

**AGENDA ITEM EXECUTIVE SUMMARY****Agenda Item Number: IIC5****Title:**

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

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 2nd 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 an Assignment of License and Consent by and between 2nd & Main Partners, L.L.C., an Illinois limited liability company; H & C Hospitality, LLC, an Illinois limited liability company; and the City of St. Charles, Kane and DuPage Counties, Illinois

**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 Assignment of License and Consent, 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: _____

EXHIBIT A

ASSIGNMENT AND ASSUMPTION OF LICENSE AND CONSENT

THIS ASSIGNMENT AND ASSUMPTION OF LICENSE AND CONSENT ("*Assignment Agreement*") is entered into this _____ day of _____, 2021, by and between 2ND & MAIN PARTNERS, LLC, an Illinois limited liability company ("*Assignor*"), H & C HOSPITALITY, LLC, an Illinois limited liability company ("*Assignee*"), and the CITY OF ST. CHARLES, an Illinois municipal corporation ("*City*").

RECITALS

Assignor is the Licensee under that certain License Agreement, dated February 11, 1999, approved pursuant to City Ordinance No. 1999-M-76 and recorded as Document No. 1999K118674 on December 17, 1999, in Kane County, Illinois ("*License Agreement*"), with the City as Licensor, pursuant to which License Agreement the City has licensed to Assignor the use of certain property owned by the City for the construction, utilization and maintenance of an elevated pedestrian walkway to provide ingress and egress to adjacent property owned by Assignor and as more fully described in the License Agreement.

Assignor desires to assign to Assignee, and Assignee desires to accept the assignment from Assignor of the License Agreement.

Whereas, in connection with the Assignment Agreement herein, the City has been requested to consent to the assignment of the License Agreement from Assignor to Assignee.

NOW, THEREFORE, in consideration of the foregoing recitals which by reference are incorporated herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Assignment.** Assignor transfers, assigns and sets over to Assignee all of the right, title and interest of Assignor in and to the License Agreement, effective as of _____, 2021 ("*Effective Date*").

2. **Assumption.** Assignee, for itself and its successors and assigns, hereby assumes and agrees to perform and be bound by all of the covenants, agreements, provisions, conditions and obligations of the Licensee under the License Agreement. Nothing contained in this Assignment Agreement shall be deemed to amend, modify or alter in any way the terms, covenants and conditions set forth in the License Agreement.

3. Indemnification of Assignee. Assignor shall indemnify, defend and hold harmless Assignee and its directors, officers, members, partners, shareholders, affiliates, agents, employees, successors and assigns from and against any and all loss, damage, cost, liability, expense, claims, suits, or proceedings (including, without limitation, reasonable attorneys' fees, paralegal fees and costs) attributable to any obligations and liabilities that arise or accrue under the License Agreement prior to the Effective Date.

4. Indemnification of Assignor. Assignee shall indemnify, defend and hold harmless Assignor and its directors, officers, members, partners, shareholders, affiliates, agents, employees, successors and assigns from and against any and all loss, damage, cost, liability, expense, claims, suits, or proceedings (including, without limitation, reasonable attorneys' fees, paralegal fees and costs) attributable to any obligations and liabilities that arise or accrue under the License Agreement on or after the Effective Date.

5. Consent. The City hereby consents to the assignment made in Paragraph 1 above of the License Agreement and the acceptance and assumption made in Paragraph 2 above; provided that, notwithstanding, such consent:

a. Assignor is not released or discharged from any liability or obligation of the Licensee arising or occurring under the License Agreement, prior to the Effective Date, but shall thereafter be released from any and all claims arising or occurring after the Effective Date; and

b. The City's consent is limited to the assignment and assumption herein made and shall not relieve Assignee from its obligation to obtain the consent of the City to any future assignment, in whole or in part, of the interest of the Licensee under the License Agreement.

6. Notice Address. Any notices to Assignee shall be effective when served to Assignee at the following address in accordance with the terms of the License Agreement:

H & C Hospitality, LLC

E-Mail: _____

7. Definitions. Any term which is capitalized, but not defined in this Assignment Agreement, which is capitalized and defined in the License Agreement, shall have the same meaning for purposes of this Assignment Agreement as it has for purposes of the License Agreement.

8. Counterparts. This Assignment Agreement may be executed in counterparts and shall constitute an agreement binding on all parties notwithstanding that all parties are not signatories to the original or the same counterpart provide that all parties are furnished a copy or copies thereof reflecting the signature of all parties.

9. Electronic Signature. The parties acknowledge and agree that they intend to conduct this transaction by electronic means that this Assignment Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, in addition to electronically produced signatures, "electronic signature" shall include faxed versions of an original signature or electronically scanned or transmitted versions (*e.g.*, via pdf) of an original signature.

10. Conflicts of Provisions. In the event of any conflict between the License Agreement and this Assignment Agreement, the terms, conditions and provisions of the latter shall govern. However, except as herein expressed amended, all of the terms, covenants, conditions and provisions of the License Agreement shall continue in full force and effect.

11. Successors and Assigns. This Assignment Agreement and the terms, covenants, provisions and conditions hereof shall be binding upon, and shall inure to the benefit of, the respective heirs, successors and assigns of the parties hereto.

12. Entire Agreement. This Assignment Agreement embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, oral or written, relating to said subject matter.

13. Modification. This Assignment Agreement may not be amended or modified in any manner except by a written agreement executed by each of the parties hereto.

14. Waiver. Neither party hereto shall be deemed to have waived any right, power or privilege under this Assignment Agreement unless such waiver shall have been expressed in a written instrument signed by the waiving party. The failure of any party hereto to enforce any provision of this Assignment Agreement shall in no way be construed as a waiver of such provision or a right of such party to thereafter enforce such provision or any other provision of this Assignment Agreement.

15. Governing Law. This Assignment Agreement and the respective rights and obligations of the parties hereto shall be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to its conflicts of laws provisions.

16. Construction of Assignment Agreement. This Assignment Agreement shall not be construed more strictly against one party than against the other, merely by virtue of the fact that it may have been prepared primarily by counsel for one of the parties, it being recognized that both Assignor and Assignee have contributed substantially and materially to the preparation of this Assignment Agreement.

17. Severability. If any provision of this Assignment Agreement is held to be invalid or unenforceable, then, to the extent that such invalidity or unenforceability shall not deprive either party of any material benefit intended to be provided by this Assignment Agreement, the remaining provisions of this Assignment Agreement shall remain in full force and effect and shall be binding upon the parties hereto.

18. Captions. The captions of this Assignment Agreement are for convenience of reference only and do not in any way limit or amplify the terms hereof.

[SIGNATURE PAGE FOLLOWS IMMEDIATELY]

IN WITNESS WHEREOF, Assignor, Assignee and the City have executed this Assignment Agreement on the day and year first above written.

ASSIGNOR:

2ND & MAIN PARTNERS, LLC,
an Illinois limited liability company

By: _____
Name: _____
Title: _____
Date: _____

ASSIGNEE:

H & C HOSPITALITY, LLC,
an Illinois limited liability company

By: _____
Name: _____
Title: _____
Date: _____

THE CITY:

CITY OF ST. CHARLES,
an Illinois municipal corporation

By: _____
Name: _____
Title: _____

Attest: _____
Name: _____
Title: _____
Date: _____