

**City of St. Charles, Illinois
Resolution No. 2024-_____**

A Resolution Authorizing the Mayor and City Clerk of the City of St. Charles to Execute a Right-Of-Way License Agreement between the City of St. Charles and Triple R-214 LLC (1416 Indiana Ave.)

**Presented & Passed by the
City Council on April 15, 2024**

BE IT RESOLVED by the Mayor and 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 a Right-Of-Way License Agreement between the City of St. Charles and Triple R-214, LLC.

PRESENTED to the City Council of the City of St. Charles, Illinois, this 15th day of April, 2024.

PASSED by the City Council of the City of St. Charles, Illinois, this 15th day of April, 2024.

APPROVED by the Mayor of the City of St. Charles, Illinois, this 15th day of April, 2024.

Lora A. Vitek, Mayor

ATTEST:

City Clerk/Recording Secretary

Voice Vote:

Ayes:

Nays:

Absent:

Abstain:

<p>Prepared by:</p> <p>City of St. Charles 2 E. Main St. St. Charles, IL 60174</p>	<p style="text-align: center;">For Recorder's Use Only</p>
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RIGHT-OF-WAY LICENSE AGREEMENT

This RIGHT-OF-WAY LICENSE AGREEMENT (hereinafter the "Agreement") is made and entered into as of this ___ day of _____, 2024, by and between the City of St. Charles, an Illinois municipal Corporation, Kane and DuPage Counties, Illinois (hereinafter "City"), and Triple R-214 LLC, an Illinois Limited Liability Corporation (hereinafter "Licensee"); the City and Licensee are sometimes hereinafter collectively referred to as the Parties ("Parties") or individually as the Party ("Party");

WITNESSETH:

WHEREAS, Licensee owns the property commonly known as 1416 Indiana Avenue, St. Charles, Illinois, legally described on Exhibit "A," attached hereto and made a part hereof ("Licensee Property"); and

WHEREAS, the City does maintain, occupy, operate and use public right-of-way known as Indiana Avenue, a portion of which is immediately adjacent to the Licensee Property ("Indiana Avenue ROW"); and

WHEREAS, Licensee proposes to redevelop the existing structure on the Licensee Property into fifteen (15) residential apartment units, which includes the addition of four (4) balconies projecting into the Indiana Avenue ROW ("Balcony Projections"), one (1) awning projecting into the Indiana Avenue ROW ("Awning Projection"), and two (2) sidewalk segments projecting into the Indiana Avenue ROW ("Sidewalk Projections"), pursuant to the plans approved by the City under Building Permit No. 202300865 and as illustrated on Exhibit "B," attached hereto and made a part hereof ("Site Plan & Building Elevations"); and

NOW, THEREFORE, in consideration of the sum of Ten (\$10.00) Dollars and other good and valuable consideration paid to City, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the foregoing premises and of the covenants and conditions

hereinafter contained, the adequacy and sufficiency of which the Parties hereto hereby stipulate, the Parties hereby agree as follows:

1. The Recitals hereinabove are hereby incorporated into and made a substantive part of this Agreement as though they were fully set forth in this Paragraph.

2. The City, hereby grants to the Licensee, its successors, grantees and assigns, an irrevocable permanent and exclusive restricted license (hereinafter the "License") for the purpose of constructing and maintaining the Balcony Projections, Awning Projection, and Sidewalk Projections solely within the limited area in the Indiana Avenue ROW, pursuant to the City approved zoning and permit plans, as illustrated on the Site Plan & Building Elevations, subject to the terms, conditions and limitations herein.

3. Licensee must construct and maintain the Balcony Projections, Awning Projection, and Sidewalk Projections in full compliance with the permit and all conditions contained herein or attached hereto by reference.

4. The Balcony Projections, Awning Projection, and Sidewalk Projections shall not in any manner be expanded, added to or enlarged beyond the extent of the Balcony Projections, Awning Projection, Sidewalk Projections as depicted, construed and illustrated on Exhibit "B."

5. The Balcony Projections, Awning Projection, and Sidewalk Projections shall not in any manner be constructed, reconstructed, modified or improved without prior written consent of the City.

6. This Agreement shall terminate in the event that any of the following occur: (a) the primary structure located on the Licensee Property is ever damaged or destroyed, to the extent that its value is less than 25% of the cost to replace the primary structure, and the Licensee shall have failed to repair the primary structure within one hundred and eighty (180) days of said damage; (b) if the Balcony Projections, Awning Projection and Sidewalk Projections are ever removed and use terminated for more than three (3) months; (c) this Agreement otherwise terminates pursuant to any other provision of this Agreement. Prior to termination of this Agreement, Licensor shall provide Licensee with a written Notice of Termination ten (10) days prior to the date of said termination.

