St. Charles
2 E. Main Street
St. Charles, Illinois 60174

With a copy to: Nicholas S. Peppers
Storino, Ramello & Durkin
9501 West Devon Avenue, Suite 800
Rosemont, IL 60018
Telephone: (847) 318-9500
Facsimile: (847) 318-9509
Email: npeppers@srd-law.com

If to the Sellers: Joselito Salas c/o Joseph Klein
2550 West Golf Road, Suite 250
Rolling Meadows, Illinois 60008
Telephone: (847) 590-8700
Facsimile: (847) 428-8995
Email: jklein@jkleinlaw.com

With a copy to: Joseph Klein
Klein, Daday, Aretos & O'Donoghue, LLC
2550 West Golf Road, Suite 250
Rolling Meadows, Illinois 60008
Telephone: (847) 590-8700
Facsimile: (847) 428-8995
Email: jklein@jkleinlaw.com

17.4 Whenever used herein, unless expressly provided otherwise, the term "days" shall mean consecutive calendar days, except that if the expiration of any time period measured in days occurs on a Saturday, Sunday, legal holiday or other day when federal offices are closed in Washington, D.C., such expiration shall automatically be extended to the next business day.

17.5 The necessary grammatical changes required to make the provisions of this Agreement apply to the past, present or future, or the singular or plural, or to the appropriate gender, as the intent of such changes is evident from the terms hereof, shall in all cases be assumed as though in each case fully expressed.

17.6 This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and supersedes any prior agreements or promises, whether written or oral, and the parties acknowledge and agree that all discussions or agreements which have induced the parties to execute this Agreement have been incorporated herein. No representation, warranties, agreements, undertakings or promises whether written or oral, whether expressed or implied, shall be binding on the parties hereto or shall be deemed to have induced the parties to enter into this Agreement unless stated herein. No prior or contemporaneous writing shall be deemed part of this Agreement. No subsequent agreements or changes or modifications to this Agreement, whether expressed or implied from the conduct or either party shall be binding upon the parties unless the same are reduced to writing and executed by the party to be charged therewith.

17.7 It is acknowledged and agreed by all parties hereto that each party to this Agreement has had the benefit of independent legal counsel and other advisors, that each party has had an equal right to negotiate the terms hereof and participate in the drafting of this Agreement. No rule of law or construction that would require that this Agreement be construed more strongly for or against any party hereto shall be applicable to the enforcement, interpretation or construction of this Agreement.

17.8 This Agreement has been entered into and shall be performed in the State of Illinois and Illinois law shall govern the interpretation, construction and enforcement of this Agreement and the rights, duties and obligations of the parties hereunder.

17.9 Time is of the essence in the performance of each of the terms and provisions of this Agreement and only a written waiver executed by the party who would otherwise have the right to require such timely performance may waive the requirement of timely performance.

17.10 In the event any one or more of the provisions contained in this Agreement are held to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein unless in the sole and exclusive judgment of Purchaser the invalidity, illegality of unenforceability of such provision materially deprives Purchaser of the benefit of its bargain hereunder, in which case Purchaser shall have the right to terminate this Agreement and receive a complete refund of the Deposit and any interest earned thereon and including any amounts released to Sellers.

17.11 All paragraph headings and captions contained in this Agreement are for convenience of reference only and shall not affect or limit the construction or interpretation of any provisions of this Agreement.

17.12 This Agreement may be executed in two or more counterparts. Each of such executed counterparts shall be deemed an original hereof, and all such executed counterparts shall together constitute one and the same instrument, which instrument shall for all purposes be sufficiently evidenced by any such executed counterpart.

17.13 The parties hereby agree to indemnify and defend the Escrow Agent from any and all suits, actions or claims if the Escrow Agent acts in good faith on the written notice and direction of the parties delivered in accordance with the terms hereof.

17.14 Submission of an unexecuted copy of this Agreement does not constitute an offer to purchase the Real Property. This Agreement shall constitute an offer to purchase only when executed by an authorized officer of Purchaser. Furthermore, this offer shall be null and void and the Deposit returned to Purchaser if this Agreement is not accepted by Sellers and a copy of this Agreement, executed by Sellers, is not delivered to Purchaser within five (5) days of the date appearing at the beginning of this Agreement.

