



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

AGENDA ITEM EXECUTIVE SUMMARY

Title: Motion to approve an Ordinance Authorizing the Execution of an Eleventh Amendment to a Purchase Agreement By and Between the City of St. Charles and SMN Development, L.L.C.

Presenter: Rita Tungare

Please check appropriate box:

	Government Operations		Government Services
	Planning & Development	X	City Council – New Business (11/18/13)
Estimated Cost:	N/A	Budgeted:	<input type="checkbox"/> YES <input type="checkbox"/> NO

If NO, please explain how item will be funded:

Executive Summary:

In 2008, the City entered into a purchase agreement with SMN Development, LLC, to purchase a 52 ft. wide parcel (i.e. Lot 2 of the Phase III First Street Subdivision) fronting First Street for the purpose of combining the parcel with property SMN owns at 1 W. Main St. (former Manor Restaurant parcel) to construct a four-story retail/office building. This building is known as Building 9 in the First Street Redevelopment PUD.

The agreement specifies SMN must secure the following by November 18, 2013: 1) building permit and 2) an unconditional commitment for construction financing, with a construction escrow to be opened simultaneously with, and as a condition to, the closing.

Staff is recommending an amendment to the purchase agreement allowing SMN until February 18, 2014 to meet the aforesaid conditions. The date coincides with the First Street Phase III PUD construction extension that is being considered.

Attachments: *(please list)*

Ordinance

Recommendation / Suggested Action *(briefly explain):*

Motion to approve an Ordinance Authorizing the Execution of an Eleventh Amendment to a Purchase Agreement By and Between the City of St. Charles and SMN Development, L.L.C.

For office use only

Agenda Item Number:

City of St. Charles, Illinois
Ordinance No. _____

**An Ordinance Approving and Authorizing the Execution
of an Eleventh 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, May 7, 2012, July 16, 2012, May 6, 2013 and August 19, 2013 (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 Eleventh 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 Eleventh Amendment to Purchase Agreement, the City Administrator is hereby authorized to execute this Eleventh 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. _____

Page 2

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 Eleventh 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 Eleventh 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 18th day of November, 2013.

Passed by the City Council of the City of St. Charles, Illinois, this 18th day of November, 2013.

Approved by the Mayor of the City of St. Charles, Illinois, this 18th day of November, 2013.

MAYOR RAYMOND P. ROGINA

ATTEST:

CITY CLERK

COUNCIL VOTE:

Ayes: _____

Nays: _____

Absent: _____

Abstain: _____

APPROVED AS TO FORM:

_____ Date: _____

City Attorney

EXHIBIT A

ELEVENTH AMENDMENT TO PURCHASE AGREEMENT

This Eleventh Amendment to Purchase Agreement (“Eleventh Amendment”) is entered into on this _____ day of _____, 2013, 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, May 7, 2012, July 16, 2012, May 6, 2013 and August 19, 2013 (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.

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 Eleventh 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 Eleventh Amendment, the terms and conditions set forth in this Eleventh 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:

On or before February 18, 2014, 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, 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 Eleventh Amendment, the Agreement is hereby ratified to be in full force and effect.

6. Counterparts. This Eleventh 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 Eleventh Amendment to the Agreement to be executed, as of the day and year first above written.

PURCHASER:

SELLER:

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

City of St. Charles,
an Illinois municipal corporation

By: _____

By: _____

City Administrator

Attest: _____

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.