7. Licensee understands and agrees that the Sidewalk Projections, and Balcony Projections and Awning Projection attached to the building shall remain in good structural condition at all times and that the use and enjoyment of the Indiana Avenue ROW pertaining to the Sidewalk Projections, Balcony Projections and Awning Projection shall not be compromised in any unsafe or adverse manner. The Licensee shall promptly restore or cause to be restored the Sidewalk Projections, Balcony Projections and Awning Projection to a good state of repair and in a clean, safe, unobstructed and usable condition, at all times complying with all local codes and ordinances. Should repairs or maintenance be needed to the Sidewalk Projections, Balcony Projections and Awning Projection or where the Balcony Projections and Awning Projection are attached to the building, Licensee shall perform such work within thirty (30) days of notification by the City. If the required work is not performed or completed to the City's satisfaction, the City shall have the

right to terminate the Agreement or perform or complete such work. Licensee agrees to reimburse the City for performance of such work within thirty (30) days of invoice by the City. Non-payment of invoices shall constitute a lien against the Licensee Property.

8. To the fullest extent permitted by law, Licensee hereby agrees to defend, indemnify and hold harmless the City, its officials, agents, and employee, against all injuries, deaths, loss, damages, claims, patent claims, suits, liabilities, judgments, costs and expenses, specifically including but not limited to, any claim for damages caused by or to the Balcony Projections, Awning Projection, or Sidewalk Projections, any respective parts thereof located within the or attached to the Licensee Property or within the Indiana Avenue ROW, or caused by work performed by the City, or its agents, which may in anywise accrue against the City, its officials, agents, and employees, arising in whole or in part or in consequence of the performance of this Agreement by the Licensee, their agents, invitees, employees, contractors or subcontractors, or which may in anyway result therefrom, except that arising out of the sole legal cause of the City, its agents or employees, the Licensee shall, at their own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefore or incurred in connections therewith, and, if any judgment shall be rendered against the City, its officials, agents and employees, in any such action, the Licensee shall, at its own expense, satisfy and discharge the same. Upon completion and occupancy, the Licensee shall furnish to the City a certificate of insurance evidencing commercial general liability insurance with minimum limits of \$1,000,000.00 combined single limit per occurrence and \$3,000,000.00 general aggregate limits and otherwise reasonably satisfactory to the City. The insurance policy shall be expressly endorsed to include the City as an additional insured, Such certification of insurance shall require the insurer(s) to provide not less than thirty (30) days advance written notice to the City 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 term of the License.

9. The City shall have the right, in its sole and absolute discretion, to promulgate and enforce rules and regulations regarding the use of the Balcony Projections, Awning Projection, and Sidewalk Projections, to protect the health, safety and welfare of the public utilizing the Indiana Avenue ROW. The Licensee will provide, at its expense (and the City shall have no obligation to provide or pay for), any and all improvements and/or modifications to the Balcony Projections, Awning Projection, and/or Sidewalk Projections to comply with this provision.

10. Except in the Encroachment, Licensee understands and agrees that various third party utility, telecommunication, and T.V. cable companies, including but not limited to Commonwealth Edison, NICOR and AT&T and their successors and assigns ("Utility Companies"), may have certain rights arising in the Indiana Avenue ROW, and that this Agreement does not in any way affect or diminish the rights of those Utility Companies. Licensee hereby acknowledges and agrees that the Utility Companies have no obligation or responsibility to Licensee or the Encroachment.

11. If this Agreement is terminated under any of the provisions contained herein, Licensee shall remove the Balcony Projections, Awning Projection, and Sidewalk Projections within thirty (30) days of termination. If the required work is not performed or completed to the City's satisfaction, the City shall have the right to perform or complete such work. Licensee agrees to

reimburse the City for performance of such work within thirty (30) days of invoice by the City. Non-payment of invoices shall constitute a lien against the Licensee Property.

12. The Encroachment when installed does not become a part of or an interest in the Indiana Avenue ROW, the air rights above and below or the underlying property. This Agreement shall not be construed to grant any interest in realty or any other possessory interest beyond the License granted to the Licensee, as provided herein.

13. Licensee is responsible for the cost of installation, maintenance, and removal of such Balcony Projections, Awning Projection, and Sidewalk Projections and is responsible for any damage caused to the Indiana Avenue ROW resulting from such installation, maintenance, and removal.

14. The terms of this Agreement are covenants running with the Licensee Property and shall inure to the benefit of, burden and be binding upon, the Parties hereto and their respective successors and assigns, including, but not limited to, any future association and all owners of all or any portion of, or interest in the Licensee Property.

