



ST. CHARLES
S I N C E 1 8 3 4

AGENDA ITEM EXECUTIVE SUMMARY

Title: Recommendation to approve a Resolution Authorizing the Execution of a Parking Easement Agreement with BMO Harris Bank, N.A.

Presenter: Mark Koenen

Please check appropriate box:

<input checked="" type="checkbox"/>	Government Operations	X	Government Services 04.22.13
<input type="checkbox"/>	Planning & Development		City Council
<input type="checkbox"/>	Public Hearing		

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:

The City and BMO Harris Bank, N. A. have worked together for years to provide parking in the downtown. Please recall parking Lot B ownership is shared between BMO Harris and the City. This Parking Lease Agreement extends the lease for parking (66 spaces) at the northwest corner of 2nd Ave and Illinois Ave until April 30, 2023 and with mutual agreement for successive five year extensions. Terms of the lease are generally unchanged from prior agreements except as follows:

- 1- BMO and the City have granted parking easements to the other respective contractual party that run with the duration of the agreement. The previous agreement’s “right of first refusal” has been deleted from the new agreement.
- 2- BMO employees and authorized users (including tenants or invitees of the bank, subsequent owners and their tenants/invitee for building located at 11-13 E. Main St.) have the right to use 26 designated parking spaces located in the parking lot on Monday-Friday 7 AM to 5 PM and on Saturday 8 AM to 12 PM (noon) except for bank holidays.

For your information, Robin Jones of Gorski Good has reviewed this document.

Attachments: *(please list)*

Resolution
Parking Easement Agreement (this will be inserted before the meeting, as it is not available at time of publishing)

Recommendation / Suggested Action *(briefly explain):*

Recommendation to approve a Resolution Authorizing the Execution of a Parking Easement Agreement with BMO Harris Bank, N.A.

For office use only: *Agenda Item Number: 4.c*

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

**A Resolution Authorizing the Mayor and City Clerk of the City
of St. Charles to Execute a Certain Agreement
Parking Easement with BMO Harris Bank, N.A.**

**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 Intergovernmental Agreement, 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 ____ day of _____, 2013.

Passed by the City Council of the City of St. Charles, Illinois this ____ day of _____, 2013.

Approved by the Mayor of the City of St. Charles, Illinois this ____ day of _____, 2013.

Mayor Donald P. DeWitte

Attest:

City Clerk

Council Vote:

Ayes: _____

Nays: _____

Abstain: _____

Absent: _____

PARKING EASEMENT AGREEMENT

THIS PARKING EASEMENT AGREEMENT (the "Agreement") is made this ____ day of _____, 2013, by and between the City of St. Charles, Kane and DuPage Counties, Illinois (the "City") and BMO Harris Bank, N.A., a national banking association (the "Bank"), known collectively as the "Parties".

WITNESSETH

WHEREAS, the Bank currently owns the parcel of real property legally described in Exhibit "A" attached hereto and made a part hereof ("Parcel A"); and,

WHEREAS, the City currently owns the parcels of real property legally described in Exhibit "B" attached hereto and made a part hereof ("Parcel B" and "Parcel C"); and,

WHEREAS, Parcels A, B and C are improved as parking areas and the Parties wish to grant reciprocal access/parking easements over each Parcel pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following grants, agreements, covenants and restrictions are made:

Section 1. Parking Easement over Parcel A. For the Term of this Agreement (defined in Section 9 below), the Bank hereby grants, gives and conveys to the City and its successors and assigns, as an easement appurtenant to Parcels B and C, a non-exclusive easement on and over Parcel A for use by the general public for the parking of motor vehicles in the parking spaces designated thereon and for ingress and egress to and from said parking spaces. No barrier, curb or other improvement shall be erected on the boundary line of Parcel A or otherwise which would prohibit or prevent ingress or egress to and from said Parcel by motor vehicles or pedestrians, or the exercise of any easement rights granted to the City herein. Said easement shall be subject to the additional terms and conditions set forth herein. Any additional easements granted by the Bank over Parcel A shall not interfere with the City's use of said Parcel hereunder, or any easement rights granted to the City herein.

Section 2. Parking Easement over Parcel C. For the Term of this Agreement, the City hereby grants, gives and conveys to the Bank and its successors and assigns, as an easement appurtenant to Parcel A, a non-exclusive easement on and over Parcel C for use by certain Authorized Users (as hereinafter defined) for the parking of motor vehicles by Authorized Users in the parking spaces reserved exclusively for Authorized User parking as designated on Exhibit C hereto (subject to Section 4 below) (the "Reserved Parking Spaces"), and for ingress and egress to and from said Reserved Parking Spaces. No barrier, curb or other improvement shall be erected on the boundary line of Parcel C or otherwise which would prohibit or prevent ingress or egress to and from said Parcel by Authorized Users, or the exercise of any easement rights granted to the Bank

herein. Said easement shall be subject to the additional terms and conditions set forth herein. Any additional easements granted by the City over Parcel C shall not interfere with the Bank's use of said Parcel hereunder, or any easement rights granted to the Bank herein.

