

 <p>CITY OF ST. CHARLES ILLINOIS • 1834</p>	<b>AGENDA ITEM EXECUTIVE SUMMARY</b>		<b>Agenda Item number: IIB</b>
	Title:	Recommendation to Approve a Resolution Authorizing a Parking Easement Agreement between the City of St. Charles and STC MORSE, LLC.	
	Presenter:	Derek Conley, Economic Development Director	
<b>Meeting:</b> City Council		<b>Date:</b> November 20, 2023	
<b>Proposed Cost:</b> \$		<b>Budgeted Amount:</b> \$	<b>Not Budgeted:</b> <input type="checkbox"/>
<b>TIF District:</b> TIF 7 - Central Downtown (VOTING RESTRICTION)			
<p><b>Background:</b></p> <p>In May 2013, the City entered into a Parking Easement Agreement for the parking lot adjacent to the Flagship and Pollyanna building. The parking lot is partially owned by the City and partially privately owned, see Agreement Exhibit B with ownership labeled. The agreement granted reciprocal access and indemnification protections to both the City and private ownership over the entire parking lot. The agreement grants the City use of all the parcels for public parking and access purposes. This agreement expired on October 31, 2023. The City no longer has the right to utilize the privately-owned parking lot (Parcel A) for public parking or for ingress/egress purposes.</p> <p>City staff has drafted a new agreement which would substantially mirror the previous agreement. Sections referencing reservation of certain spaces for exclusive use by the former owner (BMO Bank) have been removed. The term of the new lease agreement would be in effect through December 31, 2024 and thereafter continue on a month-to-month basis, at which time each Party may cancel this Agreement upon thirty (30) days written notice to the other.</p>			
<p><b>Attachments (please list):</b></p> <p>Resolution Parking Easement Agreement (including aerial map as Exhibit B)</p>			
<p><b>Recommendation/Suggested Action (briefly explain):</b></p> <p>Recommendation to approve a Resolution Authorizing a Parking Easement Agreement between the City of St. Charles and STC MORSE, LLC.</p>			

**City of St. Charles, Illinois  
Resolution No. 2023-\_\_\_\_\_**

**A Resolution Authorizing the Mayor and City Clerk to Execute a Parking  
Easement Agreement between the City of St. Charles and STC Morse, LLC**

**Presented & Passed by the  
City Council on \_\_\_\_\_**

BE IT RESOLVED by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, that the Mayor and City Clerk are hereby authorized to execute that certain Parking Easement Agreement, in substantially the form attached hereto and incorporated herein as Exhibit "A" by and on behalf of the City of St. Charles.

PRESENTED to the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, this 20th day of November 2023.

PASSED by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, this 20th day of November 2023.

APPROVED by the Mayor of the City of St. Charles, Kane and DuPage Counties, Illinois, this 20th day of November 2023.

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

Attest:

\_\_\_\_\_  
City Clerk/Recording Secretary

Voice Vote:

Ayes:

Nays:

Absent:

Abstain:

Resolution No. \_\_\_\_\_  
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EXHIBIT "A"

Parking Easement Agreement

## PARKING EASEMENT AGREEMENT

This PARKING EASEMENT AGREEMENT (the “Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the CITY OF ST. CHARLES, Kane and DuPage Counties, Illinois (the “City”) and STC MORSE, LLC, an Illinois limited liability company (“Morse”), known collectively as the “Parties.”

### WITNESSETH

WHEREAS, Morse currently owns the parcel of real property legally described in Exhibit A, attached hereto and made a part hereof (“Parcel A”); and

WHEREAS, the City currently owns the parcels of real property legally described in Exhibit A, attached hereto and made a part hereof (“Parcel B” and “Parcel C”); and

WHEREAS, Parcels A, B and C are improved as parking areas and the Parties wish to grant reciprocal access/parking easements over each parcel pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following grants, agreements, covenants and restrictions are made:

Section 1. Ingress, Egress and Parking Easement Over Parcel A. For the Term of this Agreement (defined in Section 7 below), Morse hereby grants, gives and conveys to the City and its successors and assigns, as an easement appurtenant to Parcels B and C, a non-exclusive easement on and over Parcel A for use by the general public for the parking of motor vehicles in the parking spaces designated thereon and for ingress and egress to and from said parking spaces. No barrier, curb or other improvement shall be erected on the boundary line of Parcel A or otherwise which would prohibit or prevent ingress or egress to and from said parcel by motor vehicles or pedestrians, or the exercise of any easement rights granted to the City herein. Said easement shall be subject to the additional terms and conditions set forth herein. Any additional easements granted by Morse over Parcel A shall not interfere with the City’s use of said parcel hereunder, or any easement rights granted to the City herein.