15. This Agreement may be enforced either at law or in equity, with the non-breaching Party entitled to injunctive relief and/or monetary damages. If any action for enforcement of this Agreement is brought, the non-prevailing Party in such action shall reimburse the prevailing Party for its attorneys' fees and related costs in such action.

16. Licensee shall not assign this Agreement or its rights and duties under this License, without the prior written consent of the City, which consent may be withheld in the City's sole and absolute discretion.

17. This Agreement may be modified or amended only by a written instrument executed by the Parties, or their respective permitted successors or assigns.

18. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

[SIGNATURE PAGE FOLLOWS IMMEDIATELY]

Dated this ____ day of _____, 2024.

TRIPLE R-214 LLC
an Illinois Limited Liability Corporation

By: _____

Subscribed and sworn to before me this ____ day of _____, 2024.

Notary Public

CITY OF ST. CHARLES,
an Illinois municipal corporation

By: _____
Mayor

Attest: _____
City Clerk

Exhibit A:

Licensee Property

THAT PART OF BLOCK 5 OF W.H. WILCOX SECOND ADDITION TO ST CHARLES AND THAT PART OF VACATED INDIANA AVENUE, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID BLOCK 5; THENCE SOUTH ALONG THE WESTERLY LINE OF SAID BLOCK AND SAID WEST LINE EXTENDED 131.5 FEET TO A LINE DRAWN PARALLEL WITH AND 4 FEET SOUTHERLY OF, MEASURED AT RIGHT ANGLES THERETO THE SOUTHERLY LINE OF SAID BLOCK 5; THENCE EASTERLY ALONG SAID PARALLEL LINE AND SAID LINE EXTENDED TO THE EASTERLY LINE OF SAID BLOCK 5; THENCE NORTHERLY ALONG SAID EASTERLY LINE TO THE NORTHEAST CORNER THEREOF; THENCE NORTHERLY ALONG SAID NORTHERLY LINE 344.4 FEET TO THE POINT OF BEGINNING, IN THE CITY OF ST CHARLES, KANE COUNTY, ILLINOIS.

PIN #09-26-352-002

Exhibit B:

Site Plan & Building Elevations

Indiana ROW and City Approved Plans Depicting Scope of
Balcony Projections, Awning Projection and Sidewalk Projections

WARNING



CALL BEFORE YOU DIG
(48 HOURS NOTICE REQUIRED PRIOR TO DIGGING)

COUNTY ENGINEERS, INC.
COMMERCIAL MANUFACTURE
ONEWS DOOLEY BLDG. GREEN, ILLINOIS 60134

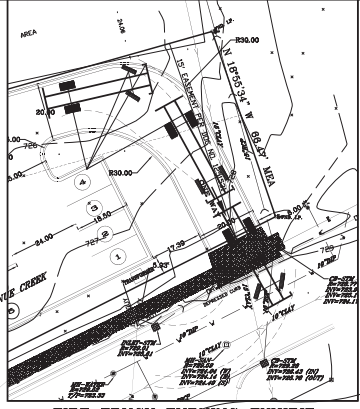
Scale: 1" = 20'

