

**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: IA

Title:

Motion to approve A Resolution Authorizing the Execution of a “Consent of the City of St. Charles” to the Second Amendment To Reciprocal Construction, Operating and Easement Agreement (Jewel-Osco shopping center & Prairie Centre PUD)

Presenter:

Rita Tungare

Meeting: City Council

Date: April 3, 2017

Proposed Cost:

Budgeted Amount: N/A

Not Budgeted: **Executive Summary** *(if not budgeted please explain):*

In connection with the City’s recent approval of the Prairie Centre PUD, the property owner, Towne Centre Equities, LLC, has requested the City’s consent to amend an existing Reciprocal Construction, Operating and Easement Agreement (RCOA) that applies to the Prairie Centre site and the adjacent Jewel-Osco shopping center. The City is not a party to the original 1979 agreement; however, due to a 2002 amendment, certain changes to the agreement require the City’s consent.

The proposed Second Amendment would modify use restrictions in the existing RCOA in order to permit mixed uses and residential uses that are planned for the Prairie Centre development, in accordance with the PUD approvals granted by the City Council.

Currently, per the 1979 RCOA, as long as either the Jewel property or the Prairie Centre site remain as entirely commercial in land use, all other parcels subject to the agreement must remain commercial as well. The amendment would remove this requirement and modify certain lighting requirements.

The City Attorney has reviewed the proposed Second Amendment to the RCOA and provided the attached memorandum, finding that the request is reasonable and should be consented to by the City.

Attachments *(please list):*

Resolution

Recommendation/Suggested Action *(briefly explain):*

Motion to approve the Resolution

memo



HOSCHEIT, MCGUIRK, MCCRACKEN & CUSCADEN, P.C.

1001 EAST MAIN STREET, SUITE G

ST. CHARLES, IL 60174

TO: RUSS COLBY / RITA TUNGARE

FROM: JOHN M. MCGUIRK

DATE: MARCH 29, 2017

RE: SECOND AMENDMENT TO RCOE - PRAIRIE CENTRE

As you know, we recently received a proposed Second Amendment to Reciprocal Construction Operating and Easement Agreement for the Prairie Centre Project. The Second Amendment was drafted by the attorneys for Towne Centre Equities, LLC, the record owner of the Prairie Centre project site. It primarily relates to a clean-up issue for the original Reciprocal Construction Operating and Easement Agreement dating back to 1979.

In 1979, the owners of the St. Charles Mall property and the owners of the Jewel property entered into an agreement which established various easements, common areas, parking restrictions and so forth. That was a private agreement which did not require the City's approval and to which the City was not a party. On April 5, 2002, the successors in interest to those parcels entered into an amendment to the agreement. At that point in time, the old mall had been closed and may have even been demolished. The First Amendment deleted various provisions with respect to what could be constructed on the parcels, the location thereof, and so forth. It also, by agreement, eliminated certain commons area restrictions and replaced it with alternative language.

Most importantly, the First Amendment added a "consent" provision that stated that the City of St. Charles would consent to any additional amendments to the RCOE in the event that those amendments materially modified or imposed building use or occupancy restrictions. The proposed Second Amendment to Reciprocal Construction Operating and Easement Agreement provided by the developer requires the consent of the City due to the fact that the original Agreement did not allow for non-commercial use of any parcel subject to the agreement while either the Jewel property or St. Charles Mall property remained completely commercial in use. The original Agreement also required certain lighting in the commons areas that was also tied to the commercial use.

The City Staff and I have reviewed the original Agreement, the First Amendment and the proposed Second Amendment and find that it is in accord with the PUD that has recently been approved for the property.

The First Amendment language that added the requirement of consent by the City states that said consent shall not be unreasonably withheld. The request by the Developer is reasonable and should be consented to by the City.

Please feel free to contact me with any additional questions or comments that you may have with regard to this matter.

