



ST. CHARLES  
SINCE 1834

### AGENDA ITEM EXECUTIVE SUMMARY

Title: Recommend Approval of Request from SMN Development, LLC For Extension of Purchase Agreement (1 West Main Street)

Presenter: Chris Aiston

*Please check appropriate box:*

<input type="checkbox"/>	Government Operations	<input type="checkbox"/>	Government Services
<input type="checkbox"/>	Planning & Development	<input checked="" type="checkbox"/>	City Council (1/17/12)
<input type="checkbox"/>	Public Hearing	<input type="checkbox"/>	

Estimated Cost:	NA	Budgeted:	YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
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If NO, please explain how item will be funded:

#### Executive Summary:

In a letter dated August 16, 2011 and citing his client's inability to secure pre-lease/pre-sale commitments required for private financing, Attorney Joe Klein, on behalf of SMN Development, LLC (SMN), formally requests an extension of certain dates referenced in the pending Purchase Agreement (Third Amendment) between the City and SMN. Per this request, SMN is asking that it be given until on or before May 8, 2012 to (i) secure a building permit and (ii) secure an unconditional commitment for construction financing, with the construction escrow to be opened simultaneously with, and as a condition to closing the purchase on the City's 52-foot wide parcel located between 1<sup>st</sup> Street and the Fox River, north of Illinois Street and south of Main Street.

As planned, once purchased, SMN will combine this parcel with its property at 1 West Main Street (former Manor Restaurant parcel). Approving this request requires a Fourth Amendment to the City's existing purchase agreement with SMN. SMN is requesting an extension of the above-referenced date to September 15, 2012. However, staff is recommending an extension only to February 21, 2012, assuming progress continues with respect to the proposed joint venture initiative to modify existing plans for Phase III of the 1<sup>st</sup> Street Project.

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

Ordinance Approving Fourth Amendment to Purchase Agreement (Including Amended Purchase Agreement as an Exhibit)

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

Staff recommends that the City Council approve an Ordinance Approving and Authorizing the Execution of the Fourth Amendment to Purchase Agreement By and Between the City of St. Charles and SMN Development, L.L.C. establishing February 21, 2012 as the relevant date as set forth above.

For office use only: Agenda Item Number: IA

**City of St. Charles, Illinois**  
**Ordinance No. \_\_\_\_\_**

**An Ordinance Approving and Authorizing the Execution of the  
Fourth Amendment to Purchase Agreement By and Between  
The City of St. Charles and SMN Development, L.L.C.**

WHEREAS, SMN Development, L.L.C., an Illinois limited liability company (the “Developer”), has previously entered into a Purchase Agreement, dated September 2, 2008, First Amendment to Purchase Agreement, dated January 5, 2009, Second Amendment to Purchase Agreement, dated September 21, 2009, and Third Amendment to Purchase Agreement, dated April 5, 2010 (collectively, the “Agreement”), with the City of St. Charles, Kane and DuPage Counties, Illinois (the “City”) for the purchase of a certain vacant parcel of real property (the “Premises”) located within the First Street Redevelopment Project Area (the “Redevelopment Area”); and

WHEREAS, the parties desire to amend the Agreement to revise the conditions of and date for closing of the Premises; and

WHEREAS, the Corporate Authorities of the City find it is in the best interests of the City to enter into this Fourth Amendment to Purchase Agreement.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, as follows:

Section 1. That the foregoing recital clauses to this Ordinance are adopted as the findings of the Corporate Authorities of the City of St. Charles and are incorporated herein by specific reference.

Section 2. That upon receipt from the Developer of four (4) executed copies of the Fourth Amendment to Purchase Agreement, the City Administrator is hereby authorized to execute the Fourth Amendment to Purchase Agreement in substantially the form of such agreement appended to

this Ordinance as Exhibit A, with such changes therein as shall be approved by the officials of the City executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from and after the execution and delivery of such Fourth Amendment to Purchase Agreement.

Section 3. That the officials, officers and employees of the City are hereby authorized to take such further actions and execute such documents as are necessary to carry out the intent and purpose of this Ordinance and of the Fourth Amendment to Purchase Agreement.

