



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: IA

Title:	Motion to Approve an Ordinance Authorizing the Execution of the Phase III (Building #2) Construction License Agreement between the City of St. Charles and First Street Development II, LLC
Presenter:	Rita Tungare

Meeting: City Council - New Business Date: April 2, 2018

Proposed Cost: N/A	Budgeted Amount: N/A	Not Budgeted: <input type="checkbox"/>
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Executive Summary *(if not budgeted please explain):*

A license agreement between the City of St. Charles and First Street Development II, LLC for Phase III (Building #2) of the First Street Redevelopment Project is being presented to the Council for consideration.

The City and First Street Development II, LLC are parties to the Central Downtown Tax Increment Financing Redevelopment Agreement (First Street Project), dated March 5, 2015. The agreement was most recently amended in November 2017 to approve development plans for Building #2

The City Council approved a resubdivision plat to modify the Building #2 lot to match the proposed building footprint. This plat is in the process of being signed and recorded.

The construction license will permit the developer to access Lot #2 and the surrounding City-owned property for construction staging and materials storage for the duration of the building construction. The agreement will also permit the developer to commence grading, excavation and related construction activities on Lot 2, prior to the recording of the plat and conveyance of the property.

Building permit plans for Building #2 are currently under review. The target construction commencement date for this building is 4/30/18.

Similar construction license agreements were approved for the other buildings constructed in Phase 3.

Attachments *(please list):*

Ordinance, with Construction License attached as an Exhibit

Recommendation/Suggested Action *(briefly explain):*

Motion to Approve an Ordinance Authorizing the Execution of the Phase III (Building #2) Construction License Agreement between the City of St. Charles and First Street Development II, LLC

Prepared by: City of St. Charles 2 E. Main St. St. Charles, IL 60174	<p style="text-align: right;">For Recorder's Use Only</p>
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**License Agreement
PHASE III (BUILDING #2)**

This PHASE III (BUILDING #2) CONSTRUCTION LICENSE AGREEMENT ("License") is made and entered into on this 2nd day of April, 2018 by and between the CITY OF ST. CHARLES, an Illinois municipal corporation (herein referred to as "Licensor") and FIRST STREET DEVELOPMENT II, LLC, an Illinois limited liability company (herein referred to as "Licensee").

Licensor and Licensee are parties to a certain City of St. Charles Central Downtown Tax Increment Financing Redevelopment Agreement (First Street Project), dated the 5th day of March, 2015, and amended by a certain First Amendment dated the 6th of September, 2016, a certain Second Amendment dated the 21st of February, 2017, and a certain Third Amendment dated the 6th of November, 2017 (the "RDA"). Unless otherwise defined to the contrary, all defined terms in the License shall have the same definition and meaning as provided for in the RDA.

Pursuant to Section 4.1 of the RDA, the Licensee is to construct each Phase of the Project undertaken by Developer in accordance with the objectives of the Redevelopment Plan, the Site Plan, the Scope of Project and all Governmental Requirements. Licensee desires to enter the fenced in area on the City Property depicted on Exhibit A, attached hereto and made a part hereof, and as modified from time to time during construction and begin construction of the Phase III (Building #2) and the Licensor is willing to grant Licensee a license to do so, pursuant to the RDA, on the terms and conditions set forth below.

Licensor hereby grants Licensee and its contractors and its subcontractors, a license to enter upon the City Property, for the purpose of staging construction activities and materials and to commence grading, excavation and related construction activities on the City Property, as required under the RDA (collectively the "Work") provided, however:

1. Such Work is at Licensee's risk shall be done in accordance with the RDA and all applicable laws, regulations and requirements of all governmental authorities having jurisdiction over the Work and in full compliance and in strict conformance with the plans and specifications approved by the City.

2. The terms of the RDA are incorporated herein and made a part hereof. The term of the License shall expire upon Substantial Completion of Phase III as contemplated by the RDA, or as may be otherwise determined by the City upon notice to Licensee, as provided for under the RDA, and the Licensee shall restore the City Property to substantially the same condition as existed prior to commencement of the Work, except for those improvements on Lot 2 of Phase III to be constructed and owned by Licensee pursuant to the RDA.