17.15 All information, other than matters of public record, furnished to or obtained by Purchaser, its lenders, agents, employees, contractors, in connection with the inspection of the Real Property shall be treated as confidential and shall not be disclosed except as required to comply with the terms of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates written below.

SELLERS:

WEST SUBURBAN BANK AS TRUSTEE UNDER TRUST AGREEMENT DATED OCTOBER 26, 2004, KNOWN AS TRUST NO. 12635 & CHICAGO TITLE LAND TRUST COMPNAY AS TRUSTEE UNDER A TRUST AGREEMENT DATED MAY 8, 2012, KNOWN AS TRUST NO. 12-12591

Chicago Title Land Trust Company as Trustee under a Trust Agreement dated May 8, 2012, known as Trust No. 12-12591

Date: 1/2/20

By: EMILY A. RALPH

West Suburban Bank as Trustee under Trust Agreement Dated October 26, 2004, known as Trust No.: 12635

Date: 1-2-2020

By: WEST SUBURBAN BANK NOT PERSONALLY BUT AS TRUSTEE U/T NO. 12635 BY TRUST OFFICER

PURCHASER:

City of St. Charles, an Illinois Municipal Corporation

Date: _____

By: Raymond P. Rogina, Mayor

Attest:

By:

THIS INSTRUMENT is executed by West Suburban Bank ("WSB") not personally or individually, but solely as trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such trustee. All of the statements, warranties, and representations set forth herein are made solely on information and belief without any independent inquiry or investigation by WSB and should be construed accordingly. Notwithstanding any provision to the contrary set forth in this instrument, any recourse against WSB shall be limited to the assets comprising the trust estate and no personal liability shall be asserted or be enforceable against WSB by reason of the terms, promises, agreements, covenants, warranties, representations, indemnifications, or other matters herein set forth, all such personal liability of WSB being expressly waived.

This instrument is executed by the undersigned Land Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and not personally. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument.

EXHIBIT "A"

LEGAL DESCRIPTION

Permanent Index No.: 09-27-378-006

Legal:

LOT 1 PHASE III FIRST STREET REDEVELOPMENT SUBDIVISION OF PART OF THE EAST ½ OF THE SOUTHWEST ¼ OF SECTION 27 AND THE EAST ½ OF THE NORTHWEST ¼ OF SECTION 34, TOWNSHIP 40 NORTH, RANGE 8, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 8, 2008 AS DOCUMENT 2008K89916 AND CERTIFICATE OF CORRECTION RECORDED DECEMBER 8, 2008 AS DOCUMENT 2008K089917 IN KANE COUNTY, ILLINOIS.

Permanent Index No.: 09-27-378-007

Legal:

LOT 16 OF PHASE III FIRST STREET REDEVELOPMENT SUBDIVISION OF PART OF THE EAST ½ OF THE SOUTHWEST ¼ OF SECTION 27 AND THE EAST ½ OF THE NORTHWEST 1/4 OF SECTION 34 TOWNSHIP 40 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE CITY OF SAINT CHARLES, KANE COUNTY, ILLINOIS ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 8, 2008 AS DOCUMENT 2008K899916 AND CERTIFICATE OF CORRECTION RECORDED DECEMBER 8, 2008 AS DOCUMENT 2008K089917.

EXHIBIT "B"

CHICAGO TITLE AND TRUST COMPANY

1795 W. State Street, Geneva, IL. 60134

Refer to: Sally Soderstrom
Phone no.:630-232-2750

STRICT JOINT ORDER #1 ESCROW TRUST INSTRUCTIONS (EARNEST MONEY)

ESCROW TRUST NO: DATE:

To: Chicago Title and Trust Company, Escrow Trustee:

Customer Identification:

Seller:

Purchaser:

Property Address:

Project Reference:

Proposed Disbursement Date:

Deposits:

1. The sum of $ Representing: INITIAL EARNEST MONEY

FUNDS ( ) WILL (X) WILL NOT BE INVESTED

NOTE: If funds are to be invested, an investment package will be sent. Please complete and return to Escrow Trustee as soon as possible in order to begin accruing interest.