City of St. Charles, Illinois
Resolution No. 2017-_____

**A Resolution Authorizing the Execution of a “Consent of the City of St. Charles” to the Second Amendment To Reciprocal Construction, Operating and Easement Agreement
(Jewel-Osco shopping center & Prairie Centre PUD)**

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

WHEREAS, a Reciprocal Construction Operating and Easement Agreement (“RCOA”) was entered into by and between the owners of the property commonly known as Jewel-Osco shopping center (2073 Prairie Street and adjoining parcels) and the property formerly known as the St. Charles Mall on or about January 15, 1979 which document was recorded with the Kane County Recorder as Document No. 1494080; and

WHEREAS, a First Amendment to the RCOA dated April 5, 2002, by and between the property owners of the Jewel-Osco parcel (2073 Prairie Street) and former St. Charles Mall parcels, recorded with the Kane County Recorder as Document No. 2002K048461, requires the written approval and consent of the City of St. Charles prior to any amendment that materially modifies or imposes building use or occupancy restrictions; and

WHEREAS, on March 6, 2017, the City of St. Charles approved Ordinance No. 2017-Z-5, “An Ordinance Granting Approval of a Special Use for Planned Unit Development and PUD Preliminary Plan (Prairie Centre PUD- former St. Charles Mall site)”, which granted approval of mixed land use, including residential use, within the Prairie Centre PUD, subject to the restrictions and conditions of said ordinance; and

WHEREAS, Sjodin Property Company, LLC, current owners of the Jewel-Osco parcel, and Towne Centre Equities, LLC, current owners of the former St. Charles Mall parcels, have drafted and executed a proposed Second Amendment to the RCOA, and have requested that the City of St. Charles execute a document consenting to that Second Amendment in order to permit mixed use development of the Prairie Center PUD as contemplated in Ordinance No. 2017-Z-5.

NOW THEREFORE, be it resolved by the authorities of the City of St. Charles that the Mayor and City Clerk are hereby authorized to execute the “Consent of the City of St. Charles” to the Second Amendment to The Reciprocal Construction, Operating and Easement Agreement, attached hereto as Exhibit “A”.

PRESENTED to the City Council of the City of St. Charles, Illinois this 3rd day of April 2017.

PASSED by the City Council of the City of St. Charles, Illinois, this 3rd day of April 2017.

APPROVED by the Mayor of the City of St. Charles, Illinois, this 3rd day of April 2017.

Raymond P. Rogina, Mayor

ATEST:

Nancy Garrison, City Clerk

COUNCIL VOTE:

Ayes:

Nays:

Absent:

Abstain:

EXHIBIT "A"

**Second Amendment To
Reciprocal Construction, Operating and Easement Agreement**

Dated March 14, 2017

This instrument prepared by and after recording mail to:

Jonathan S. Pope, Esq.
Bazos, Freeman, Schuster, & Braithwaite LLC
1250 Larkin Avenue
Suite 100
Elgin, IL 60123

SECOND AMENDMENT TO RECIPROCAL CONSTRUCTION, OPERATING AND EASEMENT AGREEMENT

This Second Amendment to Reciprocal Construction, Operating and Easement Agreement (hereinafter referred to as the “**Second Amendment**”), is made and entered into as of this 14th day of March, 2017 by and between Sjodin Property Company, LLC, an Illinois limited liability company (hereinafter referred to as “**Sjodin**”), and Towne Centre Equities, LLC, a Delaware limited liability company (hereinafter referred to as “**Towne Centre**”). Sjodin and Towne Centre are also sometimes individually referred to as a “**Party**” and collectively as the “**Parties**”.