Section 2. Ingress and Egress Easement Over Parcel B. For the Term of this Agreement, the City hereby grants, gives and conveys to Morse and its successors and assigns, as an easement appurtenant to Parcel A, a non-exclusive easement on and over Parcel B for ingress and egress for motor vehicles and pedestrians to and from Parcel A and Parcel C. No barrier, curb or other improvement shall be erected on the boundary line of Parcel B or otherwise which would prohibit or prevent ingress or egress to and from said parcels or Parcel A by motor vehicles or pedestrians, or the exercise of any easement rights granted to Morse herein. Said easement shall be subject to the additional terms and conditions set forth herein. Any additional easements granted by the City over Parcel B shall not interfere with Morse's use of said parcel hereunder, or any easement rights granted to Morse herein.

Section 3. City's Use of Parcels. The City shall, at its cost, post appropriate signs on the parcels indicating the day/hour restrictions set forth above and shall enforce the City's parking ordinances relative thereto. Subject to and without interfering with the easement and other rights granted to Morse herein, the City shall have the unrestricted right to use all of Parcels A, B and C for parking and access purposes, as substantially in the manner and as depicted on Exhibit B, attached hereto and made a part hereof. Said right shall include, but not be limited to, the ability to provide parking on a public, no fee basis, to charge a fee for parking, or to lease parking spaces under such terms and conditions as the City shall determine. If the City charges a fee for parking, all revenues generated therefrom shall belong to the City.

Section 4. Maintenance of Parcels. The City shall, at its own cost, provide sweeping, snow removal, pavement patching and repair (limited on Parcel A to \$1,000 per patch), pavement sealing and marking to define parking stalls, mowing and bush and tree trimming, lot lighting and electric energy and signage for Parcels A, B and C. If the City deems that a major repair/rebuild of Parcels A, B and C is necessary or desirable, then the City will provide Morse with at least three (3) months advance notice of the same (provided the repair/rebuild is not needed immediately, such as due to unforeseen seasonal deterioration, in which case such notice shall be provided as soon as practicable), and the estimated cost to Morse. If the estimated cost to Morse exceeds \$10,000, the City will, at a minimum, obtain three (3) quotes and provide the same to Morse for review, along with such notice. Unless Morse has a commercially reasonable objection to the quoted cost, the cost of such major repair/rebuild shall be paid for by each party pro-rata, based upon the surface area of each party's respective parcel(s).

All improvements on Parcel A shall remain the property of Morse after the termination or expiration of this Agreement.

Morse hereby grants to the City an easement over Parcel A for such maintenance/repair and/or rebuild purposes.

Section 5. Taxes. The City shall remain responsible for the general real estate taxes, if any, attributable to Parcels B and C. As may be provided by law, Morse, as property owner, shall timely apply to exempt Parcel A from general real estate taxes for calendar year 2024, as a result of entering into this Parking Easement Agreement. The City shall cooperate with Morse in filing and securing such 2024 tax year exemption. In the event any such exempt application is denied, after expiration of any available appeals, the City shall be responsible for the general real

estate taxes, if any, that may become attributable to or levied upon Parcel A for calendar year 2024, payable in 2025.

Section 6. Covenants Running with the Land; Recording. All provisions of this Agreement, including the benefits and burdens set forth herein, shall run with the land and are binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto. A fully executed copy of this Agreement shall be recorded with the Office of the Recorder, Kane County, Illinois.

Section 7. Term of Agreement. This Agreement shall be effective as of the date set forth above and shall continue through December 31, 2024 (“Initial Term”), and thereafter continue on a month-to-month basis, at which time each Party may cancel this Agreement upon thirty (30) days written notice to the other.

