ST. CHARLES
SINCE 1834

AGENDA ITEM EXECUTIVE SUMMARY

Title:	Motion to approve an Ordinance Approving and Authorizing the Execution of the Redevelopment Agreement by and between First Street Development II, LLC and the City of St. Charles, Kane and DuPage Counties, Illinois
Presenter:	Rita Tungare

Please check appropriate box:

	Government Operations		Government Services
	Planning & Development	X	City Council 03-02-15
	Public Hearing		

Estimated Cost:		Budgeted:	YES		NO	

If NO, please explain how item will be funded:

Executive Summary:

On February 17, 2015, the Planning and Development Committee unanimously recommended approval of a proposed Redevelopment Agreement (RDA) between the City and First Street Development II, LLC, pertaining to development of Phase 3 of the First Street Redevelopment Project. The final version of the agreement is attached. The terms are unchanged from the P&D Committee presentation.

Pursuant to the statutory requirements of the TIF Act, the City is required to publish for alternate proposals for the disposition of City-owned property as part of the First Street Phase III Development. The City published for alternate proposals in February and written responses were due at the office of the City Administrator on Friday, February 27, 2015 at 3:00 p.m.

For your information, as of noon on February 27, 2015, when this Executive Summary was prepared the City has not received any alternate proposals. At the Council Meeting, we will update the Council on whether any proposals were submitted as of the above stated deadline.

Attachments: *(please list)*

Ordinance

Recommendation / Suggested Action *(briefly explain)*:

Motion to approve an Ordinance Approving and Authorizing the Execution of the Redevelopment Agreement by and between First Street Development II, LLC and the City of St. Charles, Kane and DuPage Counties, Illinois

For office use only:	*Agenda Item Number:* II C 4

IIC4

City of St. Charles, Illinois
Ordinance No. 2015-M-___

An Ordinance Approving and Authorizing the Execution of the Redevelopment Agreement by and between First Street Development II, LLC and the City of St. Charles, Kane and DuPage Counties, Illinois

WHEREAS, First Street Development II, LLC (the "Developer") desires to enter into a redevelopment agreement ("Redevelopment Agreement") with the City of St. Charles, Kane and DuPage Counties, Illinois (the "City") for purposes of acquiring and redeveloping of a portion of the Central Downtown Redevelopment Project Area (the "Redevelopment Area"); and

WHEREAS, on February 14 and 18, 2015, notices were published providing an invitation to all interested parties to submit alternate proposals to the City on or before 3:00 p.m., February 27, 2015, for the disposition of the City-owned real property within the Redevelopment Area proposed to be conveyed to the Developer pursuant to the terms of the proposed Redevelopment Agreement by and between the Developer and the City; 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 alternate proposals were submitted to the City; and

WHEREAS, the Corporate Authorities of the City find it is in the best interests of the City to enter into the Redevelopment 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:

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.

2. That upon receipt from the Developer of four (4) executed copies of the Redevelopment Agreement, the Mayor is hereby authorized to execute, and the City Clerk is hereby authorized to attest to, the Redevelopment 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 Redevelopment Agreement.

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 Redevelopment Agreement.

4. That after the adoption and approval hereof, the Ordinance shall (i) be printed or published in book or pamphlet form, published by the authority of the Council, or (ii) within thirty (30) days after the adoption and approval hereof, be published in a newspaper published in and with a general circulation within the City of St. Charles.

PRESENTED to the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois this 2nd day of March, 2015.

PASSED by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois this 2nd day of March, 2015.

APPROVED by the Mayor of the City of St. Charles, Kane and DuPage Counties, Illinois this 2nd day of March, 2015.