Section 4. That this Ordinance shall be in full force and effect upon and after its passage in the manner provided by law.

PRESENTED to the City Council of the City of St. Charles, Illinois this \_\_\_\_ day of \_\_\_\_\_, 2012.

PASSED by the City Council of the City of St. Charles, Illinois, this \_\_\_\_ day of \_\_\_\_\_, 2012.

APPROVED by the Mayor of the City of St. Charles, Illinois, this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
MAYOR DONALD P. DeWITTE

ATTEST:

\_\_\_\_\_  
CITY CLERK

COUNCIL VOTE:

- Ayes:
- Nays:
- Absent:
- Abstain:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

Date: \_\_\_\_\_

**EXHIBIT A**

**FOURTH AMENDMENT TO PURCHASE AGREEMENT**

This Fourth Amendment to Purchase Agreement (“Fourth Amendment”) is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between SMN Development, L.L.C., an Illinois limited liability company (“Purchaser”), and the City of St. Charles, an Illinois municipal corporation (“Seller”).

W I T N E S S E T H:

WHEREAS, Purchaser and Seller entered into that certain Purchase Agreement, dated September 2, 2008, First Amendment to Purchase Agreement, dated January 5, 2009, Second Amendment to Purchase Agreement, dated September 21, 2009, and Third Amendment to Purchase Agreement, dated April 5, 2010 (collectively, the “Agreement”), for the purchase and sale of the Premises, as defined in the Agreement and legally described in Exhibit A, attached hereto and to be made a part hereof; and

WHEREAS, the Seller and Purchaser desire to amend the Agreement to extend the Conditions Precedent Date, under Paragraph 8 of the Agreement; and

WHEREAS, the parties desire to further amend and modify the Agreement to incorporate the terms and conditions set forth in this Fourth Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby mutually agree as follows:

1. Incorporation of Recitals. The foregoing recitals are hereby incorporated as if fully rewritten.

2. Definitions; Amendment Controls. Capitalized terms used, but not defined herein, shall have the same meaning ascribed to such terms in the Agreement. To the extent any of the terms and conditions set forth in this Fourth Amendment shall conflict with any of the terms and conditions of the Agreement, the terms and conditions set forth in this Fourth Amendment shall at all times supersede, govern and control. In all other respects, this Fourth Amendment shall supplement the terms and conditions of the Agreement.

3. Conditions Precedent. Paragraph 8 of the Agreement is hereby deleted in its entirety and the following Paragraph 8 is hereby inserted in lieu thereof:

8. **Conditions Precedent.** On or before February 21, 2012, this Agreement and each party’s obligations to close are subject to Purchaser (i) securing a building permit and (ii) securing an unconditional commitment for construction financing, with the construction escrow to be opened simultaneously with, and as a condition to, the closing herein of the Premises between the parties.

4. Compliance. The parties hereby acknowledge that each has been faithfully performing its required obligations under the terms of the Agreement and that neither party is in breach or in default in the performance of any covenant or agreement required to be performed of such party under the Agreement as of the date hereof.

5. Ratification of Agreement. Except as amended and modified in this Fourth Amendment, the Agreement is hereby ratified to be in full force and effect.

6. Counterparts. This Fourth Amendment may be executed in counterparts, each of which shall constitute an original, but all together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed or caused this Fourth Amendment to the Agreement to be executed, as of the day and year first above written.

PURCHASER:

SMN Development, L.L.C.,  
an Illinois limited liability company

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

Attest: \_\_\_\_\_

SELLER:

City of St. Charles,  
an Illinois municipal corporation

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

Brian Townsend  
City Administrator

**EXHIBIT "A"**

**Legal Description of Real Estate**

LOT 2 OF PHASE III FIRST STREET REDEVELOPMENT SUBDIVISION OF PART OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 27 AND EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 34, TOWNSHIP 40 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 8, 2008, AS DOCUMENT 2008K089916 AND CORRECTION CERTIFICATE RECORDED DECEMBER 8, 2008, AS DOCUMENT 2008K089917.