



ST. CHARLES  
SINCE 1834

### AGENDA ITEM EXECUTIVE SUMMARY

Title:	Recommendation to approve an Ordinance Authorizing the Purchase of Certain Property for Corporate Purposes by the City of St. Charles and Related Matters - 119 North Third Street
Presenter:	Brian Townsend

*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
<input type="checkbox"/>	Public Hearing	<input type="checkbox"/>	

Estimated Cost:	\$800,000	Budgeted:	YES	<input checked="" type="checkbox"/>	NO	<input type="checkbox"/>
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If NO, please explain how item will be funded:

**Executive Summary:**

The Veterans of Foreign Wars Post #5036 and the City of St. Charles have negotiated an agreement that will allow the VFW to sell its building and adjacent parking lot to the City of St. Charles.

The property is located at 119 N. 3rd Street in downtown St. Charles. The property is 35,000 square feet and consists of a one-story, 5,600 square foot building that was constructed in 1952 and expanded in 1986. The property also includes an adjacent parking lot of 40 spaces.

Representatives of the VFW approached the City of St. Charles in October, 2011 about their interest in selling the building due to increasing maintenance and operating costs and a declining membership base.

The City intends to remove the existing building to expand parking in this area of the downtown. It is estimated that the completed parking lot will contain 85 spaces. In addition, the City's draft Comprehensive Plan calls for future redevelopment in the area, including the potential to construct a public parking structure. The City's existing land holdings, coupled with the acquisition of the VFW site, will ensure that the City plays a critical role in any redevelopment that may occur in the future.

The closing of the transaction is scheduled to take place on June 14, 2013.

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

- Ordinance
- Purchase and Sale Agreement

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

Recommendation to approve an Ordinance Authorizing the Purchase of Certain Property for Corporate Purposes by the City of St. Charles and Related Matters - 119 North Third Street.

*For office use only:*

*Agenda Item Number:* IE

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

**An Ordinance Authorizing the Purchase of Certain Property for  
Corporate Purposes by the City of St. Charles and Related  
Matters - 119 North Third Street**

**Presented & Passed by the  
City Council on April 15, 2013**

**WHEREAS**, the City of St. Charles, pursuant to its powers as a home rule municipality, is authorized to acquire and hold real property and interests in real property for corporate purposes; and

**WHEREAS**, the City has determined that it is necessary and in the best interests of the residents of the City that certain real property be acquired for such purposes, such real property located at 119 North Third Street, St. Charles, Illinois.

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

**SECTION ONE**: That the Mayor and City Clerk be and the same are hereby authorized to execute a Purchase and Sale Agreement with St. Charles Veterans Club, Inc., in substantially the form attached hereto as Exhibit "A", and, by this reference, incorporated herein, with such changes as may be approved by the City Attorney.

**SECTION TWO**: That the Mayor and City Clerk of the City be and the same are hereby authorized to execute and attest all other documents necessary to effectuate the purpose of the Purchase and Sale Agreement.

**SECTION THREE**: This Ordinance shall be in full force and effect from and after its passage and approval in the manner provided by law.

**Presented** to the City Council of the City of St. Charles, Illinois this 15<sup>th</sup> day of April, 2013.

**Passed** by the City Council of the City of St. Charles, Illinois this 15<sup>th</sup> day of April, 2013.

Ordinance No. \_\_\_\_\_  
Page 2 of 2

**Approved** by the Mayor of the City of St. Charles, Illinois this 15<sup>th</sup> day of  
April, 2013.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Council Vote:

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

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

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

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

## PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between St. Charles Memorial Post #5036, VFW, Inc., an Illinois not-for-profit corporation (the "Seller") and the City of St. Charles, an Illinois municipal corporation (the "Buyer").

### RECITALS:

A. Seller is the owner of certain real estate known located at 119 North Third Street, St. Charles, Illinois, as legally described on Exhibit A, attached hereto and incorporated herein (the "Property").

B. Seller desires to sell the Property to Buyer, and Buyer desires to buy the Property from Seller, on the terms and subject to the conditions of this Agreement.

THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

### ARTICLE I PURCHASE AND SALE

1.01. Agreement to Buy and Sell. Subject to the terms and conditions of this Agreement, Seller will sell to Buyer, and Buyer will purchase from Seller, good and marketable title to the Property subject only to the Permitted Exceptions which are set forth on Exhibit B, attached hereto and incorporated herein.

1.02. Purchase Price. The purchase price (the "Purchase Price") for the Property will be Eight Hundred Thousand Dollars (\$800,000).

1.03. Payment Terms. The Purchase Price will be payable at Closing (as hereinafter defined), plus or minus prorations provided for under this Agreement, and less other credits to which Buyer is entitled under the terms of this Agreement, in U.S. funds, by cashier's check or wire transfer of immediately available funds.

### ARTICLE II CERTAIN PRE-CLOSING MATTERS

2.01. Deposit. Within five (5) business days following the execution of this Agreement, the parties, through their respective attorneys, shall establish a strict joint order escrow with Chicago Title & Trust Company (the "Escrow Agent") through which the transaction contemplated hereby shall be closed. Upon opening of said escrow, Buyer shall cause a deposit (the "Deposit") in the amount of \$50,000 to be placed in said escrow. The Deposit shall be held in an interest bearing escrow account by the Escrow Agent in an institution as directed by Buyer and include any interest earned thereon. The escrow instructions shall be in the form customarily used by the Escrow Agent with such special provisions added thereto as may be required to conform to the provisions of this Agreement. Seller and Buyer will each pay one-half (1/2) of the escrow fee. If the Closing occurs, the Deposit shall be paid to Seller and credited against the

Purchase Price at Closing. If the Closing does not occur in accordance with the terms hereof, the Deposit shall be held and delivered as hereinafter provided.

2.02. Title Commitment. Within fifteen (15) days of the execution of this Agreement, Seller will deliver to Buyer a commitment for an owner's title insurance policy ("Title Commitment") issued by Chicago Title Insurance Company (the "Title Company") in the amount of the Purchase Price, covering title to the Property on or after the date of this Agreement, showing title in the intended grantor, subject only to the general exceptions contained in the policy, the Permitted Exceptions and title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at Closing and which Seller will so remove or cause to be removed at Closing by using funds Buyer will pay upon delivery of the deed.

2.03. Survey. Within fifteen (15) days of the execution of this Agreement, Seller shall deliver a survey (the "Survey") to Buyer, at Seller's sole cost and expense, but subject to reimbursement pursuant to Section 3.04 hereof. The Survey shall show no encroachments onto the Property from any adjacent property, no encroachments by or from the Property onto any adjacent property and no violation of or encroachments upon any recorded building lines, restrictions or easements affecting the Property. If the Survey is dated more than ninety (90) days prior to the Closing Date (as hereinafter defined), Seller shall furnish at Closing a certificate of the surveyor to Buyer dated within ninety (90) days prior to Closing certifying that there have been no changes or additions to the Property since the date of the Survey.

2.04. Title Defects. If either the Title Commitment or the Survey disclose any encroachment or violation or any exceptions to title other than an exception described in Section 2.02 of this Agreement (an "Unpermitted Exception"), unless the Buyer otherwise notifies the Seller that it is willing to accept the Property subject to the Unpermitted Exception(s), Seller shall have ten (10) days from the date of delivery thereof to have the Title Company issue its endorsement insuring against damage caused by such encroachments, violations or Unpermitted Exceptions, and provide evidence thereof to Buyer. If Seller fails to have the same insured against within said 10-day period, Buyer may elect, on or before the Closing, to terminate this Agreement or accept the Property subject to such encroachments, violations and Unpermitted Exceptions.

2.05. Existing Lease. The Buyer is currently leasing the parking lot located upon the Property from the Seller pursuant to a Lease Agreement dated August 1, 2011 (the "Lease"). Notwithstanding the Notice of Termination, dated November 15, 2012 directed to the Buyer, prior to the Closing Date, and for so long as no default has occurred or is occurring under the Lease or this Agreement, the Lease shall remain in effect and the Seller agrees not to terminate the Lease.