For purposes of this Agreement, "Authorized Users" of the Reserved Parking Spaces shall mean any one or more of the following, as the Bank designates to the City from time to time in its sole discretion: (a) Bank employees, customers or invitees, (b) Bank tenant employees, customers, or invitees; and/or (c) the employees, customers or invitees of any subsequent owner(s) of any of the the building(s) located at 1, 9, 13 and 15 E. Main Street, or of any tenant(s) of such subsequent owner(s). The Bank shall reasonably cooperate with the City to establish a procedure reasonably acceptable to the City whereby the City can identify the Authorized Users that the Bank designates when enforcing its parking regulations, such as by use of vehicle stickers and/or hang tags. The Bank acknowledges that if an Authorized User fails to comply with the agreed upon procedure, such Authorized User shall be subject to ticketing/towing by the City. The Bank reserves the right to allocate, as it sees fit, certain Reserved Parking Spaces to certain Authorized Users.

Section 3. Ingress and Egress Easement over Parcel B. For the Term of this Agreement, the City hereby grants, gives and conveys to the Bank and its successors and assigns, as an easement appurtenant to Parcel A, a non-exclusive easement on and over Parcel B for ingress and egress for motor vehicles and pedestrians to and from Parcel A and Parcel C. No barrier, curb or other improvement shall be erected on the boundary line of Parcel B or otherwise which would prohibit or prevent ingress or egress to and from said Parcels or Parcel A by Authorized Users, or the exercise of any easement rights granted to the Bank herein. Said easement shall be subject to the additional terms and conditions set forth herein. Any additional easements granted by the City over Parcel B shall not interfere with the Bank's use of said Parcel hereunder, or any easement rights granted to the Bank herein.

Section 4. Bank's Use of Parcels; Reserved Parking Spaces. At no cost, fee or other charge for parking, the Bank and its Authorized Users shall have the exclusive right to use of the twenty six (26) designated Reserved Parking Spaces located on Parcels A and C, which are depicted on Exhibit "C" attached hereto and incorporated herein, between the hours of 7:00 a.m. and 5:00 p.m. Monday through Friday and 8:00 a.m. and 12:00 p.m. (noon) on Saturday, except when any of such days shall fall on a Bank holiday. The City currently allows non-reserved public parking at all other hours at no cost, fee or charge, and all Authorized Users shall be entitled to the same benefit at all other hours, including overnight. If the City shall determine to charge a fee for parking, the City shall provide the Bank with a least sixty (60) days advance written notice and, upon request of the Bank, the parties shall in good faith ~~consider~~ negotiate amending this Agreement to permit a mutually agreed upon number of Authorized Users to use any available parking spaces on a non-reserved basis at no cost or fee at all other hours, including overnight.

The City shall, at its cost, post appropriate signs on the Parcels indicating the day/hour restrictions set forth above and shall enforce the City's parking ordinances relative thereto. Upon mutual agreement the parties may agree to relocate the designated Reserved Parking Spaces.

Section 5. City's Use of Parcels. Subject to and without interfering with the easement and other rights granted to the Bank herein, and including without limitation the Bank's and Authorized Users' exclusive use rights with respect to the Reserved Parking Spaces as described above, the City shall have the unrestricted right to use all of Parcels A, B and C for parking and access purposes. Said right shall include, but not be limited to, the ability to provide parking on a public, no fee basis, to charge a fee for parking, or to lease parking spaces under such terms and conditions as the City shall determine. If the City charges a fee for parking, all revenues generated therefrom shall belong to the City.

Section 6. Maintenance of Parcels. The City shall, at its own cost, provide sweeping, snow removal, pavement patching and repair (limited on Parcel A to \$1,000 per patch), pavement sealing and marking to define parking stalls, mowing and bush and tree trimming, lot lighting and electric energy and signage for Parcels A, B and C. If the City deems that a major repair/rebuild of Parcels A, B and C is necessary or desirable, then the City will provide the Bank with at least 12 months advance notice of the same (provided the repair/rebuild is not needed immediately, such as due to unforeseen seasonal deterioration, in which case such notice shall be provided as soon as practicable), and the estimated cost to the Bank. If the estimated cost to the Bank exceeds \$10,000, the City will, at a minimum, obtain three (3) quotes and provide the same to the Bank for review along with such notice. Unless the Bank has a commercially reasonable objection to the quoted cost, the cost of such major repair/rebuild shall be paid for by each party pro-rata based upon the surface area of each party's respective Parcel(s).