Delivery of Deposits:

The above-referenced escrow trust deposits ("deposits") are deposited with the escrow trustee to be delivered by it only upon the receipt of a joint order of the undersigned or their respective legal representatives or assigns.

In no case shall the above-mentioned deposits be surrendered except upon the receipt of an order signed by the parties hereto, their respective legal representatives or assigns, or in obedience to the court order described below.

Billing Instructions:
Escrow trust fee will be deducted as follows: $___ escrow fee. If the transaction closes in a Chicago Title Metro office, the escrow fee will be waived.

The parties acknowledge that beginning after a period of one year from the date of this agreement, Chicago Title and Trust Company will impose an administrative maintenance fee equivalent to the fee set forth on the Company's then current rate schedule.

This fee may be deducted from the outstanding escrow balance or billed.

PLEASE NOTE: The escrow trust fee for these joint order escrow trust instructions is due and payable within 30 days from the projected disbursement date (which may be amended by joint written direction of the parties hereto). In the event no projected disbursement date is ascertainable, said escrow trust fee is to be billed at acceptance and is due and payable within 30 days from the billing date. Chicago Title and Trust Company, at its sole discretion, may reduce or waive the escrow trust fee for these joint order escrow instructions in the event the funds on deposit herein are

transferred to or disbursed in connection with sale escrow trust instructions or an agency closing transaction established at Chicago Title.

Standard Provisions:

Investment:

Deposits made pursuant to these instructions may be invested on behalf of any party or parties hereto; provided that any direction to escrow trustee for such investment shall be expressed in writing and contain the consent of all parties to this escrow, and also provided that escrow trustee is in receipt of the taxpayer's identification number and investment forms as required. Escrow trustee will, upon request, furnish information concerning its procedures and fee schedules for investment.

In the event the escrow trustee is requested to invest deposits hereunder, Chicago Title and Trust Company is not to be held responsible for any loss of principal or interest which may be incurred as a result of making the investments or redeeming said investment for the purposes of these escrow trust instructions.

Direction Not to Invest/Right to Commingle:
Except as to deposits of funds for which escrow trustee has received express written direction concerning investment or other handling, the parties hereto direct the escrow trustee NOT to invest any funds deposited by the parties under the terms of this escrow and waive any rights which they may have under Section 2-8 of the Corporate Fiduciary Act (205 ILCS 620/2-8) to receive interest on funds deposited hereunder. In the absence of an authorized direction to invest funds, the parties hereto agree that the escrow trustee shall be under no duty to invest or reinvest any such funds at any time held by it hereunder; and, further, that escrow trustee may commingle such funds with other deposits or with its own funds in the manner provided for the administration of funds under said Section 2-8 and may use any part or all of such funds for its own benefit without obligation to any party for interest or earnings derived thereby, if any. Further, even with appropriate instructions to invest Escrow Deposits, Escrow Trustee may commingle the Escrow Deposits with other funds in a trust account in order to facilitate placing the Escrow Deposits into a segregated interest bearing account and to disburse the Escrow Deposits once they have been removed from such segregated interest bearing account as required by the terms of this Agreement. Provided, however, nothing herein shall diminish escrow trustee's obligation to apply the full amount of such funds in accordance with the terms of these escrow instructions.

Compliance With Court Order:
The undersigned authorize and direct the escrow trustee to disregard any and all notices, warnings or demands given or made by the undersigned (other than jointly) or by any other person. The said undersigned also hereby authorize and direct the escrow trustee to accept, comply with, and obey any and all writs, orders, judgments or decrees entered or issued by any court with or without jurisdiction; and in case the said escrow trustee obeys or complies with any such writ, order, judgment or decree of any court, it shall not be liable to any of the parties hereto or any other person, by reason of such compliance, notwithstanding any such writ, order, judgment or decree be entered without jurisdiction or be subsequently reversed, modified, annulled, set aside or vacated. In case the escrow trustee is made a party defendant to any suit or proceedings regarding this escrow trust, the undersigned, for themselves, their heirs, personal representatives, successors, and assigns, jointly and severally, agree to pay to said escrow trustee, upon written demand, all costs, attorney's fees, and expenses incurred with respect thereto. The escrow trustee shall have a lien on the deposit(s) herein for any and all such costs, fees and expenses. If said costs, fees and expenses are not paid, then the escrow trustee shall have the right to reimburse itself out of the said deposit(s).