_____
Raymond P. Rogina, Mayor

ATTEST:

_____
Nancy Garrison, City Clerk

Council Vote:
Ayes:
Nays:
Absent:
Abstain:

APPROVED AS TO FORM:

_____
City Attorney
DATE:_____

EXHIBIT "A"

REDEVELOPMENT AGREEMENT

Execution Copy

CITY OF ST. CHARLES CENTRAL DOWNTOWN TAX INCREMENT FINANCING REDEVELOPMENT AGREEMENT (FIRST STREET PROJECT)

THIS REDEVELOPMENT AGREEMENT (the "*Agreement*") is made and entered into this _____ day of March, 2015 ("*Effective Date*"), by and between the **CITY OF ST. CHARLES**, an Illinois municipal corporation (the "*City*"), and **FIRST STREET DEVELOPMENT II, LLC,** an Illinois limited liability company (the "*Developer*") (the City and Developer are hereinafter sometimes collectively referred to as the "*Parties*", and individually as a "*Party*").

W I T N E S S E T H:

WHEREAS, pursuant to the Tax Increment Allocation Redevelopment Act, as amended [65 ILCS 5/11- 74.4 -1 *et seq.* (2005 Illinois State Bar Ed.)] (the "*Act*"), the City has undertaken a program to qualify for redevelopment of certain property within the City and generally located and which is legally described in Exhibit A and depicted in Exhibit A-1, attached hereto and made a part hereof (the "*Redevelopment Project Area*"); and

WHEREAS, on February 17, 2015, the Corporate Authorities of the City, after giving all notices and conducting all public hearings required by the Act, adopted the following ordinances:

Ordinance No. 2015-M-7, entitled "An Ordinance of the City of St. Charles, Kane and DuPage Counties, Illinois, Approving a Tax Increment Redevelopment Plan and Redevelopment Project for the Central Downtown Redevelopment Project Area";

Ordinance No. 2015-M-8, entitled "An Ordinance of the City of St. Charles, Kane and DuPage Counties, Illinois, Designating the Central Downtown Redevelopment Project Area Pursuant to the Tax Increment Allocation Redevelopment Act"; and

Ordinance No. 2015-M-9, entitled "An Ordinance of the City of St. Charles, Kane and DuPage Counties, Illinois, Adopting Tax Increment Allocation Financing for the Central Downtown Redevelopment Project Area."

WHEREAS, the City owns in fee simple that certain real property located within the Redevelopment Project Area and legally described in Exhibit B and depicted in Exhibit B-1, attached hereto and made a part hereof (the "*City Property*"); and

WHEREAS, the City, pursuant to the terms of this Agreement, shall convey to the Developer, on a phase-by-phase basis, certain portions of the City Property, as legally described in Exhibit C and depicted in Exhibit C-1, attached hereto and made a part hereof (the "*Conveyed Property*"), anticipated to be in three (3) phases (each, a "*Phase*"); and

WHEREAS, the Developer, pursuant to the terms of this Agreement, shall develop the Conveyed Property, on a phase-by-phase basis, by developing:

Phase 1:
- a mixed use retail/office building, with private underground parking;
- a City-owned public parking deck with 110 spaces;

Phase 2: a mixed use retail/residential building, with private underground parking; and

Phase 3: a mixed use retail/residential building, with private underground parking;

all with associated landscaping and streetscape ("*Project*"), which Project is intended to be developed in substantial conformance with the site plan prepared by County Engineers, Inc., dated January 28, 2015, which is attached hereto and incorporated herein as Exhibit D-1 (the "*Site Plan*") and the scope of project which is attached hereto and incorporated herein as Exhibit D-2 (the "*Scope of Project*"); and

WHEREAS, except to the extent already secured, the Developer shall make such applications for zoning and other relief as may be necessary to permit the Property to be properly zoned and to otherwise cause to be secured such other entitlements as may be necessary or convenient so as to permit the development of the Property with the Project, in substantial conformance with the Site Plan and the Scope of Project, including any conditions attendant thereto, including but not limited to Ordinance No. _____, approving a_____ for the Project, pursuant to the plans and renderings referenced in said ordinance and attached hereto as Exhibit D-3, and made a part hereof (hereinafter, the "*Governmental Requirements*"); and

WHEREAS, the Project shall be constructed in strict accordance with the phasing time frames set forth in Exhibit E ("*Construction Phasing Schedule*"); and