2.06. Due Diligence Period. During the period that begins on the date which this Agreement is fully executed by both parties and ending thirty (30) days thereafter (the "Due Diligence Period"), the Buyer and/or its engineer, contractors and subcontractors shall have reasonable access to the Property (during business hours and with at least one day's prior notice to Seller of the date, time and scope of the proposed inspection) for the purpose of any non-intrusive physical and environmental inspection of the Property. Seller or its agent will have the

right to accompany Buyer on any such inspection. Buyer shall not conduct or allow any physically intrusive testing of, on, or under the Property without first obtaining Seller's consent as to the timing and scope of the work to be performed, such consent not to be unreasonably withheld by Seller.

Buyer and any engineer, contractor or subcontractor accessing the Property pursuant to this Section shall have the following insurance from an insurance company reasonably acceptable to Seller: (i) commercial general liability insurance in an amount not less than \$1,000,000 per occurrence, (ii) worker's compensation insurance at statutory limits, and (iii) employer's liability insurance in an amount not less than \$1,000,000 per occurrence. The commercial liability insurance will name Seller as an additional insured, and Buyer shall provide Seller with a certificate of insurance evidencing the same prior to Buyer's access to the Property.

Buyer shall indemnify, defend and hold harmless Seller and Seller's agents and advisors and their respective trustees, officers, directors, employees, contractors and agents from and against any and all loss, cost, damage, liability and expense whatsoever (including reasonable attorney fees) arising out of or from the conduct of the aforesaid activities by Buyer.

If, during the Due Diligence Period, the Buyer, in its sole discretion, determines that the Property is not satisfactory to the Buyer for any reason, the Buyer may notify Seller in writing, prior to the expiration of the Due Diligence Period, that the Buyer elects not to purchase the Property. Upon giving such notice, this Agreement shall automatically expire and become null and void. Buyer will return the Property to its original condition and the Deposit, together with any interest earned thereon, shall be returned to the Buyer.

### ARTICLE III APPORTIONMENT OF COSTS

3.01. Real Estate Taxes. General and special real estate and other ad valorem taxes and assessments and other state or city taxes, fees, charges and assessments affecting the Property, if any, shall be prorated as of the Closing Date on the basis of one hundred percent (100%) of the most recent ascertainable amounts of, or other reliable information in respect to, each such item, and the net credit to Buyer or Seller shall be paid in cash at the Closing. Any such taxes prorated on an estimated basis on the Closing Date shall be reprorated by the parties when and as the actual amount of such item becomes known. Any adjustment due to reproration shall be effected not later than ten (10) days following final determination of the amount of such item and demand by the party to whom credit is due.

3.02. Transfer Taxes. Seller will pay all transfer taxes imposed by the State of Illinois, Kane County and the City of St. Charles, if any.

3.03. Title; Recording Costs. Seller will pay any fee the Title Company charges for issuing the Title Commitment, including any date down fee, and will also pay all premiums for the Owner's title insurance policy. Seller will pay any separate title exam charges and the recording fees for any mortgage or other encumbrance releases. Buyer will pay the recording fees for the deed conveying the Property.

3.04. Reimbursement of Certain Costs. Buyer shall, at Closing, reimburse Seller for Seller's actual costs incurred, up to a maximum amount of \$10,000 for closing costs, including, but not limited to, attorney fees, survey, title commitment and title policy. If such costs are less than \$10,000, Buyer shall also provide a credit to Seller against the real estate tax proration described in Section 3.01, but only to the extent that such credit, when added to the reimbursable costs described in this Section, does not exceed \$10,000. Any tax proration above that amount shall be credited to the Buyer at Closing.

#### ARTICLE IV CLOSING

4.01. Closing Date and Location; Escrow. Seller and Buyer will use their best efforts to close this transaction by June 14, 2013 (the "Closing Date"), at the offices of the Title Company, or at such other time as is mutually acceptable to Seller and Buyer. Unless the parties otherwise agree to the contrary, the Closing shall not occur prior to June 1, 2013. In this Agreement, the term "Closing" refers to Seller's conveyance of title to the Property to Buyer. Closing will take place through a New York style deed and money escrow with the Title Company serving as escrow agent (the "Escrow Agent"). Not less than two (2) days before the Closing Date, Seller and Buyer will execute the standard form of New York style deed and money escrow instructions then in use by the Escrow Agent, modified as necessary to conform to the terms of this Agreement. Seller and Buyer will each pay one-half (1/2) of the escrow fee, but subject to the reimbursement provisions set forth in Section 3.04 hereof.