City of St. Charles, Illinois

Ordinance No. 2008-M-59

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

**Adopted by the
City Council
of the
City of St. Charles
September 2, 2008**

**Published in pamphlet form by
authority of the City Council
of the City of St. Charles,
Kane and Du Page Counties,
Illinois, September 5, 2008**

Nancy Garrison

City Clerk



(SEAL)

DATE OF PUBLICATION 09/05/08
RECEIVED PUBLIC WORKS

DATE FOR
COURTESY 09/02/08
PAGE

ORDINANCE NO. 2008-M-59

**AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION
OF THE 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") desires to enter into a purchase agreement ("Purchase Agreement") with the City of St. Charles, Kane and DuPage Counties, Illinois (the ACity@) for the purchase of a parcel of real property (the "Property") located within the First Street Redevelopment Project Area (the ARedevelopment Area@); and

WHEREAS, copies of the proposed Purchase Agreement and Redevelopment Plan and Project, as amended, for the Redevelopment Area have been on file for public inspection in the Office of the City Clerk/City Administrator since August 16, 2008; and

WHEREAS, on August 16, 2008, a notice was published in the Kane County Chronicle providing, among other things, an invitation to all interested parties to submit alternative proposals to the City on or before 3:00 p.m., September 2, 2008, for the purchase of the Property to be conveyed to the Developer pursuant to the Purchase Agreement; and

WHEREAS, the City finds that the time period within which to submit alternate proposals was sufficient for purposes of satisfying the Tax Increment Allocation Act, 65 ILCS 5/11-74.4-1 *et seq.*, as amended (the "Act"); and

WHEREAS, no alternative proposals have been submitted to the City concerning the purchase of the Property; and

WHEREAS, the Corporate Authorities of the City find it is in the best interests of the City to enter into the 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 Purchase Agreement, the Mayor is hereby authorized to execute, and the City Clerk is hereby authorized to attest the 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 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 Purchase Agreement.

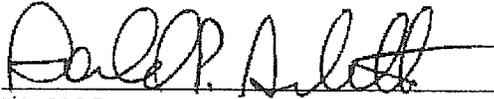
[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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 2nd day of September, 2008.

PASSED by the City Council of the City of St. Charles, Illinois, this 2nd day of September, 2008.

APPROVED by the Mayor of the City of St. Charles, Illinois, this 2nd day of September, 2008.


MAYOR

ATTEST:

Filing acknowledged this 3rd day of September, 2008:


CITY CLERK



EXHIBIT A

PURCHASE AGREEMENT

PURCHASE AGREEMENT

THIS AGREEMENT ("Agreement"), made this 2nd day of September, 2008 ("Effective Date") by and between SMN DEVELOPMENT, L.L.C. (hereinafter referred to as "Purchaser"), and the CITY OF ST. CHARLES, an Illinois municipal corporation (hereinafter referred to as "Seller").

1. Subject to the terms and conditions of this Agreement, Seller agrees to sell and Purchaser agrees to buy approximately 3,804.7 square feet of certain vacant real estate legally described and depicted as set forth in Exhibit A ("Premises"), including all hereditaments and appurtenances pertaining to the Premises, including without limitation all of Seller's right, title, and interest in and to adjacent streets, alleys, rights-of-way, and/or easements for ingress and egress.

2. PURCHASE PRICE/FINANCING/POSSESSION.

(a) The Purchase Price for the Premises shall be One Hundred Seventy-Two Thousand Forty-Eight and 00/100 Dollars (\$172,048.00) ("Purchase Price"), plus or minus prorations, to be paid at Closing in cash or cashier's or certified funds.

(b) Possession shall be granted to Purchaser at the time of closing, free and clear of all liens, mortgages and other leases, tenancies and parties in possession.

3. SURVEY. Seller shall provide to Purchaser, at its sole cost, an updated ALTA survey of the Premises, dated not less than six (6) months prior to Closing ("Survey").

4. TITLE COMMITMENT; TITLE POLICY. Within ten (10) days of the execution date of this Agreement, Seller shall order and secure a Commitment for Owner's ALTA Title Insurance Form B ("Commitment") issued by Chicago Title Insurance Company ("Title Company"), in the amount of the Purchase Price. Along with such Commitment, the Title Company shall also furnish Purchaser with copies of all documents affecting the Premises and reflected in the Commitment.

