

**AGENDA ITEM EXECUTIVE SUMMARY****Agenda Item Number: IIC4****Title:**

Motion to approve A Resolution Authorizing the Mayor and City Clerk of the City of St. Charles to Execute a Waiver of First Refusal Agreement by and between the City of St. Charles, Kane and DuPage Counties, Illinois; 2nd & Main Partners, L.L.C., an Illinois limited liability company; and H & C Hospitality, LLC, an Illinois limited liability company

**Presenter:**

Russell Colby

**Meeting:** City Council**Date:** September 20, 2021

Proposed Cost: \$

Budgeted Amount: \$

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

On September 13, 2021, Planning & Development Committee unanimously recommended approval of two requests from 2<sup>nd</sup> and Main Partners, LLC, property owner, pertaining to 201 E. Main St, location of the Office Dining & Spirits. In connection with the sale of the property to H&C Hospitality, LLC, the owners have requested City approval of:

1. Waiver of a Right of First Refusal to allow the sale of the outdoor dining lot east of the building to the new owner. (The Right of First Refusal Agreement will continue until 2025)
2. Assignment of an existing Pedestrian Walkway License to the new owner, for continued use of the second-floor walkway connecting the building to the City parking deck.

The P&D recommendation for approval was contingent upon the final documents being reviewed and approved by the City Attorney. The documents have been reviewed by all parties and are in final form.

**Attachments** *(please list):*

Resolution and Agreement

**Recommendation/Suggested Action** *(briefly explain):*

Approve the Resolution

**City of St. Charles, Illinois  
Resolution No. 2021-\_\_\_\_\_**

**A Resolution Authorizing the Mayor and City Clerk of the City of St. Charles to Execute a Waiver of First Refusal Agreement by and between the City of St. Charles, Kane and DuPage Counties, Illinois; 2nd & Main Partners, L.L.C., an Illinois limited liability company; and H & C Hospitality, LLC, an Illinois limited liability company**

**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 be and the same are hereby authorized to execute that certain Waiver of First Refusal 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, Illinois this 20th day of September, 2021.

**Passed** by the City Council of the City of St. Charles, Illinois this 20th day of September, 2021.

**Approved** by the Mayor of the City of St. Charles, Illinois this 20th day of September, 2021.

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

ATTEST: \_\_\_\_\_

City Clerk

COUNCIL VOTE:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Abstain: \_\_\_\_\_

Absent: \_\_\_\_\_

Waiver of  
Right of First Refusal  
Agreement

Prepared by:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Mail to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This WAIVER OF FIRST REFUSAL AGREEMENT is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of St. Charles, an Illinois municipal corporation (“City”), 2<sup>nd</sup> & Main Partners, L.L.C., an Illinois limited liability company (“Grantor”), and H & C Hospitality, LLC, an Illinois limited liability company (“Grantee”).

WITNESSETH:

WHEREAS, Grantor holds title to the real property commonly known as 201 E. Main Street, St. Charles, IL 60174, legally described in Exhibit A, attached hereto (“Grantor Property”); and

WHEREAS, the City of St. Charles possesses a right of first refusal (“ROFR”) to purchase a portion of said Grantor Property, legally described on Exhibit B, attached hereto (“City Parcel”), pursuant to the terms of a Right of First Refusal Agreement, recorded as Document No. 2010K056302 on August 31, 2010 in Kane County, Illinois (“Agreement”); and

WHEREAS, pursuant to the terms of said Agreement, the ROFR contained therein for the City Parcel shall expire on September 1, 2025; and

WHEREAS, an offer has been made by Grantee to purchase the Grantor Property from Grantor, which offer includes the City Parcel; and

WHEREAS, in anticipation of closing said transaction, Grantor has requested that the City waive its aforementioned ROFR.