Right to Interplead:
The parties agree that escrow trustee shall not interplead any funds in escrow until and unless there is a dispute among two (2) or more parties hereunder with respect to the disposition of funds held in escrow. If any dispute arises among any two (2) or more of the parties hereunder and such parties fail to resolve such dispute or commence an arbitration proceeding to resolve such dispute within thirty (30) days after a written demand by escrow trustee to do so, then the escrow trustee shall have the right to interplead the amounts in controversy into a court of competent jurisdiction and, upon the deposit of said funds into court as aforesaid, escrow trustee shall have no further obligations hereunder with respect to such funds. All costs of any such interpleader action shall be reimbursed to escrow trustee from the funds deposited hereunder.

Execution:

These escrow trust instructions are governed by and are to be construed under the laws of the state of Illinois. The escrow trust instructions, amendments or supplemental instructions hereto, may be executed in counterparts, each of which shall be deemed an original and all such counterparts together shall constitute one and the same instrument.

For Seller:

Name:
By:
Address:

Phone:
Fax:
Email:

Signature:_____

For Purchaser:

Name:
By:
Address:

Phone:
Fax:
Email:

Signature:_____

Accepted: Chicago Title and Trust Company, as Escrow Trustee

By:_____

Date: _____

EXHIBIT C

RESTRICTIVE COVENANT

RESTRICTIVE COVENANT AGREEMENT

SRD 12/6/2019

Prepared by and return recorded copy to:

Nicholas S. Peppers
Storino, Ramello & Durkin
9501 West Devon Avenue
Suite 800
Rosemont, Illinois 60018

This space for Recorder's use only

This RESTRICTIVE COVENANT AGREEMENT (the "*Covenant*") is entered into the _____ day of _____, 2020, by and between the CITY OF ST. CHARLES, an Illinois municipal corporation (the "*City*"), and _____ ("_____").

RECITALS

WHEREAS, the City has acquired from _____ and is the fee simple title holder to certain real property located in the City of St. Charles, Illinois, more specifically described in Exhibit A, attached hereto and incorporated herein by this reference (the "*Property*"); and

WHEREAS, _____, as part of the consideration for the sale and transfer of the Property to the City, requires that a restrictive covenant for the benefit of _____ be recorded against the Property, restricting certain uses, as herein defined.

COVENANT

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City agrees with _____ as follows:

1. Restriction. For a period of forty (40) years, the Property is hereby subjected to the covenants, conditions, and restrictions, all of which shall be deemed to run with the Property and each and every parcel thereof, and shall be binding upon the heirs, representatives, successors and assigns of the City, to use the Property for public purposes, subject to the ordinances, rules and regulations of the City and to prohibit the use, development, construction and operation of the Property as a hotel, motel, restaurant, bar or banquet facilities, in accordance with the terms and provisions of this Covenant.

2. Enforcement and Remedies. The Covenant and any obligation of the City thereunder shall be enforceable by a proceeding for specific performance or a prohibitive or mandatory injunction, or by a suit or action to recover damages, in addition to all other remedies available at law or in equity.

3. Miscellaneous.

(a) Captions/Heading. Titles of Sections, Paragraphs or sub-paragraphs are used in this Covenant solely for the convenience of those examining it and are not to be resorted to as aids in its construction or interpretation.

(b) Governing Law. This Covenant shall be interpreted and construed in accordance with the internal laws of the State of Illinois, without regard to conflict of law rules.

(c) Attorneys' Fees. If any party brings an action in connection with the performance, breach or interpretation of this Covenant, the prevailing party in such action shall be entitled to recover from the losing party its reasonable costs and expenses of such litigation, including attorneys' fees, court costs, costs of investigation and other costs reasonably related to such litigation.