In the event the Survey discloses any unacceptable conditions and any exceptions appear in such Commitment or title documents other than the standard printed exceptions (which shall be modified in the Owner's Title Policy as here after provided), that are unacceptable to Purchaser, then Purchaser shall, within fifteen (15) days after Purchaser's receipt of the last of such Commitment and title documents, notify Seller in writing of such fact. Seller may, at Seller's option, undertake to commit to eliminate or modify such unacceptable exceptions from the Commitment and/or Survey, at its expense, to the reasonable satisfaction of Purchaser. If Seller is unwilling or unable to commit to cure any such objections within thirty (30) days after Seller's receipt of Purchaser's objections, Purchaser may terminate this Agreement by notice in writing to Seller. Any exceptions not

objected to by Purchaser shall hereinafter be referred to as "Permitted Exceptions."

5. ESCROW CLOSING. If Seller or Purchaser so elect, this sale shall be closed through an escrow with Chicago Title Insurance Company in accordance with the general provisions of the usual forms of escrow agreement then in use by said title company, with such special provisions inserted in the escrow agreement as may be required to conform with this Agreement. Upon the creation of such an escrow, anything herein to the contrary notwithstanding, payment of Purchase Price and delivery of deed shall be made through the escrow and this contract and any and all sums paid to Seller by Purchaser prior to Closing shall be deposited in the escrow. Cost of the escrow shall be divided equally by Purchaser and Seller.

6. CLOSING DATE. The Closing Date shall be the earlier of (i) thirty (30) days after the satisfaction or waiver of the conditions precedent in paragraph 8 below, or (ii) March 1, 2009, or sooner upon mutual agreement, provided that either party has not terminated this Agreement pursuant to a right to do so contained herein, and provided that all other covenants and conditions herein contained on the part of Seller have been complied with.

7. CONDITION OF PREMISES. Subsequent to the execution of this Agreement and until closing, Seller agrees that the Premises will be kept in good order in accordance with past practice and that all acts required respect to any portion of the Premises will be made in order to correct any violations of which seller shall receive written notice after the date hereof from any governmental body having jurisdiction over the Premises and in order to allow Seller to deliver the Premises to Purchaser in the same condition as exists on the date hereof.

Seller and Purchaser agree that the Premises shall be sold and that the Purchaser shall accept possession of the Premises on the Closing Date "As Is, Where Is, With All Faults" with no right of setoff or reduction in the Purchase Price and such sale shall be without representation or warranty of habitability or physical condition, use, environmental condition, zoning, economic suitability or marketability.

8. CONDITIONS PRECEDENT. On or before January 15, 2009, this Agreement and each party's obligations to close are subject to the Purchaser:

(a) recording the Phase III First Street Redevelopment Plat of Subdivision, creating the Premises legal description; and

(b) securing the permit for and the demolition of the above ground manor improvements located on the Purchaser's property located adjacent to and immediately north of the Premises.

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.

9. DEED/CLOSING MECHANICS. At the Closing of the transaction, and subject to any specific Escrow Instructions as may be agreed between the parties and the title company, Seller shall deliver to Purchaser the following items, which items shall be in form and substance satisfactory to Purchaser and/or performs the following:

(a) On the Closing Date, Seller shall cause to be issued to Purchaser, at Seller's sole cost, a later date mark-up of the Commitment from the Title Company and Seller shall cause the Title Company to issue an Owner's ALTA Policy of Title Insurance Form B, issued by the Title Company in Purchaser's favor in the full amount of the Sales Price, insuring Purchaser's fee simple title to the Premises satisfactory to Purchaser, subject only to the Permitted Exceptions, with extended coverage over the General Exceptions.

(b) A Special Warranty Deed, in a form suitable for recording, conveying good and marketable fee simple title in the Premises to Purchaser, or its nominee, free and clear of all liens and encumbrances, subject only to the Permitted Exceptions.

(c) Affidavit of Title covering the period from the date of the title report to the date of delivery of the deed, in form acceptable to the Title Company.

(d) Such other instruments and documents specifically required to be delivered by Seller under the terms of this Agreement or not expressly set forth in this Paragraph.