3. The Licensee agrees to and shall indemnify, defend and hold harmless Licensor its members, managers, representatives, assigns, servants, agents and employees from any and all liability, claims, damages, expenses, actions, and costs of actions, in law or equity (including reasonable attorney's fees and costs, and reasonable attorney's fees and costs on appeal), of any kind and nature, arising or growing out of or in any way connected with the use, occupancy, maintenance or control of the public parking activities on the Property by the Licensee and any of its agents, assigns, servants, employees, customers, patrons or invitees, or arising out of or in any way connected with the operation or conduct of the Licensee hereunder or in any way related to this License, whether known or unknown, suspected or unanticipated as well as anticipated and that now exist or may hereinafter accrue based on matters now known as well as unknown. The Licensee shall, at its own expense, appear, defend and pay all reasonable charges of attorneys and all costs and other expenses arising therefore or incurred in connections therewith, and, if any judgment shall be rendered against Licensor, its members, managers, representatives, assigns, servants, agents and employees, the Licensee shall, at its own expense, satisfy and discharge the same. Each party shall give prompt written notice to the other of the assertion or commencement of any claim, demand, investigation, action, suit or other legal proceeding for which indemnity is, or may be sought hereunder. The Licensee shall have the right and obligation to assume, at its own expense, the defense or settlement of any third-party claim, demand, investigation, action, suit or other legal proceeding for which it is obligated to provide indemnity hereunder; provided, however, that the Licensee shall not settle or compromise any such claim, demand, investigation, action, suit or other legal proceeding without Licensor's prior written consent thereto, unless the terms of such settlement or compromise unconditionally discharge and release Licensor from any and all liabilities and obligations thereunder and do not involve a remedy other than the payment of money by the Licensee. Notwithstanding the foregoing, the Licensee may not assume or control the defense if the named parties to a third party claim (including any impleaded parties) include both the Licensee and Licensor and representation of both parties by the same counsel (in such counsel's reasonable determination) would be inappropriate due to actual or potential differing interests between them, in which case Licensor shall have the right to defend the third party claim and to employ counsel reasonably approved by the Licensee, and to the extent the matter is determined to be subject to indemnification hereunder, the Licensee shall reimburse Licensor for the reasonable costs of its counsel. If the Licensee does not assume liability for and the defense of a third party claim, Licensor shall have the right (i) to control the defense thereof and (ii), if Licensor shall

have notified the Licensee of Licensor's intention to negotiate a settlement of the third party claim (at the Licensee's expense to the extent the matter is determined to be subject to indemnification hereunder), which notice shall include the material terms of any proposed settlement in reasonable detail, unless the Licensee shall have notified Licensor in writing of the Licensee's election to assume liability for and the defense of the third party claim within ten days after receipt of such notice, and the Licensee promptly thereafter shall have taken appropriate action to implement such defense Licensor shall have the right to settle such third party claim. Licensor shall not be entitled to settle any such third party claim pursuant to the preceding sentence without the Licensee's prior written consent unless the terms of such settlement includes an unconditional release of the Licensee by the third party claimant on account thereof. Notwithstanding the foregoing, Licensor at all times shall have the right, at its option and expense, to participate fully in the defense or settlement of such claim, demand, investigation, action, suit or other legal proceeding. The Licensee and Licensor shall cooperate fully in defending or settling any third-party claim, demand, investigation, action, suit or other legal proceeding, and the defending or settling party shall have reasonable access to the books and records and personnel of the other party that are relevant to such claim, demand, investigation, action, suit or other legal proceeding.

4. During the term of this License and until Closing, the Licensee shall furnish, or cause its contractors to furnish, to the Licensor a certificate of insurance, to be provided under the construction agreement between Licensee and its contractor, as approved by Licensor, but in no event for coverages and amounts less than those required under the RDA, and otherwise reasonably satisfactory to the Licensor. The insurance policies shall be expressly endorsed to include the Licensor, as additional insured. Such certificates of insurance shall require the insurer(s) to provide not less than thirty (30) days advance written notice to the Licensor in the event of any cancellation, non-renewal or change in the policy limits, terms or conditions which would cause them to fail to meet the foregoing requirements. Such insurance shall be maintained during the terms of the License.

5. Licensor shall at Licensee's sole cost and expense fully but reasonably cooperate with Licensee's efforts to obtain necessary permits and governmental approvals to begin site work and construction, including but not limited to executing and /or consenting to any necessary applications as Licensor of the Property when and if required by any governmental authority.