4.02. Seller's Closing Documents. At Closing, Seller will deposit with the Escrow Agent for delivery to Buyer, the following documents:

- (a) A recordable warranty deed, in a form reasonably acceptable to Buyer's counsel and the Title Company, conveying good and marketable title to Buyer in fee simple, free and clear of all liens and encumbrances, except the Permitted Exceptions.
- (b) An ALTA Owner's Title Insurance Policy ("Title Policy") issued by the Title Company in the form customarily used by the Title Company for property similar to the Property, in the amount of the Purchase Price, insuring that Buyer or Buyer's assignee has marketable, good, insurable and indefeasible fee simple title to the Property, subject only to the general exceptions of the Policy, the Permitted Exceptions, and any other exceptions Buyer has elected to accept.
- (c) Payoff letters issued by the holders of all mortgages or trust deeds of record, if any, setting forth the amount(s) required to release the Property from such mortgages or trust deeds, or release deed(s) sufficient to release such mortgages or trust deeds or record as to the Property.
- (d) A duly executed affidavit attesting to the absence of any claims of lien or potential lienors known to the Seller and further attesting that there have been no improvements to the Property for one hundred twenty (120) days immediately preceding the Closing Date which have not been fully paid for.

- (e) ALTA Statements, executed in duplicate.
- (f) Executed real estate transfer tax declarations.
- (g) Executed Closing Statement.
- (h) Such other documents as reasonably may be required to consummate the transaction contemplated by this Agreement.

4.03. Buyer's Closing Documents. At Closing, in addition to the Purchase Price, Buyer will deposit with the Escrow Agent for delivery to Seller, the following documents:

- (a) ALTA Statements in duplicate.
- (b) Executed counterpart of Seller's Closing Statement.
- (c) A copy of the ordinance or resolution of Buyer's City Council, approving this Agreement and authorizing Buyer to complete the transaction described herein, certified by an authorized officer of Buyer as being a true and complete copy of the original and as being in effect.
- (d) Such other documents as reasonably may be required to consummate the transaction contemplated by this Agreement.

## ARTICLE V REPRESENTATIONS

5.01. Seller's Representations. To induce Buyer to enter into this Agreement, Seller makes the following representations (all of which representations will be deemed to have been made again at the time of the Closing, and all will survive the Closing), and Seller's obligations under Section 5.03 to indemnify and hold Buyer harmless from any and all loss, expense or liability Buyer may suffer or incur, including reasonable attorneys' fees and court costs, as a result of any inaccuracy in any of such representations, will be applicable.

(a) Seller has full power and authority to enter into and carry out the terms and provisions of this Agreement. The execution and performance of this Agreement and the terms and provisions hereof by Seller are not inconsistent with, and do not result in the breach of any terms of any agreement or instrument to which Seller is a party or by which Seller may be bound.

(b) Seller has the right and authority to perform hereunder without obtaining any consent from governmental authorities or others except as expressly provided herein. The transactions herein contemplated will not constitute a violation of any applicable law, rule, regulation, ordinance, judgment, order or decree of any governmental entity or court to which Seller is subject.

(c) Seller will at all times on and after the date of this Agreement, act with diligence and in good faith to satisfy any contingencies remaining unsatisfied from time to time, and to perform its obligations under this Agreement.

5.02. Buyer's Representations. To induce Seller to enter into this Agreement, Buyer makes the following representations (all of which representations will be deemed to have been made again at the time of Closing, and all will survive the closing), and Buyer's obligations under Section 5.03 to indemnify and hold Seller harmless from any and all loss, expense or liability Seller may suffer or incur, including reasonable attorneys' fees and court costs, as a result of any inaccuracy in any of such representations, will be applicable.

(a) Buyer is a municipal corporation, duly organized, validly existing and in good standing under the laws of the State of Illinois, with full power and authority to enter into and carry out the terms and provisions of this Agreement. The execution and performance of this Agreement and the terms and provisions hereof by Buyer are not inconsistent with, and do not result in the breach of any terms of any agreement or instrument to which Buyer is a party or by which Buyer may be bound.