RECITALS

WHEREAS, the Parties, or their predecessors in interest, entered into a certain Reciprocal Construction, Operating and Easement Agreement dated January 15, 1979 and recorded with the Kane County Recorder of Deeds on February 13, 1979 as document number 1494080, as later amended by the First Amendment to the Reciprocal Construction, Operating and Easement Agreement dated April 5, 2002 and recorded with the Kane County Recorder of Deeds on April 10, 2002 as document number 2002K048461 (collectively hereinafter referred to as the “**Easement Agreement**”). The terms and provisions of the Easement Agreement are incorporated herein by reference, and capitalized terms used but not defined herein shall have the meanings as set forth on the Easement Agreement; and

WHEREAS, the land originally covered by the Easement Agreement are (collectively, the “**Land**”) is situated in St. Charles, Kane County, Illinois and legally described on **Exhibit A** attached hereto; and

WHEREAS, Towne Centre is the owner of that portion of the Land described as Parcels A, D, E and G (collectively, the “**Towne Centre Parcels**”) and Sjodin is the owner of that portion of the Land described as Parcel B (the “**Sjodin Parcel**”);

WHEREAS, the Parties, in exercise of the authority given to them by Section 12.08 of the Easement Agreement (as the owners of Parcels A and B), now wish to amend the terms of the Easement Agreement as set forth herein;

CONSIDERATION AND AGREEMENT

NOW, THEREFORE, in consideration of the mutual observance by the Parties of their respective covenants and obligations, and of other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, it is hereby agreed as follows:

1. The Parties hereto acknowledge and agree that the Recitals set forth hereinabove are true and correct and are hereby incorporated into, and made a part of this Second Amendment.
2. References to Articles or Sections herein are references made to the correspondingly numbered Articles or Sections in the Easement Agreement.
3. Section 6.01 of the Easement Agreement, entitled "Commercial Use", shall be, and hereby is, deleted in its entirety as to all of the Land.
4. Section 3.01 of the Easement Agreement, entitled "Maintenance of Common Areas" shall be, and hereby is, deleted and replaced with the following as to all of the Land:

Each of the Parties hereto shall keep and maintain the Common Areas located on their respective parcels of land in good operating conditions and repair, adequately drained, properly striped and reasonably free from snow, ice, rubbish and debris.

5. The following new provision shall be, and hereby is, added to the Easement Agreement.

Section 7.06 Lot Owner Association

If (i) the Towne Centre Parcels (Parcels A, D, E and G) are re-subdivided into multiple lots (each a "Lot") and (ii) an association of lot owners (the "Association") is formed, then the obligations and liability established by Article VII entitled "Indemnification: Public Liability Insurance", with respect to said Towne Centre Parcels shall be transferred to and assumed by the Association, and shall not be the obligation or liability of the individual Lot owners.

6. Except for the modifications to the Easement Agreement expressly set forth herein, the Easement Agreement shall remain unmodified and in full force and effect.

[signature page follows]

IN WITNESS WHEREOF, Sjodin and Towne Centre have entered into this Second Amendment effective as the date first set forth above.

Towne Centre Equities, LLC
A Delaware Limited Liability Company,
By: Towne Centre Management, LLC, a
Delaware Limited Liability Company
Its: Manager

By: *David A. Patzelt*
Name: David A. Patzelt
Its: A Manager

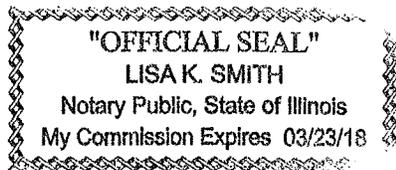
Sjodin Property Company, LLC
An Illinois Limited Liability Company,
By: Sjodin Equity Investment Company, an
Illinois Corporation
Its: Manager

By: *Kent W. Shodeen*
Kent W. Shodeen, President

**STATE OF ILLINOIS)
COUNTY OF KANE) SS.**

I, the undersigned, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT, Kent W. Shodeen, personally known to me to be the President of Sjodin Equity Investment Company, and to be the same persons whose name is to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument on behalf of the said Sjodin Equity Investment Company (being the Manager of Sjodin Property Company, LLC) as his free and voluntary act, and as the free and voluntary act of said Sjodin Equity Investment Company, for the uses and purposes therein set forth.