WHEREAS, to facilitate the development and construction of the Project and subject to and in accordance with the terms of this Agreement, the City agrees to convey the Conveyed Property to the Developer and reimburse the Developer for certain Redevelopment Project Costs (as hereinafter defined) that the Developer incurs, or has incurred, in connection with the development and construction of the Project; and

WHEREAS, in connection with the commitment of the Developer to develop and construct the Project, the City intends to construct certain City Public Improvements, the direct and indirect costs of which are eligible for reimbursement pursuant to the Act; and

WHEREAS, the Project shall be developed and constructed in accordance with all City codes, ordinances and regulations, as applicable to the plans and specifications to be approved by the City and any other appropriate governmental authorities having jurisdiction over the Project in accordance with the Site Plan, the Scope of Project and Governmental Requirements; and

WHEREAS, the Developer represents and warrants to the City, and the City finds, that, but for the assistance to be provided by the City to the Developer pursuant to the Act, the Project would

not be economically viable or eligible for the private financing necessary for its completion and, concomitantly, the Developer would not develop and construct the Project; and

WHEREAS, pursuant to 65 ILCS 5/11-74.4(c), the City published on February 14, 2015 and republished on February 18, 2015 a notice requesting alternate proposals for the redevelopment of the City Property; and

WHEREAS, the City did not receive any alternate proposals to redevelop the City Property; and

WHEREAS, this Agreement has been submitted to the Corporate Authorities of the City for consideration and review, and the Corporate Authorities have taken all actions required to be taken prior to the approval and execution of this Agreement in order to make the same binding upon the City according to the terms hereof; and

WHEREAS, the Corporate Authorities of the City, after due and careful consideration, have concluded that the development and construction of the Project as provided for herein will further the growth of the City, facilitate the redevelopment of the Redevelopment Project Area, improve the environment of the City, increase the assessed valuation of the real estate situated within the City, foster increased economic activity within the City, increase employment opportunities within the City, upgrade public infrastructure within the Redevelopment Project Area, and otherwise be in the best interests of the City by furthering the health, safety, morals and welfare of its residents and taxpayers.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Developer do hereby agree as follows:

ARTICLE I.
RECITALS PART OF AGREEMENT

The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Article I.

ARTICLE II.
MUTUAL ASSISTANCE

The Parties agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications (and, in the case of the City, the adoption of such ordinances and resolutions), as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out such terms, provisions and intent.

Further, provided the Developer is in compliance with this Agreement, the City agrees that it shall not revoke or amend the Redevelopment Plan or the ordinances adopted by the City relating to the Redevelopment Plan and Project or this Agreement if such revocation or amendment would prevent the development of the Project by the Developer in accordance with this Agreement and the exhibits appended hereto. The Parties shall cooperate fully with each other in seeking from any or all appropriate governmental bodies (whether federal, state, county or local) any necessary permits, entitlements and approvals required to develop and construct the Project.

In addition, the City reserves the right, but does not have the obligation, to maintain at City's expense, an on-site representative at the Project to monitor the construction of the Project. Developer agrees to provide safe access to the Project, including without limitation, access to inspect all portions of the construction of the Project, of the site's work and work in progress. This on-site representative shall not interfere with any construction work and shall comply with all safety standards and other job-site rules and regulations of Developer. The City's on-site representative is an inspector only. The on-site representative shall make only such communications with Developer and the general contractor as are reasonably necessary to enable such on-site representative to conduct its investigations. The foregoing shall not limit the authority of the City to enforce any applicable City regulations.

ARTICLE III.
OBLIGATIONS OF THE PARTIES

3.1 **Developer Obligations and Agreements.** In consideration of the substantial commitment of the City to the redevelopment of the Redevelopment Project Area pursuant to the Redevelopment Plan and its commitments contained in this Agreement, the Developer has fulfilled, or shall fulfill, the following obligations:

(A) The Developer has advanced, shall hereafter advance, or shall cause other parties to advance the funds necessary to construct and complete each Phase of the Project that Developer undertakes to complete.

(B) The Developer has secured, or shall hereafter secure or cause to be secured, all required permits and approvals necessary to construct and complete each Phase of the Project that Developer undertakes to complete.