(d) Partial Invalidity. If any term, covenant or condition of this Covenant or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Covenant, 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 Covenant shall be valid and enforceable to the fullest extent permitted by law.

(e) Construction. The rule of strict construction does not apply to this Covenant. This Covenant shall be given a reasonable construction so that the intention of the parties to confer commercially usable right of enjoyment on the parties hereof is carried out.

(f) Amendment. This Covenant may be modified or amended only by a written instrument executed by the parties, or their respective permitted successors or assigns.

CITY OF ST. CHARLES, ILLINOIS, _____

an Illinois municipal corporation

By:_____ By:_____

Attest:_____ Attest:_____

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS
COUNTY OF KANE)

I, _____, a Notary Public in and for said County and State, do hereby certify that Raymond P. Rogina, as Mayor, and Charles Amenta, as City Clerk of the City of St. Charles, 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 such Mayor and City Clerk of the City of St. Charles they signed and delivered the said instrument pursuant to authority given by said City of St. Charles as their free and voluntary act and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of _____, 2020.

_____
Notary Public

_____
Printed Name

My commission expires: _____

STATE OF ILLINOIS)
) SS
COUNTY OF_____)

I, _____, a Notary Public in and for said County and State, do hereby certify that _____, as _____ and _____, as _____ of _____, 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 such _____ and _____ of _____, they signed and delivered the said instrument pursuant to authority given by said _____ as their free and voluntary act and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of _____, 2020.

_____
Notary Public

_____
Printed Name

My commission expires: _____

EXHIBIT D

RIGHT OF FIRST REFUSAL

RIGHT OF FIRST REFUSAL AGREEMENT

This Right of First Refusal Agreement ("**Agreement**") is made and entered into this _____ day of _____, 2020, by and between the **CITY OF ST. CHARLES**, an Illinois municipal corporation ("**Buyer**"), and _____ (the "**Seller**").

WHEREAS, the Seller and Buyer are parties to a certain Purchase and Sale Agreement dated January ____, 2020 ("**Sale Agreement**"), wherein the Seller conveyed to the Buyer that certain vacant property ("**Parcel**") legally described on Exhibit A, attached hereto and made a part hereof.

WHEREAS, as additional valuable consideration for the conveyance of the Parcel by the Seller to the Buyer, Buyer agreed to provide and grant to Seller a right of first refusal to purchase the Parcel, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF the covenants, conditions and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Consideration and Grant. In consideration of the conveyance by the Seller to the Buyer for the Parcel, and other good and valuable consideration as specified in the Agreement, the Buyer herein provides and grants to the Seller a right of first refusal to acquire the Parcel, upon the terms and conditions provided for herein.

2. Terms. After the date of this Agreement and for a period of forty (40) years, if the Buyer desires to accept a bona fide offer to sell all or a portion of the Parcel (the "**Offer**") from an unrelated party (the "**Offeror**"), the Buyer, within five (5) days after accepting such Offer (which acceptance shall be expressly subject to the Seller's rights hereunder), shall notify the Seller of the Offer in the manner provided herein for the giving of notice (the "**Sale Notice**"). The Sale Notice shall be accompanied by a copy of the Offer. The Seller shall then have the right of first refusal to purchase the portion of the Parcel for the purchase price contained in the Offer (the "**Purchase Price**") on the same terms and conditions as are contained in the Offer. The Seller shall give the Buyer written notice of the Seller's election to Purchase the Parcel (the "**Seller's Notice**") within ten (10) days after receipt of the Sale Notice and simultaneously, the Seller shall deposit into a title company escrow account in form and substance reasonably satisfactory to the parties, earnest money equal to the earnest money amount specified in the Offer. If the Seller fails to give the Seller's Notice within said ten (10) day period or elects in writing not to purchase the Parcel pursuant to the Offer, the Buyer shall have the unqualified right to sell the Parcel to the Offeror on the same economic terms and substantially the same other terms as are contained in the Offer and the Seller's rights under this Agreement shall automatically terminate without further action of the parties; provided, however, that if the sale of the Parcel pursuant to the Offer does not close under the Offer within the time frame as may be provided for under the terms and conditions of the Offer, the Buyer shall re-notify the Seller and the Parcel shall again be subject to all of the terms and provisions of this Agreement, including, without limitation, Seller's right of first refusal set forth in paragraph 1. If the Seller elects to purchase the Parcel but defaults in its obligation to close, the earnest money shall be

paid to the Seller, as liquidated damages, and the Buyer's rights under this Agreement shall terminate.