6. The Licensee shall be liable for all claims for damages to persons or property by reason of the occupation or use of the Property for the Work under this License. Licensor, its representatives, assigns, servants, agents and employees shall not be liable for any damage to the property of the adjoining property owners or occupants or the property of the public.

7. Assignment. The Licensee shall neither assign this License nor any part of it without the prior written consent of Licensor, which may be withheld for any or no reason.

8. Time is of the Essence. Time is of the essence in this License, and in all terms and conditions contained herein.

9. Notices. Written notice mailed or hand-delivered to the Licensor at Two East Main Street, St. Charles, Illinois 60174, Attn: Mark Koenen, shall constitute sufficient notice to it and written notice mailed or hand-delivered to Licensee at 409 East Illinois Ave., Suite 1C, St. Charles, Illinois 60174, shall constitute sufficient notice to Licensee to comply with the terms of this License. Notice by mail shall be considered given on the date postmarked, or in the case of hand-delivery, on the date delivered.

10. Entire Agreement. This License constitutes the entire agreement between the parties relating to the matters set forth herein, and shall supersede all written or oral agreements or understandings that may have been had between the parties. This License may be amended by the mutual written agreement of the parties.

11. Negotiation. The parties to this License acknowledge that all terms of this License were negotiated at arm's length and that this License and all documents executed in connection herewith were prepared and executed without undue influence exerted by any party or on any party. Further, this License was drafted jointly by all parties, and no parties are entitled to the benefit of any rules of construction with respect to the interpretation of any terms, conditions or provisions of this License in favor of or against any person or party who drafted this License.

LICENSOR

CITY OF ST. CHARLES,
an Illinois municipal corporation

By: _____
Mayor Raymond Rogina

Attest: _____
Chuck Amenta, City Clerk

LICENSEE

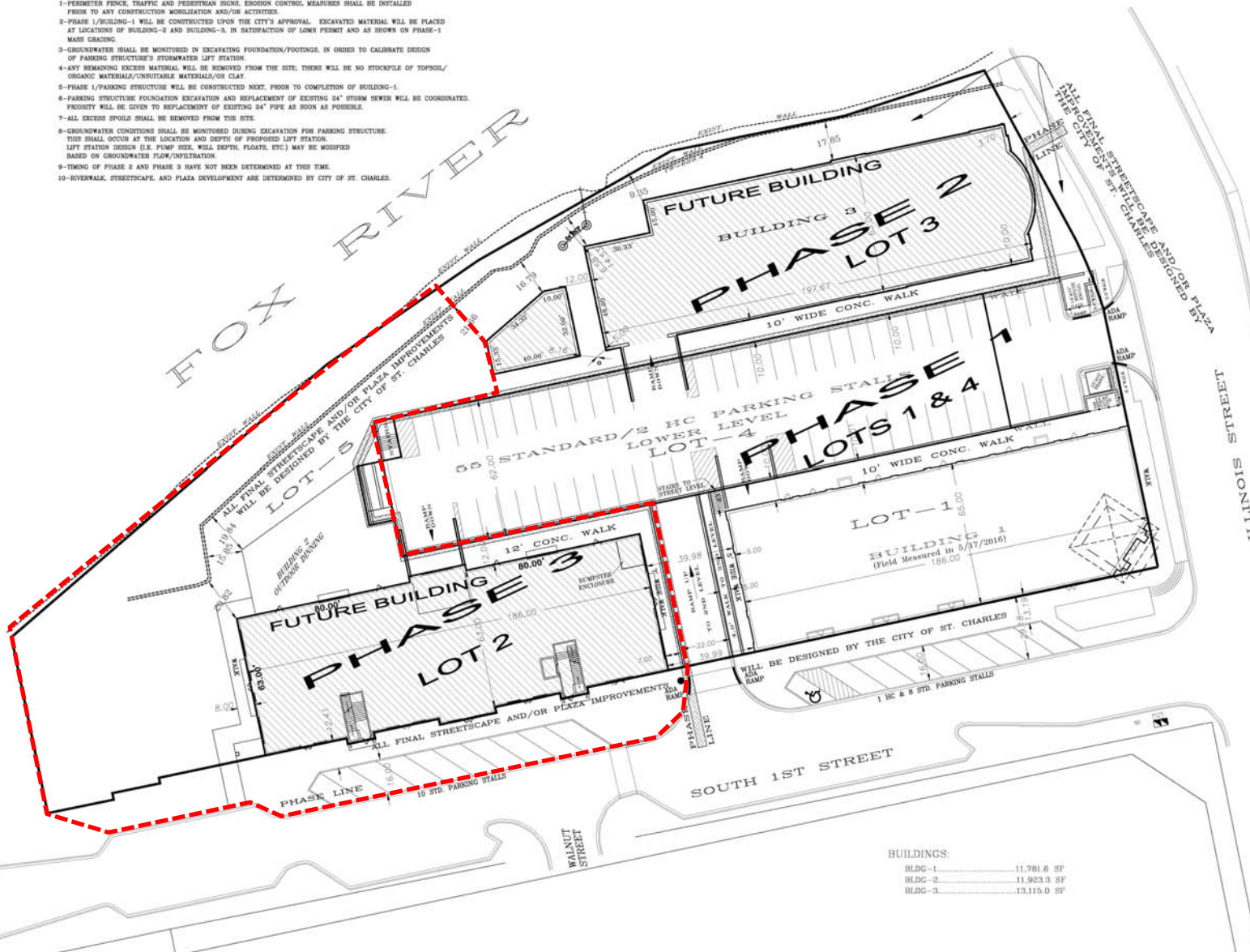
FIRST STREET DEVELOPMENT II, LLC,
an Illinois limited liability company