(e) Such other documents or instruments as in the reasonable opinion of counsel for both Seller and Purchaser may be necessary or desirable to effectuate the Closing.

10. DEFAULT. If Seller fails to consummate this Agreement for any reason (other than Purchaser's default or a termination of this Agreement by Seller pursuant to a right to do so expressly provided for in the Agreement), Purchaser shall be entitled to seek any and all remedies available at law or in equity, including the right to seek specific performance.

If Purchaser fails to consummate this Agreement for any reason, (other than Seller's default, or a termination of this Agreement by Purchaser pursuant to a right to do so expressly provided for in this Agreement), Seller's sole remedy shall be to terminate this Agreement.

11. RISK OF LOSS. The provisions of the Uniform Vendor and Purchaser Risk Act of the State of Illinois shall apply to this Agreement.

12. REAL ESTATE COMMISSION. The Seller and Purchaser acknowledge that no brokerage commission is due as a result of this sale, and shall hold harmless and indemnify the other from any claims made on behalf of any broker purporting to claim a commission on behalf of a party.

13. PRORATIONS. In recognition that the Premises are part of a larger tax parcel, no general real estate tax prorations will be provided to Purchaser at Closing. Instead, Seller shall pay the 2007 tax bill when due and owing and upon issuance of the 2008 and 2009, if applicable, tax bills, the parties agree to prorate, allocate and their respective obligations such that Seller shall be responsible to pay for any general real estate taxes accruing on or prior to Closing and Purchaser shall be responsible to pay for any general real estate taxes accruing after Closing.

14. MISCELLANEOUS PROVISIONS.

(a) Assignment. Neither party may assign nor transfer its rights, duties and obligations under this Agreement, without the prior written consent of the other.

(b) Notices. All notices required or desired to be given hereunder shall be deemed given if and when delivered personally, or on the next business day after being deposited with a national overnight courier service, or on the third business day after being deposited in the United States certified or registered mail, return receipt requested, postage prepaid, addressed to a party at its address set forth below, or to such other address as the party to receive such notice may have designated to all other parties by notice in accordance herewith:

If to Seller: City of St. Charles
Attention: Brian Townsend, City Administrator
2 East Main Street
St. Charles, IL 60174

With a Copy to: Nicholas S. Peppers
Storino, Ramello & Durkin
9501 West Devon Avenue, Suite 800
Rosemont, IL 60018
Facsimile: (847) 318-9509

If to Purchaser: SMN Development, L.L.C.
c/o Joe Klein
Stitt, Klein, Daday & Aretos
2550 West Golf Road, Suite 250
Rolling Meadows, Illinois 60008
Facsimile: (847) 841-3636

(c) Entire Agreement. This Agreement constitutes the entire agreement between Seller and Purchaser, and there are no other covenants, agreements, promises, terms, provisions, conditions, undertakings, or understandings, either oral or written, between them concerning the Premises other than those herein set forth. No subsequent alteration, amendment, change, deletion or addition to this Agreement shall be binding upon Seller or Purchaser unless in writing and signed by both Seller and Purchaser.

(d) Headings. The headings, captions, numbering system, and the like are inserted only as a matter of convenience and may under no circumstances be considered in interpreting the provisions of this Agreement.

(e) Binding Effect. All of the provisions of this Agreement are hereby made binding upon the personal representatives, heirs, successors, and assigns of both parties hereto.

(f) Time of Essence. Time is of the essence of this Agreement.

(g) Unenforceable or Inapplicable Provisions. If any provision hereof is for any reason unenforceable or inapplicable, the other provisions hereof will remain in full force and effect in the same manner as if such unenforceable or inapplicable provision had never been contained herein.

(h) Counterparts. This Agreement may be executed in any number of counterparts, each of which will for all purposes be deemed to be an original, and all of which are identical.