(C) To the extent the Developer undertakes construction of a particular Phase, the Developer shall develop, construct and complete such particular Phase, and any subsequent Phase of the Project undertaken in accordance with the terms and provisions of this Agreement.

(D) The Developer shall construct the public improvements (the "*Developer Public Improvements*") as set forth in Exhibit F-1, attached hereto and made a part hereof. The City shall pay the Developer the actual construction costs of the Developer Public Improvements, but in no event shall the City pay the Developer, in aggregate, more than the aggregate construction costs of the Developer Public Improvements set forth in Exhibit F-1. In the event the aggregate construction costs of the Developer Public Improvements exceed the

aggregate construction costs set forth in Exhibit F-1, the Developer shall be solely responsible for paying any and all such additional costs above and beyond the amounts set forth in Exhibit F-1. The Developer Public Improvements shall be constructed in accordance with the plans and specifications jointly prepared, reviewed and approved by the City and Developer. The Developer shall construct the Developer Public Improvements in accordance with the Construction Phasing Schedule set forth in Exhibit E. The City shall make payments to the Developer for the Developer Public Improvements actually constructed, regardless of whether said construction is partially or Substantially Complete (as hereinafter defined) during each phase of construction, as provided for in this Agreement. Such payments shall be made in accordance with Section 5.3 of this Agreement upon the Developer's submittal of a Reimbursement Application as provided in Exhibit H, attached hereto and made a part hereof.

(E) So long as the Developer is constructing any Phase of the Project which is not Substantially Complete (as hereinafter defined), Developer shall require its general contractor, or if there is none, then at its own expense, to obtain and maintain, subject to the requirements of Section 9.14 hereof, comprehensive general liability, workmen's compensation and automobile/vehicle liability insurance for the Project, and shall cause City to be named as an additional insured party, with all the rights of a primary insured, on such insurance policies, except that on the workmen's compensation insurance, the Certificate of Insurance shall include a waiver of subrogation in favor of the City. Said insurance policies shall be issued in an amount not less than Five Million Dollars ($5,000,000.00) combined single limit for bodily injury, personal injury or death and property damage with respect to any single occurrence or, in the case of workmen's compensation insurance, as required by statute and each of said policies shall further provide for not less than thirty (30) days prior written notice to the City and the Developer before such policies may be materially changed, modified or canceled. Prior to commencement of any work on the Project, the Developer shall provide the City with appropriate certificates of insurance and copies of such policies when issued. The Developer shall keep in force at all times completed value builders risk insurance, against risks of physical loss, including collapse, covering the total value of the building and contents including the work performed and equipment, supplies and materials furnished for each Phase of the Project as shall be on any part of the Project site from time to time. Should the City receive notice that premiums needed to maintain in force any of the required insurance policies have not been paid, the City shall notify the Developer of the receipt of said notice. If the Developer shall fail to promptly pay any such required premium, the City may, but shall not be required to, pay the premiums due during any cure period afforded in such notice. If the City shall pay any premium due on any of the required policies of insurance, the amount of the premiums paid by the City shall constitute a debt owed by the Developer to the City and the City shall be entitled to deduct the amount of the premiums from any amounts due the Developer under this Agreement. The Developer's failure to pay any premiums on any policy of insurance required hereunder shall constitute an event of default and shall remain so irrespective of whether the City shall elect to pay such premiums on behalf of the Developer. The Developer may cure said default if it promptly repays the City for the amount of the premiums paid by the City. If not promptly repaid, the City shall have the right to terminate this Agreement in accordance with the terms hereof.