By: _____

EXHIBIT A

SEQUENCE OF DEVELOPMENT:

- 1-PERIMETER FENCE, TRAFFIC AND PEDESTRIAN SIGNS, EROSION CONTROL MEASURES SHALL BE INSTALLED PRIOR TO ANY CONSTRUCTION MOBILIZATION AND/OR ACTIVITIES.
- 2-PHASE 1/BUILDING-1 WILL BE CONSTRUCTED UPON THE CITY'S APPROVAL. EXCAVATED MATERIAL WILL BE PLACED AT LOCATIONS OF BUILDING-2 AND BUILDING-3, IN SATISFACTION OF LOAN PERMIT AND AS SHOWN ON PHASE-1 MASS GRADING.
- 3-GROUNDWATER SHALL BE MONITORED IN EXCAVATING FOUNDATION/FOOTINGS, IN ORDER TO CALIBRATE DESIGN OF PARKING STRUCTURE'S STORMWATER LIFT STATION.
- 4-ANY REMAINING EXCESS MATERIAL WILL BE REMOVED FROM THE SITE, THERE WILL BE NO STOCKPILE OF TOPSOIL/ORGANIC MATERIALS/UNPOTABLE MATERIALS/OR CLAY.
- 5-PHASE 1/PARKING STRUCTURE WILL BE CONSTRUCTED NEXT, PRIOR TO COMPLETION OF BUILDING-1.
- 6-PARKING STRUCTURE FOUNDATION EXCAVATION AND REPLACEMENT OF EXISTING 24" STORM SEWER WILL BE COORDINATED. PRIORITY WILL BE GIVEN TO REPLACEMENT OF EXISTING 24" PIPE AS SOON AS POSSIBLE.
- 7-ALL EXCESS SPOILS SHALL BE REMOVED FROM THE SITE.
- 8-GROUNDWATER CONDITIONS SHALL BE MONITORED DURING EXCAVATION FOR PARKING STRUCTURE. THIS SHALL OCCUR AT THE LOCATION AND DEPTH OF PROPOSED LIFT STATION. LIFT STATION DESIGN (I.E. PUMP SIZE, WELL DEPTH, FLOATS, ETC.) MAY BE MODIFIED BASED ON GROUNDWATER FLOW/INFILTRATION.
- 9-TIMING OF PHASE 2 AND PHASE 3 HAVE NOT BEEN DETERMINED AT THIS TIME.
- 10-SIDEWALK, STREETSCAPE, AND PLAZA DEVELOPMENT ARE DETERMINED BY CITY OF ST. CHARLES.



BUILDINGS:

BLDG-1	11,781.6 SF
BLDG-2	11,923.3 SF
BLDG-3	13,115.0 SF



FCC

OCTOBER 12, 2015

REVISIONS:

1	6/20/2014	BUILDINGS 2 AND 3
2	7/24/2014	BUILDINGS 2 AND 3
3		

GEOMETRIC/PHASE PLAN

SHEET 2 OF 12

County Engineer, Inc. Construction Management
 2023 Main Ave., St. Charles, MO 63304
 Scale: 1" = 20'
 Job No. 1