All improvements on Parcel A shall remain the property of the Bank after the termination or expiration of this Agreement.

The Bank hereby grants to the City an easement over Parcel A for such maintenance purposes.

Section 7. Taxes. Each Party shall remain responsible for the real estate taxes, if any, attributable to the Parcel(s) each such Party owns.

Section 8. Covenants Running with the Land; Recording. All provisions of this Agreement, including the benefits and burdens set forth herein, shall run with the land and are binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto. A fully executed copy of this Agreement shall be recorded with the Office of the Recorder, Kane County, Illinois.

Section 9. Term of Agreement. This Agreement shall be effective as of the date set forth above and shall continue through April 30, 2023 ("Initial Term"). Upon mutual agreement of the Parties, this Agreement may be extended for successive five (5) year periods (each a "Renewal Term"), such mutual agreement to be evidenced by an extension agreement executed by both Parties and recorded with the Office of the Recorder for Kane County, Illinois. In order to give effect to this provision, no less than 90 days before expiration of the Initial Term or any Renewal Term, each party shall send notice to the other as to such party's intent or interest in extending the

Term. Within ten (10) business days of the first of such notices to be sent, the parties shall meet and confer to determine whether such mutual agreement can be reached.

Section 10. Interpretation. The rule of strict construction does not apply to the grants herein. The grants herein shall be given a reasonable construction to carry out the intention of the Parties hereto.

Section 11. Indemnity and Insurance. The City shall indemnify and hold harmless the Bank, its officers, employees, agents and Authorized Users from and against any and all liability, loss, damage, costs and expenses (including reasonable attorneys' fees) for injury to person or death or property damage arising out of or resulting from the City's negligent use of Parcel A, except for any such liability, loss, damage, costs and expenses arising in whole or in part from the acts of the Bank or its agents or the acts of Authorized Users.

The Bank shall indemnify and hold harmless the City, its officers, employees and agents from and against any and all liability, loss, damage, costs and expenses (including reasonable attorneys' fees) for injury to person or death or property damage arising out of or resulting from the Bank's or any Authorized User's negligent use of Parcels B and/or C, except for any such liability, loss, damage, costs and expenses arising in whole or in part from the acts of the City or its agents or the acts of other parties who have been granted any easement by the City upon Parcels B and/or C.

Each Party shall carry at all times, with respect to the Parcel(s) owned by it, commercial general public liability insurance, including contractual liability, in an amount not less than \$2,000,000 combined single limit per occurrence. Such insurance shall name the other Party as an additional insured. Each Party shall, from time to time upon the request of the other Party, furnish to the other Party policies or certificates evidencing such coverage.

Section 12. Notices. All notices hereunder shall be in writing and must be served either personally or by registered or certified mail to:

A. The City at:

City St. Charles
2 E. Main Street
St. Charles, Illinois 60174
Attn: City Administrator

with a copy to:

Gorski & Good, LLP
211 S. Wheaton Avenue
Suite 305
Wheaton, Illinois 60187
Attn: Robin N. Jones

B. The Bank at:

BMO Harris Bank, N.A.
Corporate Real Estate
111 W. Monroe Street – Floor 21W
Chicago, Illinois 60603

with a copy to:

Bailey Borlack Nadelhoffer
135 S. LaSalle Street
Suite 3950
Chicago, Illinois 60603
Attn: Eric Grossman

C. To such other person or place which either party hereto, by its prior written notice, shall designate for notice to it from the other parties hereto.

IN WITNESS WHEREOF, the PARTIES hereto have set their hands and seals the day and year first above written.

City of St. Charles

By: _____
Mayor

ATTEST:

City Clerk

BMO Harris Bank, N.A.

By: _____

ATTEST:

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Donald P. DeWitte, Mayor of the City of St. Charles, and Nancy Garrison, City Clerk of said City, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Mayor and City Clerk, respectively appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth; and the City Clerk then and there acknowledged that she, as custodian of the corporate seal of said City, did affix the corporate seal of said City to said instrument, as her own free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of _____,
2013.

Notary Public

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____, _____ of BMO Harris Bank N.A., and _____, _____ of said company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such _____ and _____, respectively appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act, and as the free and voluntary act of said company, for the uses and purposes therein set forth; and said _____ then and there acknowledged that he, as custodian of the seal of said company, did affix the seal of said company to said instrument, as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this _____ day of _____, 2013.