Given under my hand and official seal, this 14th day of March, 2017.

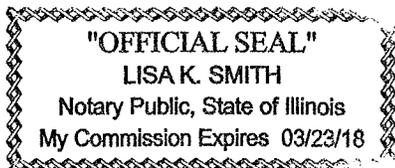


Lisa K. Smith
NOTARY PUBLIC
Commission expires 3/23/18

**STATE OF ILLINOIS)
COUNTY OF KANE) SS.**

I, the undersigned, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT, David A. Patzelt, personally known to me to be a Manager of Towne Centre Management, LLC, and to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument on behalf of the said Towne Centre Management, LLC (being the Manager of Towne Centre Equities, LLC) as his free and voluntary act, and as the free and voluntary act of said Towne Centre Management, LLC, for the uses and purposes therein set forth.

Given under my hand and official seal, this 14th day of March, 2017.



Lisa K. Smith
NOTARY PUBLIC
Commission expires 3/23/18

EXHIBIT A
LEGAL DESCRIPTION

Parcel A

That part of the Southwest Quarter of Section 33, Township 40 North, Range 8 East of the Third Principal Meridian described as follows: Commencing at the southeast corner of Joe Keim's Randall Road Subdivision, St. Charles Township, Kane County, Illinois State Route No. 38, 354.0 feet for a point of beginning; thence northeasterly at right angles to the last described course 350.0 feet; thence northwesterly at right angles to the last described course 9.0 feet; thence northeasterly at right angles to the last described course 164.02 feet to a line drawn parallel with and 560.0 feet easterly of the east line of said Subdivision (measured along the center line of Prairie Street); thence northerly parallel with said east line 447.40 feet to a point that is 40.0 feet southerly of the center line (measured at right angles thereto) of Prairie Street; thence easterly parallel with said center line 334.54 feet to a line drawn parallel with and 894.54 feet easterly of said east line (measured along said center line); thence southerly parallel with said east line 168.96 feet to a line drawn parallel with and 935.0 feet northeasterly of said northeasterly line (measured at right angles thereto) of Illinois State Route No. 38; thence southeasterly parallel with said northeasterly line 956.84 feet to a point on said northeasterly line that is 1086.0 feet southeasterly of the point of beginning (measured along said northeasterly line); thence southwestery at right angles to the last described course 935.0 feet to said northeasterly line; thence northwesterly along said northeasterly line 494.0 feet to a point that is 592.0 feet southeasterly of the point of beginning; thence northeasterly at right angles to the last described course 203.0 feet; thence northwesterly at right angles to the last described course 124.0 feet; thence southwestery at right angles to the last described course 203.0 feet to said northeasterly line; thence northwesterly along said northeasterly line 468.0 feet to the point of beginning in the City of St. Charles, Kane County, Illinois, and containing 24.551 acres.

Parcel B

That part of the Southwest Quarter of Section 33, township 40 North, Range 8 East of the Third Principal Meridian described as follows: Commencing at the northeast corner of Joe Keim's Randall Road Subdivision, St. Charles Township, Kane County, Illinois; thence southerly along the east line of said Subdivision 40.03 feet to a point that is 40.0 feet southerly of the center line (measured at right angles thereto) of Prairie Street, for a point of beginning; thence continuing southerly along said east line 691.46 feet to the southeast corner of said Subdivision; thence southeasterly along the northeasterly line of Illinois State Route No. 38, 222.0 feet; thence northeasterly at right angles to the last described course 178.0 feet; thence southeasterly at right angles to the last described course 132.0 feet; thence northeasterly at right angles to the last described course 172.0 feet; thence northwesterly at right angles to the last described course 9.0 feet; thence northeasterly at right angles to the last described course 164.02 feet to a line drawn parallel with and 560.0 feet easterly of said east line (measured along said centerline); thence northerly parallel with said east line 337.40 feet to a point that is 110.0 feet southerly of a line drawn parallel with said center line from the point of beginning (measured along a line drawn parallel with said east line); thence westerly 234.84 feet to a point on a line drawn parallel with