(b) Buyer has the right and authority to perform hereunder without obtaining any consent from governmental authorities or others except as expressly provided herein. The transactions herein contemplated will not constitute a violation of any applicable law, rule, regulation, ordinance, judgment, order or decree of any governmental entity or court to which Buyer is subject.

(c) Buyer will at all times on and after the date of this Agreement act with diligence and in good faith to satisfy any contingencies remaining unsatisfied from time to time, and to perform its obligations under this Agreement.

5.03. Survival of Representations; Indemnification. The representations of the parties will be deemed to be continuing representations up to and including the Closing Date, with the same force and effect as though such representations had been made as of Closing. The representations of the parties will further survive the Closing, will not merge with any deed of conveyance, and will be continuing commitments and obligations of the parties hereto following the Closing Date, subject to any applicable statutes of limitations. Seller and Buyer agree to reimburse and indemnify each other (and Seller's and Buyer's employees, agents, successors and assigns) from and against all liability, damages and losses whatsoever, including reasonable attorney's fees and court costs, resulting from any misrepresentation, or breach of covenant made by the indemnifying party in this Agreement or in any document certificate or exhibit given or delivered to the other pursuant to this Agreement.

ARTICLE VI  
CONDITION OF PROPERTY

6.01. Environmental Definitions. For purposes of this Article VI, the term "Hazardous Substance" shall mean at any time, any substance, waste, pollutant, contaminant or material, in solid, liquid or gaseous form, which:

(a) Is a substance regulated or defined or designated as hazardous, extremely or imminently hazardous, dangerous or toxic pursuant to any law, by any local, state, territorial or federal governmental authority; or

(b) Is a substance with respect to which such a governmental authority otherwise requires environmental investigation, monitoring, reporting, or remediation, including but not limited to,

(1) All substances, wastes, pollutants, contaminants and materials regulated, or defined or designated as hazardous, extremely or imminently hazardous, dangerous or toxic, under the following federal statutes and their state counterpart, as well as these statutes' implementing regulations: the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*, the Clean Water Act, 33 U.S.C. §1251 *et seq.*, the Clean Air Act, 42 U.S.C. §7401 *et seq.*, the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §11011 *et seq.*, the Safe Drinking Water Act, 33 U.S.C. §300f *et seq.*, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136 *et seq.*, and the Atomic Energy Act, 42 U.S.C. §2011 *et seq.*;

- (2) Petroleum and petroleum products including crude oil and any fractions thereof;
- (3) Natural gas, synthetic gas, and any mixtures thereof;
- (4) Radon;
- (5) Radioactive substances;
- (6) Asbestos;
- (7) Urea formaldehyde;
- (8) Polychlorinated biphenyl; and
- (9) Electromagnetic field radiation.

The term "Environmental Laws" shall mean all statutes specifically described in the foregoing sentence and all federal, state and local environmental health and safety statutes, ordinances, codes, rules, regulations, orders and decrees regulating, relating to or imposing liability or standards concerning or in connection with Hazardous Substances.

6.02. Environmental Representations. Seller represents that to the best of Seller's knowledge: (i) neither the Property nor any part thereof is in breach of any Environmental Laws, and (ii) the Property is free of any Hazardous Substances that would trigger response or remedial action under any Environmental Laws or any existing common law theory based on nuisance or strict liability.

6.03. No Notices. Seller has received no notice that the Property or any part thereof is, and, to the best of the Seller's knowledge and belief, no part of the Property is located within an area that has been designated by the Federal Emergency Management Agency, the Army Corps of Engineers or any other governmental body as being subject to special hazards.

6.04. "As-Is" Condition. BUYER IS ACCEPTING THE PROPERTY IN "AS-IS" CONDITION AS OF THE CLOSING DATE. SELLER DOES NOT MAKE, AND BUYER ACKNOWLEDGES THAT SELLER HAS NOT MADE, ANY REPRESENTATION (EXCEPT FOR THE SELLER'S REPRESENTATION SET FORTH HEREIN), WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOIL, THE GROUNDWATER OR ANY OTHER ASPECT OR COMPONENT OF THE PROPERTY, OR THE PRESENT OR FUTURE MERCHANTABILITY, CONDITION, QUALITY, DURABILITY, FITNESS OR SUITABILITY OF THE SOIL, THE GROUNDWATER OR ANY OTHER ASPECT OR COMPONENT OF THE PROPERTY OR ANY PART THEREOF IN ANY RESPECT OR IN CONNECTION WITH OR FOR THE PURPOSES AND USES OF BUYER, OR ANY OTHER REPRESENTATION, GUARANTEE, WARRANTY OR COVENANT OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT THERETO.