(F) The Developer agrees to and shall indemnify, defend and hold harmless the City, its elected officials, officers, representatives, assigns, servants, consultants, agents, attorneys and employees from any and all liability, claims, damages, expenses, actions and costs of actions, in law or equity (including reasonable attorney's fees and costs, and reasonable attorney's fees and costs on appeal), of any kind and nature, arising or growing out of or in any way connected with the Developer's construction, operation, duties, obligations and responsibilities under the terms of this Agreement or any Phase of the Project, including but not limited to the matters pertaining to hazardous materials and other environmental matters resulting from Developer's activities, and any of its contractors, agents, assigns, servants, employees, customers, patrons or invitees, or arising out of or in any way connected with the operation or conduct of the Developer hereunder or in any way related to this Agreement. The Developer shall, at its own expense, appear, defend and pay all reasonable charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith, and, if any judgment shall be rendered against the City, its elected officials, officers, representatives, assigns, servants, consultants, agents and employees, the Developer shall, at its own expense, satisfy and discharge the same. Each party shall give prompt written notice to the other of the assertion or commencement of any claim, demand, investigation, action, suit or other legal proceeding for which indemnity is, or may be, sought hereunder however, this notice requirement shall not apply to any claim, demand, investigation, action, suit or other legal proceeding in which the parties are litigating claims against each other. The Developer shall have the right and obligation to assume, at its own expense, the defense or settlement of any third party claim, demand, investigation, action, suit or other legal proceeding for which it is obligated to provide indemnity hereunder; provided, however, that the Developer shall not settle or compromise any such claim, demand, investigation, action, suit or other legal proceeding without the City's prior written consent thereto, which consent shall not be unreasonably withheld, conditioned or delayed unless the terms of such settlement or compromise unconditionally discharge and release the City, its elected officials, officers, representatives, assigns, servants, consultants, agents and employees from any and all liabilities and obligations thereunder and do not involve a remedy other than the payment of money by the Developer. Notwithstanding the foregoing, the Developer may not assume or control the defense if the named parties to a third party claim (including any impleaded parties) include both the Developer and the City and representation of both parties by the same counsel (in such counsel's reasonable determination) would be inappropriate due to actual or potential differing interests between them, in which case the City shall have the right to defend the third party claim and to employ counsel reasonably approved by the Developer, and to the extent the matter is determined to be subject to indemnification hereunder, the Developer shall reimburse the City for the reasonable costs of its counsel. If the Developer does not assume liability for and the defense of a third party claim pursuant to this Section 3.1(F) the City shall have the right (i) to control the defense thereof and (ii) if the City shall have notified the Developer of the City's intention to negotiate a settlement of the third party claim (at the Developer's expense to the extent the matter is determined to be subject to indemnification hereunder), which notice shall include the material terms of any proposal settlement in reasonable detail, unless the Developer shall have notified the City, in writing, of the Developer's election to assume liability for and the defense of the third party claim within ten (10) days after receipt

of such notice, and the Developer promptly thereafter shall have taken appropriate action to implement such defense the City shall have the right to settle such third party claim. The City shall not be entitled to settle any such third party claim pursuant to the preceding sentence without the Developer's prior written consent unless the terms of such settlement include an unconditional release of the Developer by the third party claimant on account thereof. Notwithstanding the foregoing, the City at all times shall have the right, at its option and expense, to participate fully in the defense or settlement of such claim, demand, investigation, action, suit or other legal proceeding. The Developer and the City shall cooperate fully in defending or settling any third party claim, demand, investigation, action, suit or other legal proceeding, and the defending or settling party shall have reasonable access to the books and records and personnel of the other party that are relevant to such claim, demand, investigation, action, suit or other legal proceeding. No indemnification shall be required to be made by Developer under this Section 3.1(F) until the aggregate amount of the damages incurred by the City, other than attorneys' fees and court costs, exceeds $10,000.00 (the "Deductible"), and then indemnification shall only be required to be made by the Developer to the extent that such damages exceed the Deductible. The Developer shall have no indemnification, except as otherwise provided for in Section 3.2(F), for hazardous materials or other environmental matters in existence as of the date of this Agreement and not directly identified and cited in the Huff & Huff Incorporated reports that have been delivered to Developer or the City by Huff & Huff Incorporated, including but not by way of limitation the letter report dated January 17, 2015.