(i) Applicable Law and Venue. This Agreement shall be construed under and in accordance with the laws of the State of Illinois. Venue of any action arising out of the terms of this Agreement shall be in the Sixteenth Judicial Circuit Kane County, State of Illinois.

(j) Purchaser's Waiver of Conditions Precedent. Either party waives any of the conditions precedent to either party's performance specified in this Agreement by giving written notice to Seller at any time on or before the Closing Date.

(k) Closing Date. In the event that the Closing Date or any other deadline date described in this Agreement falls on a weekend or a holiday, the Closing Date or other deadline date shall be deemed to be the next business day.

(l) Survival of Provisions. All agreements, representations, and warranties made herein shall be deemed to be remade at the time of closing, and shall survive the closing and the recording of the deed to Purchaser.

(m) Effect. This Agreement is and shall be deemed and construed to be the joint and collective work product of Purchaser and Seller and, as such, this Agreement shall not be construed against either party, as the otherwise purported drafter of same, by any court of competent jurisdiction in order to resolve any inconsistency, ambiguity, vagueness or conflict in terms of provisions, if any, contained herein.

SELLER:

PURCHASER:

CITY OF ST. CHARLES

SMN DEVELOPMENT, L.L.C.

By: Brian Townsend
Brian Townsend
City Administrator

By: Joseph J. Klein
Joseph J. Klein

EXHIBIT A

LEGAL DESCRIPTION AND
DEPICTION OF PREMISES
(see attached)

LEGAL DESCRIPTION:

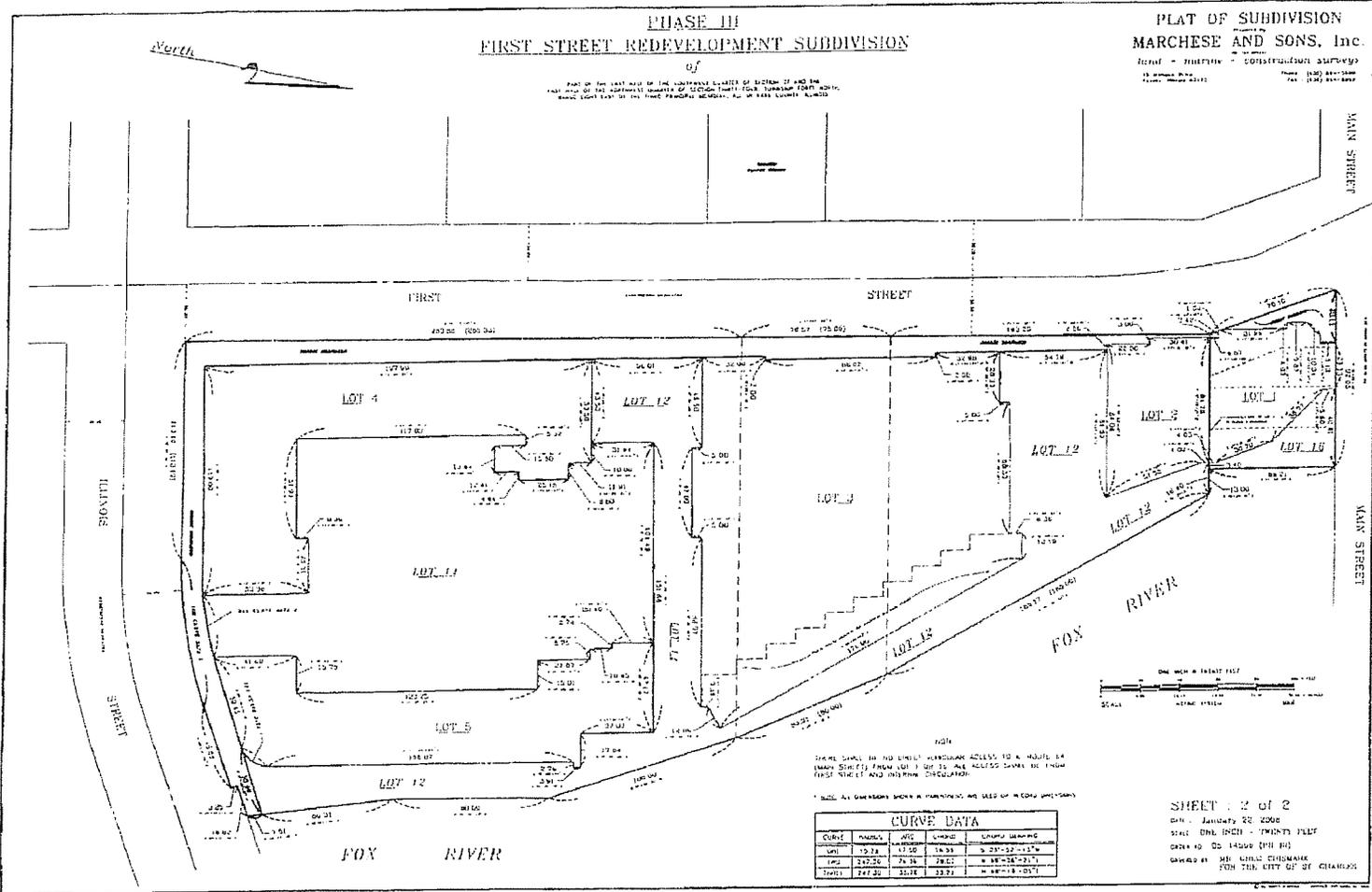
Proposed Lot 2 of the Phase III First Street Redevelopment Subdivision of part of the East half of the Southwest quarter of Section 27 and the East half of the Northwest quarter of Section Thirty-Four, Township Forty North, Range Eight East of the Third Principal Meridian, all in Kane County, Illinois.