ADDRESS: 1418 INDIANA AVENUE
OWNER/PETITIONER: ST. CHARLES, HANE COUNTY

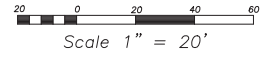
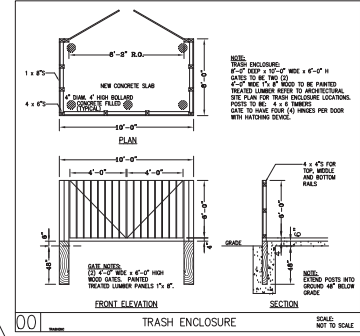
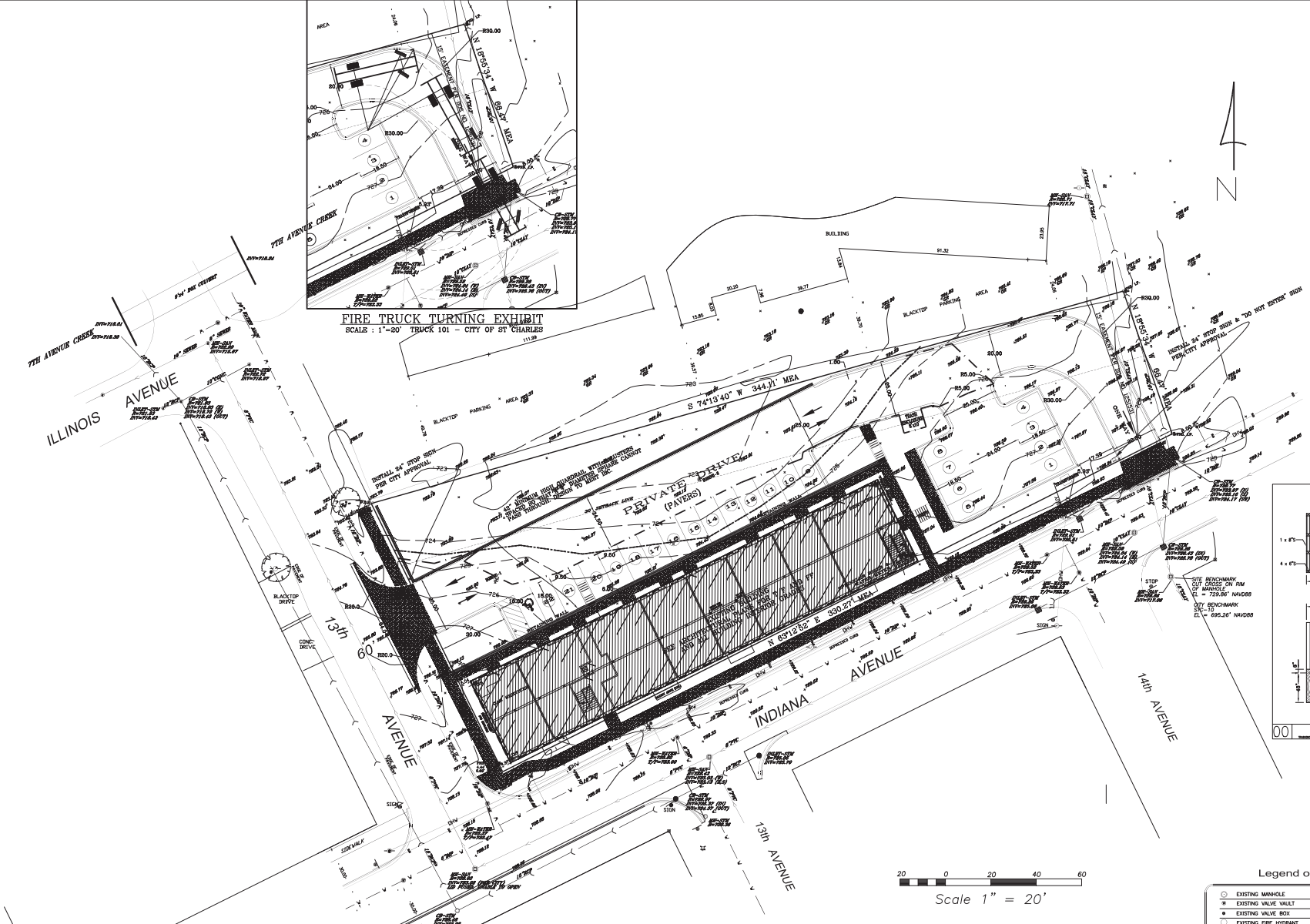
REVISIONS
1 12/28/2023 CITY COMMENTS

2 16/14/2023 CITY COMMENTS
3 7/11/2023 CITY COMMENTS
4 8/21/2023 CITY COMMENTS
5 11/25/2023 CITY COMMENTS

MARCH 10, 2023
GEOMETRIC PLAN
SHEET 3 OF 14



FIRE TRUCK TURNING EXHIBIT
SCALE: 1" = 20' TRUCK 101 - CITY OF ST CHARLES



NOTE- 7TH AVENUE CREEK FLOOD ELEVATION AS SHOWN ON FEMA F100002043
100-YR FLOOD ELEVATION = 724.5
10-YR FLOOD ELEVATION = 723.1

----- EXISTING 100-YR FLOODPLAIN
- - - - - PROPOSED 100-YR FLOODPLAIN

Legend of Symbols & Abbreviations

○	EXISTING MANHOLE	■	CONCRETE FILLED POST
●	EXISTING VALVE VAULT	□	□=W=H INDICATES WATER MANHOLE
■	EXISTING FIRE HYDRANT	AC	AIR-CONDITIONING UNIT
■	EXISTING SQUARE INLET	■	EXISTING MAILBOX
○	EXISTING STORM INLET (IN)	■	EXISTING WELL
○	EXISTING UTILITY POLE	■	EXISTING TRAFFIC SIGN
○	INDICATES IRON PIPE FOUND	■	ALL FINISHING SIGN
■	EXISTING TELEPHONE BOX	○	EXISTING STREET LIGHT
■	(S&N) EXISTING SANITARY MANHOLE	○	(M=STW) EXISTING STORM MANHOLE
■	HANDICAPPED PARKING SPOT	■	ELECTRIC BOX
		■	EXISTING CONCRETE PAVEMENT

Balcony, Awning & Sidewalk Projection Details