and 325.0 feet easterly of a said east line (measured along a line drawn parallel with said center line) that is 100.0 feet southerly of a line drawn parallel with said center line from the point of beginning; thence northerly parallel with said east line 100.0 feet to a line drawn parallel with said center line from the point of beginning; thence westerly parallel with said center line 325.0 feet to the point of beginning in the City of St. Charles, Kane County, Illinois, and containing 8.318 acres.

Parcel C

That part of the Southwest Quarter of Section 33, Township 40 North, Range 8 East of the Third Principal Meridian described as follows: Commencing at the northeast corner of Joe Keim's Randall Road Subdivision, St. Charles Township, Kane County, Illinois; thence southerly along the east line of said Subdivision 40.03 feet to a point that is 40.0 feet southerly of the center line (measured at right angles thereto) of Prairie Street; thence easterly parallel with said center line 325.0 feet; thence southerly parallel with said east line 100.0 feet for a point of beginning; thence northerly parallel with said east line 100.0 feet; thence easterly parallel with said east line 110.0 feet; thence westerly 234.84 feet to the point of beginning in the City of St. Charles, Kane County, Illinois, and containing 0.566 acres.

Parcel D

That part of the Southwest Quarter of Section 33, Township 40 North, Range 8 East of the Third Principal Meridian described as follows: Commencing at the southeast corner of Joe Keim's Randall Road Subdivision, St. Charles Township, Kane County, Illinois; thence southeasterly along the northeasterly line of Illinois State Route No. 38, 222.0 feet for a point of beginning; thence northeasterly at right angles to the last described course 178.0 feet; thence southwesterly at right angles to the last described course 132.0 feet; thence southwesterly at right angles to the last described course 178.0 feet to said northeasterly line; thence northwesterly along said northeasterly line 132.0 feet to the point of beginning in the City of St. Charles, Kane County, Illinois, and containing 0.539 acres.

Parcel E

That part of the Southwest Quarter of Section 33, Township 40 North, Range 8 East of the Third Principal Meridian described as follows: Commencing at the southeast corner of Joe Keim's Randall Road Subdivision, St. Charles Township, Kane County, Illinois; thence southeasterly along the northeasterly line of Illinois State Route No. 38, 946.0 feet for a point of beginning; thence northeasterly at right angles to the last described course 203.0 feet; thence northwesterly at right angles to the last described course 124.0 feet; thence southwesterly at right angles to the last described course 203.0 feet to said northeasterly line; thence southeasterly along said northeasterly line 124.0 feet to the point of beginning in the City of St. Charles, Kane County, Illinois, and containing 0.578 acres.

Parcel F

Lot 2, Joe Keim's Randall Road Subdivision, St. Charles Township, Kane County, Illinois, and containing 1.016 acres.

Parcel G

That part of the Southwest Quarter of Section 33, Township 40 North, Range 8 East of the Third Principal Meridian described as follows: Commencing at the northeast corner of Joe Keim's Randall Road Subdivision, St. Charles Township, Kane County, Illinois; thence southerly along the east line of said Subdivision 40.03 feet to a point that is 40.0 feet southerly of the center line (measured at right angles thereto) of Prairie Street; thence easterly parallel with said center line 894.0 feet; thence southerly parallel with said east line 168.96 feet to a line drawn parallel with and 935.0 feet northeasterly of the north easterly line (measured at right angles thereto) of Illinois State Route No. 38 for a point of beginning; thence northerly parallel with said east line 168.96 feet; thence easterly parallel with said center line 240.0 feet; thence southerly parallel with said east line 320.88 feet to a line drawn parallel with and 935.0 feet northeasterly of said northeasterly line (measured at right angles thereto); thence northwesterly parallel with said northeasterly line 279.27 feet to the point of beginning in the City of St. Charles, Kane County, Illinois, and containing 1.348 acres.

