



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: IA

Title: Motion to Approve an Ordinance Authorizing the Execution of the Phase II (Building #3) Construction License Agreement between the City of St. Charles and First Street Development II, LLC

Presenter: Rita Tungare

Meeting: City Council Date: September 6, 2016

Proposed Cost: N/A

Budgeted Amount: N/A

Not Budgeted:

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

A license agreement between the City of St. Charles and First Street Development II, LLC for Phase II (Building #3) 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 Refinancing Agreement (First Street Project), dated March 5, 2015. An amendment to the Redevelopment Agreement (RDA) with respect to Building #3 is on the agenda this evening.

The City is preparing a resubdivision plat to modify the Building #3 lot to match the proposed building footprint. This plat needs to be approved and recorded prior to the City formally conveying the Building #3 lot to the developer in accordance with the RDA.

Subject to tonight's approval by City Council and execution of the RDA amendment, the developer requests the ability to begin construction on Building #3 while the resubdivision plat is finalized.

The construction license will permit the developer to begin staging construction activities and materials and to commence grading, excavation and related construction activities on City Property. This property is currently being utilized by the developer for construction staging in relation to the ongoing construction at the site.

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 II (Building #3) Construction License Agreement between the City of St. Charles and First Street Development II, LLC

City of St. Charles, Illinois
Ordinance No. 2016-M-_____

**An Ordinance Authorizing the Execution of the Phase II (Building #3)
Construction License Agreement Between First Street Development II, LLC
and the City of St. Charles, Kane and DuPage Counties, Illinois**

WHEREAS, the City of St. Charles (“City”) owns Lot 2, 3 and 5 of the Resubdivision of Phase III First Street Redevelopment Subdivision, recorded as Document No. 2015K039582, on July 27, 2015; and,

WHEREAS, the City and First Street Development II, LLC, an Illinois limited liability company (“Licensee”) are parties to the City of St. Charles Central Downtown Tax Increment Financing Redevelopment Agreement (“First Street Project”), dated March 5, 2015, and a First Amendment to City of St. Charles Central Downtown Tax Increment Financing Redevelopment Agreement (“First Street Project”), dated September 6, 2016 (the “RDA”); and,

WHEREAS, Licensee requires the temporary right to stage construction activities and materials and to commence grading, excavation and other construction activities on portions of the Redevelopment Project Area as defined in the RDA.

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

1. That the Mayor and City Clerk be, and the same are, hereby authorized and directed to execute that certain Phase II (Building #3) Construction License Agreement with Licensee in substantially the same form as attached hereto as Exhibit "A" and, by this reference, made a part hereof.

2. This Ordinance shall be in full force and effect from and after its passage and approval pursuant to law.

3. That after the adoption and approval hereof the Ordinance shall (i) be printed or published in book or pamphlet form, published by the authority of the Council, or (ii) within thirty (30) days after the adoption and approval hereof, be published in a newspaper published in and with a general circulation within the City of St. Charles.

PRESENTED to the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois this 6th day of September, 2016.

PASSED by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois this 6th day of September, 2016.

APPROVED by the Mayor of the City of St. Charles, Kane and DuPage Counties, Illinois this 6th day of September, 2016.

Raymond P. Rogina, Mayor

ATTEST:

Nancy Garrison, City Clerk

Council Vote:

Ayes:

Nays:

Absent:

Abstain:

APPROVED AS TO FORM:

City Attorney

DATE: _____

EXHIBIT "A"

**License Agreement
PHASE II (BUILDING #3)**

Prepared by: City of St. Charles 2 E. Main St. St. Charles, IL 60174	For Recorder's Use Only
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**License Agreement
PHASE II (BUILDING #3)**

This PHASE II (BUILDING #3) CONSTRUCTION LICENSE AGREEMENT ("License") is made and entered into on this 6th day of September, 2016 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 (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 I 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 II 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 1 of Phase I 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: _____
Nancy Garrison, City Clerk

LICENSEE

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

By: _____

EXHIBIT A