PHASE III
FIRST STREET REDEVELOPMENT SUBDIVISION

PLAT OF SUBDIVISION
 PREPARED BY
MARCHESE AND SONS, Inc.
 Land - Marine - Construction Surveyors
 1500 Main Street, Suite 1000, New York, NY 10014
 Phone: (212) 691-1000
 Fax: (212) 691-1001

Part of the East Half of the Northeast Quarter of Section 22 and the East Half of the Northeast Quarter of Section 23, T-108N, R-72E, Township 108th North, Range 72nd East of the First Principal Meridian, of Cook County, Illinois.



NOTE:
 THERE SHALL BE NO EJECTA OR ACCESS TO A ROAD BY
 (ANY STREET) FROM LOT 1 OR 25. ALL ACCESS SHALL BE FROM
 FIRST STREET AND OTHER STREETS.

* SHALL ALL DIMENSIONS BE IN FEET UNLESS OTHERWISE SPECIFIED.

CURVE DATA			
CURVE	ANGLE	ARC	CHORD
1	15.74	17.00	16.36
2	242.50	74.36	78.02
3	247.30	33.18	33.71

SHEET 2 OF 2
 DATE: January 22, 2008
 SCALE: ONE INCH = FIFTY FEET
 DRAWN BY: DR. JAMES J. HILL
 CHECKED BY: DR. WILLIAM H. HILL
 FOR THE CITY OF CHICAGO

State of Illinois)
)
Counties of Kane and DuPage) ss.

Certificate

I, NANCY GARRISON, certify that I am the duly elected and acting Municipal City Clerk of the City of St. Charles, Kane and DuPage Counties, Illinois.

I further certify that on September 2, 2008, the Corporate Authorities of such municipality passed and approved Ordinance No. 2008-M-59, entitled

"An Ordinance Approving and Authorizing the Execution of the Purchase Agreement By and Between the City of St. Charles and SMN Development, L.L.C.,"

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 2008-M-59, including the Ordinance and a cover sheet thereof was prepared, and a copy of such Ordinance was posted in the municipal building, commencing on September 5, 2008, and continuing for at least ten days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the municipal clerk.

DATED at St. Charles, Illinois, this 2nd day of September.



Nancy Garrison
Municipal Clerk