Notary Public

EXHIBIT "A"

LEGAL DESCRIPTION OF PARCEL A

Lot 7 (except the westerly five (5) feet of the northerly 25 feet thereof) and Lot 8 in Block 10 of the Original Town of St. Charles, in the City of St. Charles, Kane County, Illinois

EXHIBIT "B"

LEGAL DESCRIPTION OF PARCELS "B" AND "C"

PARCEL B:

Lot 1 and Lot 2 (except the west five (5) feet of said Lot 2) in Block 10 of the Original Town of St. Charles, in the City of St. Charles, Kane County, Illinois

PARCEL C:

Lot 5 and Lot 6 (except the northerly 25 feet thereof, and the portion of said Lot 5 dedicated for public right of way) in Block 10 of the Original Town of St. Charles, in the City of St. Charles, Kane County, Illinois


EXHIBIT "C"

SITE PLAN

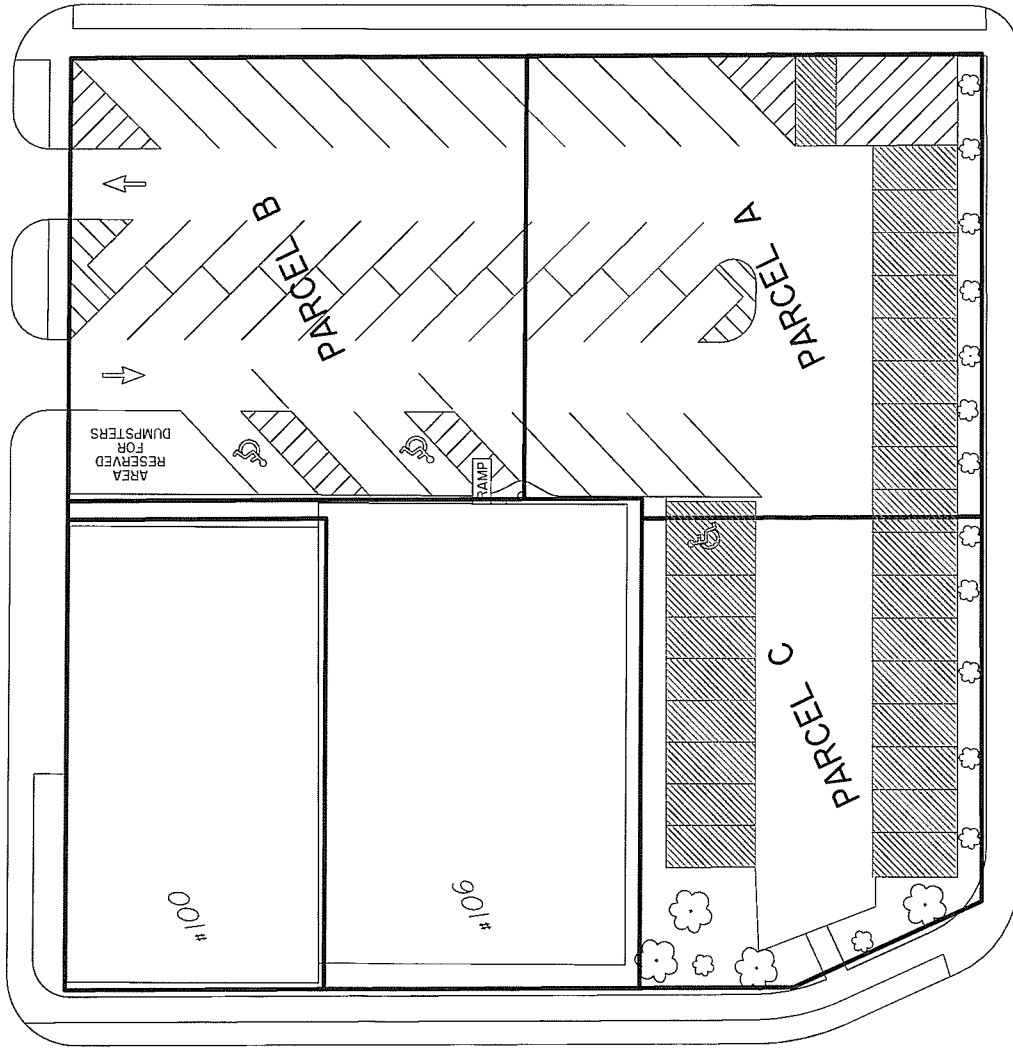
PARCEL A:
OWNED BY BMO HARRIS BANK, N.A.

PARCEL B:
OWNED BY CITY OF ST. CHARLES

PARCEL C:
OWNED BY CITY OF ST. CHARLES

 RESERVED/LEASED PARKING STALLS

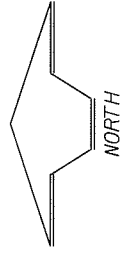
WALNUT AVE.



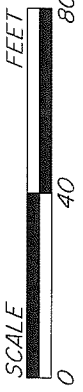
SOUTH RIVERSIDE AVE.

SOUTH 2nd AVE.

ILLINOIS AVE.



DATE: FEBRUARY 22, 2012

SCALE  FEET

0 40 80

EXHIBIT I