3. Permitted Transfers. The provisions of this Agreement shall not apply to or prohibit (a) any transfer pursuant to the exercise of the power of eminent domain, or (b) a conveyance or transfer to another governmental entity or charitable 501(c)(3) organization, which shall be deemed "Permitted Transfers." All Permitted Transfers shall be subject and subordinate to this Agreement and the terms and conditions set forth in this Agreement. The provisions, conditions and restrictions in this Agreement shall remain effective against the Parcel and any subsequent party pursuant to a Permitted Transfer.

4. Eminent Domain. The means of determining the Purchase Price in this Agreement shall not be considered if any condemning body seeks to acquire the Parcel or any part thereof by means of the exercise of the power of eminent domain.

5. Covenants Running With The Land; Specific Performance. The covenants and agreements under this Agreement are intended to be and shall be covenants running with the land with respect to the Parcel and shall be binding upon the Seller and the Buyer's successors and assigns, ending upon the termination of this Agreement or the Seller's rights under this Agreement as otherwise provided herein. This Agreement shall be specifically enforceable by the parties and by their successors and assigns.

6. Notices. Any notice or other communication required or desired to be given hereunder shall be in writing and shall be given by personal delivery with a receipt requested, by overnight courier service; and addressed to the parties as follows, or as may be otherwise designated thereby in writing; and shall be deemed given/delivered as follows: (a) if by personal delivery, upon actual receipt; (b) if by overnight courier service, one (1) business day after so sending:

If to the Buyer:	City of St. Charles 2 East Main Street St. Charles, Illinois 60174 Attn: Mark Koenen, City Administrator E-Mail: mkoenen@stcharlesil.gov Phone: (630) 377-4425
With copy to:	Nicholas S. Peppers Storino, Ramello & Durkin 9501 West Devon Avenue, #800 Rosemont, IL 60018 E-Mail: npeppers@srd-law.com Phone: (847) 318-9500 Facsimile: (847) 318-9509

If to Seller: _____
_____
_____
_____
Attn: _____
E-Mail: _____
Phone: _____

With a copy to: Joseph Klein
Klein, Daday, Aretos & O'Donoghue, LLC
2550 West Golf Road, Suite 250
Rolling Meadows, Illinois 60008
E-Mail: jklein@jkleinlaw.com
Phone: (847) 590-8700
Facsimile: (847) 428-8995

7. Recording. The parties hereto agree that a Memorandum of this Agreement may be recorded by the Seller at the Seller's expense, substantially in the form attached hereto as Exhibit B, and made a part hereof. In the event that this Agreement shall expire or terminate and the Seller shall not have acquired the Parcel pursuant hereto, the Seller shall execute, acknowledge and deliver to the Buyer a recordable quitclaim deed to the Parcel or any other instrument reasonably requested by the Buyer for the release of the Agreement and otherwise indicating the termination of the Seller's rights hereunder and with respect to the Parcel.

8. Successors and Assigns. All the terms and conditions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, successors and assigns.

9. Severability. In the event that any term or provision of this Agreement, or the application thereof to any particular party or circumstance, is found by a court of competent jurisdiction to be invalid or unenforceable (in whole or in its application to a particular party or circumstance), the remaining terms and provisions of this Agreement or the application thereof to different parties or circumstances, as the case may be, shall not be affected thereby and this Agreement shall remain in full force and effect in all other respects.

10. No Merger. The terms and provisions of this Agreement shall survive the entry, and shall not merge or be deemed to merge, into the Agreement.