## ARTICLE VII POSSESSION/DAMAGE PRIOR TO CLOSING

7.01. Delivery at Closing. Seller will deliver possession of the Property to Buyer at Closing, and shall remove any personal property belong to Seller from the Property prior to Closing, except to the extent otherwise provided herein. Seller and Buyer shall conduct a walk through inspection of the Property within fifteen (15) days of the date of this Agreement and shall prepare an inventory list of the items of personal property and fixtures which Seller shall leave on the Property. If the Seller and Buyer do not both execute an agreed upon the inventory list within ten (10) days of the walk through, either party may terminate this Agreement by giving notice of such termination within fifteen (15) days of the walk through inspection. Upon such notice, this Agreement shall become null and void and the Deposit, together with any interest earned thereon, shall be returned to the Buyer.

7.02 Destruction or Damage. If, subsequent to the date hereof and prior to the Closing Date, all or any material portion (in the judgment of Buyer) of the Property shall be destroyed or damaged by one or more incidents of vandalism, fire and/or other casualty, whether or not covered by insurance, Seller shall immediately give Buyer notice of such occurrence. In such event, the parties shall close the transaction contemplated hereby as scheduled, but Buyer shall have the right to participate in the adjustment and settlement of any insurance claim relating to said damage, and Seller shall assign and/or pay to Buyer at closing all insurance proceeds (and other related choses in action, if any) collected or claimed with respect to said loss or damage plus any deductible or self-insured amount; provided, however, that the amount of such proceeds paid to Buyer shall not exceed the Purchase Price.

ARTICLE VIII  
BROKERS

8.01 No Brokers. Seller and Buyer represent and warrant to each other that they have dealt with no brokers or real estate agents in connection with the transaction described in this Agreement.

8.02. Indemnity. Seller and Buyer will indemnify each other against all loss, cost, damage and expense the other may incur as the result of a claim for commission, fee or other compensation made by any broker or real estate agent by reason of the transaction described in this Agreement, where such claim is based on dealings or alleged dealings by such broker or agent with the indemnifying party.

8.03. Survival. The representations of Seller and Buyer, and their agreements contained in this Article VIII, will survive the Closing or other termination of this Agreement.

ARTICLE IX  
DEFAULT

9.01. Default by Seller. In the event the Closing and the transactions contemplated hereby do not occur as provided herein by reason of the default of Seller, Buyer may elect, as the sole and exclusive remedy of Buyer, to (i) terminate this Agreement and receive the Deposit from the Escrow Agent; (ii) rescind this transaction; or (iii) enforce specific performance of this Agreement. Notwithstanding the foregoing, nothing contained herein shall limit Buyer's remedies at law or in equity as to obligations that survive the closing or termination of this Agreement.

9.02. Default by Buyer. In the event the Closing and the transactions contemplated hereby do not occur as provided herein by reason of the default of Buyer, Seller may elect, as the sole and exclusive remedy of Seller, to (i) terminate this Agreement and receive the Deposit from the Escrow Agent; (ii) rescind this transaction; or (iii) enforce specific performance of this Agreement. Notwithstanding the foregoing, nothing contained herein shall limit Seller's remedies at law or in equity as to obligations that survive the closing or termination of this Agreement.

ARTICLE X  
MISCELLANEOUS

10.01. Fees and Expenses. All costs, fees and expenses, including reasonable attorneys' fees, and court costs, incurred by a non-defaulting party as a result of the default of the other party will be paid by the defaulting party.

