

AGENDA ITEM EXECUTIVE SUMMARY



Title:	Recommendation to Approve an Ordinance Authorizing the Execution of an Eighth Amendment to a Purchase Agreement By and Between the City of St. Charles and SMN Development, L.L.C.
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 (07/16/12)
<input type="checkbox"/>	Public Hearing	<input type="checkbox"/>	

Estimated Cost:	N/A	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 January 30, 2012 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”), has requested an amendment to the pending Purchase Agreement between the City and SMN. Per this request, SMN is asking that it be given until on or before December 12, 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 First Street, 52-foot wide parcel.

As planned, once purchased, SMN will combine this parcel with its property at 1 West Main Street (former Manor Restaurant parcel). At this time, staff is recommending an amendment to the subject Agreement allowing SMN until May 7, 2013 to meet the aforesaid conditions, and adding an additional condition that SMN install a fence (as recommended by staff and the DSCP in fall of 2011) along First Street to replace the temporary, chain link fence that is currently located at that location.

Attachments: *(please list)*

Ordinance (including Exhibit A, the Amended Purchase Agreement)

Recommendation / Suggested Action *(briefly explain):*

Recommend approval of an Ordinance Approving and Authorizing the Execution of an Eighth Amendment to Purchase Agreement By and Between the City of St. Charles and SMN Development, L.L.C., subject to Attorney review.

For office use only: *Agenda Item Number:* IB

City of St. Charles, Illinois
Ordinance No. _____

**An Ordinance Approving and Authorizing the Execution
of an Eighth 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, and subsequent amendments dated January 5, 2009, September 21, 2009, April 5, 2010, December 5, 2011, January 17, 2012, February 12, 2012 and May 7, 2012 (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; 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 Eighth 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 this Eighth Amendment to Purchase Agreement, the City Administrator is hereby authorized to execute this Eighth 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

Ordinance No. _____
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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 Eighth 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 Eighth 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:

_____ Date: _____
City Attorney

EXHIBIT A

EIGHTH AMENDMENT TO PURCHASE AGREEMENT

This Eighth Amendment to Purchase Agreement (“Eighth 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, and subsequent amendments dated January 5, 2009, September 21, 2009, April 5, 2010, December 5, 2011, January 17, 2012, February 12, 2012 and May 7, 2012 (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 Eighth 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. The provisions of this Eighth Amendment shall be deemed by the parties to be fully integrated into the Agreement. Should any provision of the Agreement conflict with any of the terms and conditions of this Eighth Amendment, the terms and conditions set forth in this Eighth Amendment shall at all times supersede, govern and control.

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.** Each party’s obligation to close on the sale and purchase of the Premises is subject to the following conditions:

(i) On or before August 30, 2012, Purchaser shall install a fence along South First Street substantially similar to the description and location as indicated in Exhibit B, attached hereto and incorporated herein. Purchaser shall make no substantive deviations with respect

to material, construction and location of said fence, as set forth in Exhibit B, without first obtaining approval from the City, pursuant to City building permit;

- (ii) On or before May 7, 2013, the Purchaser shall:
 - a. secure a building permit; and
 - b. secure 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.

If any of the conditions precedent to the obligations set forth in this Paragraph or elsewhere in the Agreement are not fulfilled at or within the times set forth herein for the fulfillment thereof (after any applicable cure period), or not otherwise waived in writing by the parties, either party may terminate this Agreement by notice to the other, and thereupon this Agreement shall become null and void.

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 Eighth Amendment, the Agreement is hereby ratified to be in full force and effect.

6. Counterparts. This Eighth 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 Eighth 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.

EXHIBIT "B"

Fence Description and Location

Furnish and install 60' of 4' high "Delgard" fence to include:

- Styles: Elba
- Colors: Hunter Green
- 3/4"x3/4" square pickets
- All posts set into concrete footings 10" diameter x 36" deep