11. Attorneys Fees. Should either Seller or Buyer institute any good faith action or proceeding to enforce any provision of this Agreement or for damages by reason of any alleged breach of any provision hereof, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and court costs incurred by such prevailing party in connection with such action or proceeding.

12. Term. The provisions, conditions and restrictions contained in this Agreement shall be effective commencing on the date of recording this Agreement in the office of the Kane

County Recorder and shall remain in full force and effect thereafter to and until 11:59 p.m. on _____, 20_____.

13. Counterparts. This Agreement may be executed in multiple counterparts, each of such counterpart shall be deemed to constitute one and the same instrument and each of said counterparts shall be deemed an original hereof. Facsimile and electronic .pdf signatures of this Agreement shall be treated as original signatures.

[SIGNATURE PAGE FOLLOWS IMMEDIATELY]

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

BUYER:

CITY OF ST. CHARLES,
An Illinois limited liability company

By:_____
Raymond P. Rogina, Mayor

Attest:_____
Charles Amenta, City Clerk

STATE OF ILLINOIS)
)
COUNTY OF KANE)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Raymond Rogina, personally known to me to be the Mayor of the City of St. Charles, Kane County, Illinois, and Nancy Garrison, personally known to me to be the City Clerk of said municipal corporation, and 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 severally acknowledged that as such Mayor and City Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the Mayor and City Council of said municipal corporation, as their free and voluntary act, and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this _____ day of _____, 2020.

_____
Notary Public

SELLER:

_____

By:_____
Its:_____

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that _____, as _____, 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's/ he signed and delivered said instrument as his/her free and voluntary act for the uses and purposes set forth therein.

Given under my hand and Notarial Seal this _____ day of _____, 2020.

_____
Notary Public

EXHIBIT A

PARCEL

Permanent Index No.: 09-27-378-006

Legal:

LOT 1 PHASE III FIRST STREET REDEVELOPMENT SUBDIVISION OF PART OF THE EAST ½ OF THE SOUTHWEST ¼ OF SECTION 27 AND THE EAST ½ OF THE NORTHWEST ¼ OF SECTION 34, TOWNSHIP 40 NORTH, RANGE 8, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 8, 2008 AS DOCUMENT 2008K89916 AND CERTIFICATE OF CORRECTION RECORDED DECEMBER 8, 2008 AS DOCUMENT 2008K089917 IN KANE COUNTY, ILLINOIS.

Permanent Index No.: 09-27-378-007

Legal:

LOT 16 OF PHASE III FIRST STREET REDEVELOPMENT SUBDIVISION OF PART OF THE EAST ½ OF THE SOUTHWEST ¼ OF SECTION 27 AND THE EAST ½ OF THE NORTHWEST 1/4 OF SECTION 34 TOWNSHIP 40 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE CITY OF SAINT CHARLES, KANE COUNTY, ILLINOIS ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 8, 2008 AS DOCUMENT 2008K899916 AND CERTIFICATE OF CORRECTION RECORDED DECEMBER 8, 2008 AS DOCUMENT 2008K089917.

EXHIBIT B

MEMORANDUM

Prepared by to:

Nicholas S. Peppers
Storino, Ramello & Durkin
9501 West Devon Avenue
Suite 800
Rosemont, Illinois 60018

Mail to:

_____
_____
_____
_____

MEMORANDUM OF RIGHT OF FIRST REFUSAL

THIS MEMORANDUM OF RIGHT OF FIRST REFUSAL is made this _____ day of_____, 2020, by and between _____ ("Seller") and the CITY OF ST. CHARLES, an Illinois municipal corporation ("Buyer").

W I T N E S S E T H

THAT, Seller and Buyer entered into that certain Right of First Refusal Agreement dated _____, 2018 (the "Agreement") for the vacant real estate legally described in Exhibit A attached hereto and made a part hereof (the "Property") pursuant to which Buyer granted to Seller a right of first refusal with respect to the Property upon the terms and subject to the conditions set forth in the Agreement.

THAT, pursuant to and upon the terms and conditions set forth in the Agreement, said option and right of first refusal shall expire at 11:59 p.m. on _____, 20____.