10.02. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and will be deemed to have been given when delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid return receipt

requested to the addresses noted below; (b) by means of prepaid overnight delivery service to the addresses noted below; or (c) by email transmission to the email addresses noted below:

If to Seller: St. Charles Memorial Post #5036, VFW, Inc.  
119 North Third Street  
St. Charles, IL 60174

With a copy to: James F. Cooke  
215 W. Illinois Street  
St. Charles, IL 60174  
Email: jcooke@jimcookelaw.com

If to Buyer: City of St. Charles  
Two East Main Street  
St. Charles, IL 60174  
Attn: City Administrator

With a copy to: Gorski & Good, LLP  
Attn: Robin Jones  
211 S. Wheaton Avenue, Suite 305  
Wheaton, IL 60187  
Email: rjones@gorskigood.com

or to such other address as a party may from time to time specify in writing to the other parties in accordance with the terms hereof.

10.03. Amendment. This Agreement cannot be amended or terminated except by written instrument signed by all the parties hereto.

10.04. Waiver. No failure by Seller or Buyer to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement, or to exercise any right or remedy upon a breach thereof, will constitute a waiver thereof. Any party hereto, by notice to the other parties, may, but will be under no obligation to, waive any of its rights or any condition to its obligations hereunder, or any duty, obligation or covenant of the other parties hereto. No waiver will affect or alter any other covenant, agreement, terms or condition of this Agreement, all of which shall continue in full force and effect.

10.05. Captions. The captions of this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement.

10.06. Governing Law. This Agreement has been entered into in the State of Illinois and will be interpreted under and government by the laws of the State of Illinois.

10.07. Assignment. Buyer may not assign this Agreement, or any of Buyer's rights hereunder, nor may Buyer delegate its duties, without first obtaining Seller's written consent, which Seller may withhold in its absolute discretion.

10.08. Binding Effect. Without limiting the provisions of Section 10.07, this Agreement will bind and inure to the benefit of the parties hereto and their respective successors and assigns.

10.09. Prior Agreements. This Agreement (including the exhibits attached hereto) is the entire agreement between Seller and Buyer and supersedes in its entirety all prior agreements and understandings relating to the Property. The Exhibits attached hereto are a material part of this Agreement.

10.10. Time of the Essence. Time is of the essence of the performance of each of the obligations of Seller and Buyer.

10.11. Execution. This Agreement may be executed simultaneously or in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.12 Liquor License. The parties acknowledge that the existing liquor license held by the Seller is scheduled to expire on April 30, 2013. The Seller has scheduled two (2) events for which a liquor license is required, on May 11th and May 25<sup>th</sup>, respectively. The Buyer shall issue an E-1 liquor license for each such event under the following circumstances: (i) a timely application for a liquor license is filed with the Buyer, (ii) the Seller meets each and every applicable provision of the Buyer's liquor control ordinance and the Liquor Control Act of 1934 relating to applications, qualifications, regulations and restrictions for operators of licensed establishments. The Buyer shall waive the application fee for such application.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have signed this Agreement on the date first above written.

SELLER:

ST. CHARLES MEMORIAL POST #5036, VFW,  
INC., an Illinois not-for profit corporation

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

ATTEST:

\_\_\_\_\_  
City Clerk

BUYER:

CITY OF ST. CHARLES, an Illinois municipal  
corporation

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

ATTEST:

\_\_\_\_\_  
City Clerk

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

PARCEL ONE:

LOTS 3, 4, 7 AND 5 FEET OF THE NORTHEAST CORNER OF LOT 2 (BEING 5 FEET ON STATE STREET AND RUNNING SOUTHERLY TO A POINT ON THE EASTERLY LINE OF SAID LOT 2, WHICH IS 60 FEET FROM STATE STREET) IN BLOCK 47 OF THE ORIGINAL TOWN OF ST. CHARLES, ON THE WEST SIDE OF FOX RIVER, IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS

PARCEL TWO:

LOT 8 IN BLOCK 47 OF THE ORIGINAL TOWN OF ST. CHARLES, ON THE WEST SIDE OF FOX FIVER, IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS

EXHIBIT "B"

PERMITTED EXCEPTIONS

1. Covenants, conditions and restrictions of record;
2. Private, public and utility easements and roads and highways, if any;
3. General taxes for 2012 and subsequent years;
4. Special taxes or assessments for improvements not yet completed, if any;
5. Installments not due as of the Closing Date for any special tax or assessment for improvements previously completed.