Section 8. Interpretation. The rule of strict construction does not apply to the grants herein. The grants herein shall be given a reasonable construction to carry out the intention of the Parties hereto.

Section 9. Indemnity and Insurance. The City shall indemnify and hold harmless Morse, its officers, employees and agents from and against any and all liability, loss, damage, costs and expenses (including reasonable attorneys’ fees) for injury to person or death or property damage arising out of or resulting from the City’s, its officers’, employees’ and agents’ negligent use of Parcel A, except for any such liability, loss, damage, costs and expenses arising in whole or in part from the acts of the City or its agents or the acts of other parties who have been granted any easement by the City upon Parcels B and/or C.

Morse shall indemnify and hold harmless the City, its elected officials, officers, employees and agents from and against any and all liability, loss, damage, costs and expenses (including reasonable attorneys’ fees) for injury to person or death or property damage arising out of or resulting from its officers’, employees’ or agents’ negligent use of Parcels B and/or C, except for any such liability, loss, damage, costs and expenses arising in whole or in part from the acts of Morse or its agents or the acts of other parties who have been granted any easement by Morse upon Parcel A.

Each Party shall carry at all times, with respect to the parcel(s) owned by it, commercial general public liability insurance, including contractual liability, in an amount not less than \$2,000,000 combined single limit per occurrence. Such insurance shall name the other Party as an additional insured. Each Party shall, from time to time upon request of the other Party, furnish to the other Party policies or certificates evidencing such coverage.

Section 10. Notices. Any and all notices, requests, demands or other communications hereunder shall be in writing and shall be deemed properly served (i) on the date sent if transmitted by personal delivery with receipt therefor, (ii) on the date sent if transmitted by electronic mail (with confirmation by hard copy to follow by first class mail), (iii) on day after the notice is deposited with an overnight courier, or (iv) three (3) days after being sent by registered or certified mail, return receipt requested, first class postage prepaid, addressed as follows (or to such new address as the addressee of such a communication may have notified the sender thereof):

To the City: City of St. Charles  
Attn: City Administrator  
2 East Main Street  
St. Charles, Illinois 60174  
E-Mail: hmcguire@stcharlesil.gov

With a copy to: Nicholas S. Peppers  
Storino, Ramello & Durkin  
9501 West Devon Avenue, Suite 800  
Rosemont, Illinois 60018  
E-Mail: npeppers@srd-law.com

To STC Morse: STC Morse, LLC  
Attn: Curtis Hurst  
1 East Main Street  
St. Charles, Illinois 60174  
E-Mail: curt@frontierdevelopmentgroup.com

With a copy to: William J. Mitchell  
Meltzer, Purtill & Stelle, LLC  
300 South Wacker Drive, Suite 2300  
Chicago, Illinois 60606  
E-Mail: wmittchell@mpslaw.com

SIGNED AND SEALED as of the date first written above.

STC MORSE:

STC MORSE, LLC, an Illinois  
limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY:

CITY OF ST. CHARLES,  
an Illinois municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Mayor

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Clerk





**EXHIBIT A**

**LEGAL DESCRIPTIONS OF PARCELS A, B AND C**

PARCEL A:

LOT 7 (EXCEPT THE WESTERLY FIVE (5) FEET OF THE NORTHERLY 25 FEET THEREOF) AND LOT 8 IN BLOCK 10 OF THE ORIGINAL TOWN OF ST. CHARLES, IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS.

P.I.N. 09-27-391-006

PARCEL B:

LOT 1 AND LOT 2 (EXCEPT THE WEST FIVE (5) FEET OF SAID LOT 2) IN BLOCK 10 OF THE ORIGINAL TOWN OF ST. CHARLES, IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS.

P.I.N. 09-27-391-005

PARCEL C:

LOT 5 AND LOT 6 (EXCEPT THE NORTHERLY 25 FEET THEREOF, AND THE PORTION OF SAID LOT 5 DEDICATED FOR PUBLIC RIGHT OF WAY) IN BLOCK 10 OF THE ORIGINAL TOWN OF ST. CHARLES, IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS.

P.I.N. 09-27-391-003

**EXHIBIT B**

**PARKING PLAN DEPICTION**