THAT, this Memorandum of Right of First Refusal is executed and recorded in accordance with the terms of the Agreement solely for the purpose of giving notice of the

existence thereof and shall not supersede or in any way modify the terms or conditions of the Agreement.

IN WITNESS WHEREOF, Seller and Buyer have caused this Memorandum of Right of First Refusal to be executed as of the date first above written.

BUYER:

CITY OF ST. CHARLES,
An Illinois limited liability company

By:_____
Raymond P. Rogina, Mayor

Attest:_____
Charles Amenta, City Clerk

STATE OF ILLINOIS)
)
COUNTY OF KANE)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Raymond Rogina, personally known to me to be the Mayor of the City of St. Charles, Kane County, Illinois, and Nancy Garrison, personally known to me to be the City Clerk of said municipal corporation, and 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 severally acknowledged that as such Mayor and City Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the Mayor and City Council of said municipal corporation, as their free and voluntary act, and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this _____ day of _____, 2020.

_____
Notary Public

SELLER:

_____

By:_____
Its:_____

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that _____, as _____, 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's/ he signed and delivered said instrument as his/her free and voluntary act for the uses and purposes set forth therein.

Given under my hand and Notarial Seal this _____ day of _____, 2020.

_____
Notary Public

EXHIBIT A

Legal Description of Property

Permanent Index No.: 09-27-378-006

Legal:

LOT 1 PHASE III FIRST STREET REDEVELOPMENT SUBDIVISION OF PART OF THE EAST ½ OF THE SOUTHWEST ¼ OF SECTION 27 AND THE EAST ½ OF THE NORTHWEST ¼ OF SECTION 34, TOWNSHIP 40 NORTH, RANGE 8, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 8, 2008 AS DOCUMENT 2008K89916 AND CERTIFICATE OF CORRECTION RECORDED DECEMBER 8, 2008 AS DOCUMENT 2008K089917 IN KANE COUNTY, ILLINOIS.

Permanent Index No.: 09-27-378-007

Legal:

LOT 16 OF PHASE III FIRST STREET REDEVELOPMENT SUBDIVISION OF PART OF THE EAST ½ OF THE SOUTHWEST ¼ OF SECTION 27 AND THE EAST ½ OF THE NORTHWEST 1/4 OF SECTION 34 TOWNSHIP 40 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE CITY OF SAINT CHARLES, KANE COUNTY, ILLINOIS ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 8, 2008 AS DOCUMENT 2008K899916 AND CERTIFICATE OF CORRECTION RECORDED DECEMBER 8, 2008 AS DOCUMENT 2008K089917.

TITLE: ST. CHARLES RIVERWALK

EAST PLAZA
CONCEPT PLAN

DSGN. DSG
DWN. DWN
CHKD. CHK
SCALE: NA
FX190254 LUSTRATIVE.DWG

NO.	DATE	NATURE OF REVISION

CLIENT:
CITY OF ST. CHARLES
2 E. MAIN STREET
ST. CHARLES, IL 60174

WBK engineering
WBK ENGINEERING, LLC
116 WEST MAIN STREET, SUITE 201
ST. CHARLES, ILLINOIS 60174
(630) 443-7755

PROJECT NO. 190254c
DATE : 06/13/2019
DRAWING NO. EX
SHEET:
1 OF 1

1ST STREET PLAZA - EAST PHASE I

TITLE: ST. CHARLES RIVERWALK

EAST PLAZA CONCEPT PLAN

DSGN. DSG
DWN. DWN
CHKD. CHK
SCALE: NA
FX190254 LUSTRATIVE.DWG

NO.	DATE	NATURE OF REVISION

CLIENT: CITY OF ST. CHARLES
2 E. MAIN STREET
ST. CHARLES, IL 60174

WBK engineering
WBK ENGINEERING, LLC
116 WEST MAIN STREET, SUITE 201
ST. CHARLES, ILLINOIS 60174
(630) 443-7755

PROJECT NO. 190254c
DATE : 06/13/2019
DRAWING NO. EX
SHEET:
1 OF 1

1ST STREET PLAZA - EAST PHASE 2