NOW THEREFORE, it is agreed as follows:

1. Subject to the closing of the Grantor Property, including the City Parcel, conveying title to Grantee, on or before \_\_\_\_\_, 2021, the City hereby waives the ROFR contained in the Agreement, subject to, however, Grantee acknowledging and

taking title subject to the Agreement and the City's ROFR remaining effecting as to potential future transactions after the closing to Grantee, which occurs prior to September 1, 2025.

2. Upon the execution of this Agreement, Grantor shall cause this document to be recorded with the Recorder's Office in Kane County, Illinois.

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

**GRANTOR:**

**2<sup>nd</sup> & Main Partners, L.L.C., an Illinois limited liability company**

By: \_\_\_\_\_  
Manager

**CITY:**

**City of St. Charles, an Illinois municipal corporation**

By: \_\_\_\_\_  
Lora Vitek, Mayor

**ATTEST:**

By: \_\_\_\_\_  
Nancy Garrison, City Clerk

**GRANTEE:**

**H & C Hospitality, LLC, an Illinois limited liability company**

By: \_\_\_\_\_  
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 Lora Vitek, Mayor and Nancy Garrison, City Clerk, personally known to me to be the same person whose names are subscribed to the forgoing instrument, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act, and as the free and voluntary act of the City of St. Charles, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this \_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
NOTARY PUBLIC

## EXHIBIT A

### LEGAL DESCRIPTION OF SUBJECT REALTY

THAT PART OF LOT 3 (EXCEPT THE NORTHERLY 68.00 FEET OF THE WESTERLY 3.00 FEET THEREOF) AND THAT PART OF LOT 2 IN BLOCK 4 OF THE ORIGINAL TOWN OF ST. CHARLES IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID BLOCK 4; THENCE ON AN ASSUMED BEARING OF NORTH 78 DEGREES 36 MINUTES 39 SECONDS EAST, 53.19 FEET ALONG THE NORTHERLY LINE THEREOF TO THE EASTERLY 3.00 FEET OF LOT 3 AND TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 78 DEGREES 36 MINUTES 39 SECONDS EAST, 50.58 FEET MEASURED (50.79 FEET DEED) ALONG THE NORTHERLY LINE OF SAID LOTS 3 AND 2 TO THE NORTHERLY EXTENSION OF THE WESTERLY LINE OF A CONCRETE AND STONE RETAINING WALL; THENCE SOUTH 11 DEGREES 43 MINUTES 59 SECONDS EAST, 54.88 FEET ALONG THE SAID RETAINING WALL; THENCE SOUTH 78 DEGREES 20 MINUTES 14 SECONDS WEST, 37.95 FEET; THENCE SOUTH 11 DEGREES 39 MINUTES 46 SECONDS EAST; THENCE SOUTH 78 DEGREES 20 MINUTES 14 SECONDS WEST, 12.98 FEET TO THE EASTERLY LINE OF THE WESTERLY 3.00 FEET OF SAID LOT 3; THENCE NORTH 11 DEGREES 25 MINUTES 38 SECONDS WEST, 69.62 FEET ALONG SAID EASTERLY LINE TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 2978 SQUARE FEET, MORE OR LESS

THE NORTHERLY 68.00 FEET OF LOT 4 AND THE NORTHERLY 68.00 FEET OF THE WESTERLY 3.00 FEET OF LOT 3 IN BLOCK 4 OF THE ORIGINAL TOWN OF ST. CHARLES, IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS, CONTAINING 3,617 SQUARE FEET OR 0.083 ACRES, MORE OR LESS

PIN 09-27-390-006



EXHIBIT B

CITY'S PARCEL

THE NORTHERLY 68.00 FEET OF LOT 4 AND THE NORTHERLY 68.00 FEET OF THE WESTERLY 3.00 FEET OF LOT 3 IN BLOCK 4 OF THE ORIGINAL TOWN OF ST. CHARLES, IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS, CONTAINING 3,617 SQUARE FEET OR 0.083 ACRES, MORE OR LESS