PIN: 09-33-302-002, 007, 009, 010, 011, 014, 015
09-33-329-009

EXHIBIT B

CONSENT OF MORTGAGEE OF PARCEL A

PrivateBancorp, Inc., a Delaware Corporation, d/b/a The Private Bank, Mortgagee, hereby consents to the foregoing Second Amendment pursuant to a certain Mortgage dated April 23, 2010 and recorded April 28, 2010 in the Office of the Recorder of Deeds of Kane County, Illinois as Document Number 2010K027203, does hereby consent to the recording of the foregoing Second Amendment to the Reciprocal Construction, Operating and Easement Agreement.

IN WITNESS WHEREOF, PrivateBancorp, Inc., a Delaware Corporation, d/b/a The Private Bank, as Mortgagee aforesaid, has caused its corporate seal to be affixed hereto and has caused its name to be signed to these presents by its duly authorized Officers, this 20th day of March, 2017.

By: Katelyn Brungardt
Name: Katelyn Brungardt
Its: officer

STATE OF ILLINOIS)

) ss

COUNTY OF COOK)

I, the undersigned, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT, Katelyn Brungardt, 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 they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this 20th day of March, 2017.

Monika Sarna
NOTARY PUBLIC

Commission expires 10/12/20

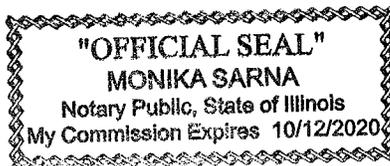


EXHIBIT C

CONSENT OF MORTGAGEE OF PARCEL B

Community State Bank, an Illinois Corporation, Mortgagee, hereby consents to the foregoing Second Amendment pursuant to a certain Mortgage dated December 9, 2016 and recorded December 12, 2016 in the Office of the Recorder of Deeds of Kane County, Illinois as Document Number 2016K068521, does hereby consent to the recording of the foregoing Second Amendment to the Reciprocal Construction, Operating and Easement Agreement.

IN WITNESS WHEREOF, Community State Bank, an Illinois Corporation, as Mortgagee aforesaid, has caused its corporate seal to be affixed hereto and has caused its name to be signed to these presents by its duly authorized Officers, this 15TH day of MARCH, 2017.

By: *Lori Pieper*
Name: LORI PIEPER
Its: CHIEF CREDIT OFFICER

STATE OF ILLINOIS)
) ss
COUNTY OF Henry)

I, the undersigned, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT, LORI Pieper, 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 they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this 15th day of March, 2017.



Cathie E. Hermie
NOTARY PUBLIC

Commission expires 8-12-18

EXHIBIT D

CONSENT OF THE CITY OF ST. CHARLES

The City of St. Charles, Illinois, a municipal corporation, hereby consents to the foregoing Second Amendment pursuant to Section 12.12 of the First Amendment to the Reciprocal Construction, Operating and Easement Agreement dated April 5, 2002 and recorded with the Kane County Recorder of Deeds on April 10, 2002 as document number 2002K048461 does hereby consent to the recording of the foregoing Second Amendment to the Reciprocal Construction, Operating and Easement Agreement.

IN WITNESS WHEREOF, The City of St. Charles, Illinois, a municipal corporation, has caused its corporate seal to be affixed hereto and has caused its name to be signed to these presents by its duly authorized Officers, this _____ day of _____, 2017.

By: _____

Name: _____

Its: _____

STATE OF ILLINOIS)

) ss

COUNTY OF KANE)

I, the undersigned, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT, _____, 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 they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this ____ day of _____, 2017.

NOTARY PUBLIC

Commission expires _____