(G) The Developer agrees to secure and pay for each building permit, occupancy permit, utility connection permit inspection or other required City, County, State, Federal or other regulatory body permit and fees, if applicable, which are then in effect and as required for each structure to be constructed or located in each Phase of the Project. Any City permits, including but not limited to occupancy permits, utility inspection permits and inspections shall be secured and paid in accordance with those amounts and terms as provided for in the St. Charles Municipal Code, as may be amended from time to time.

(H) The Developer represents and warrants that it shall not cause or permit any mechanic's liens or other lien claims to remain against the Project, or any Phase or part thereof, or the Tax Allocation Fund, as defined in Section 5.2(A), for labor or materials furnished in connection with demolition, site preparation, development, construction, additions, modifications, improvements or any other matter which might give rise to lien rights against the Project, the Property or any Phase or part thereof or the Tax Allocation Fund, as defined in Section 5.2(A). Notwithstanding the foregoing, the Developer shall be entitled to defend, prosecute or settle, as the case may be in a timely and commercially reasonable manner, any claims for mechanic's liens, other liens, claims or causes of action relating to allegedly defective or incomplete work, provided that the City shall not be required to contribute to such settlement. Subject to the foregoing, and subject to Section 9.14 hereof, the City shall have the right of offset to utilize any monies otherwise owed to or entitled by Developer (not otherwise earned but unpaid) under this Agreement to settle or satisfy any such claims and the Developer hereby agrees and covenants to indemnify, defend and hold harmless the Indemnified Parties, (including the payment of reasonable attorneys' fees and costs and

expenses) from and against any such liens, claims or causes of action as may be asserted against the Project, the Property or any Phase or part thereof or the Tax Allocation Fund.

(I) Upon reasonable notice, the City Representative (as hereinafter defined), or his designee, shall have access to all portions of the Project during reasonable times for the term of this Agreement. Upon reasonable notice, any City Representative (as hereinafter defined), or his designee, shall have access to all books and records relating to the private financing of the Project, the Property or any Phase thereof and the Redevelopment Project Costs with respect thereto, including but not limited to the Developer's closing documents, financing commitments, loan statements, general contractor's and contractor's sworn statements, general contracts, subcontracts, purchase orders, waivers of lien, paid receipts and invoices. These records shall be kept and maintained at the Developer's offices within the City and shall be available for inspection, audit and examination. The Developer shall incorporate this right to inspect, audit and examine all books and records in all contracts entered into by the Developer with respect to the Redevelopment Project Costs.

(J) To the extent required by law, the Developer agrees to pay, and to contractually obligate and cause any and all general contractors and subcontractors to pay, the prevailing rate of wages as established by the City, from time to time, when constructing the Developer Public Improvements or the City Development Public Improvements (as hereinafter defined).

(K) The Developer represents, warrants and covenants that no member, official, officer, or employee of the City, or any commission or committee exercising authority over the Project, the Redevelopment Project Area, or the Redevelopment Plan, or any consultant hired by the City or the Developer with respect thereto, owns or controls or has owned or controlled any interest, direct or indirect, in the Developer's business, the Project, or any portion of the Property, or will own or control any interest in the Developer's business or the Project, and that this Agreement and issuance and delivery of any bonds will not violate Section 5/11-74.4-4(n) of the Act.

(L) The Developer agrees to comply with the fair employment/affirmative action principles contemplated by the Act and the Redevelopment Plan, and in accordance with all applicable federal, state and municipal regulations.

(M) The Developer shall cooperate with the City and provide the City with the information in Developer's possession or control required and necessary under the Act to enable the City to comply with the Act and its obligations under this Agreement.

(N) The Developer shall use its best efforts to utilize vendors located within the City of St. Charles and to employ persons residing within the City of St. Charles.

3.2 **City Obligations and Agreements**. In consideration of the substantial commitment of the Developer to the development and construction of the Project, the City, subject to Section 3.3 below, agrees and covenants with the Developer as follows:

(A) Subject to the prior satisfaction of the pre-conditions contained in Section 3.3 below and Developer's obligations contained in this Agreement, the City shall convey the Conveyed Property in Phases to the Developer in accordance with Article VI below.

(B) Except as provided for herein, the City shall construct and pay for certain public developments ("*City Development Public Improvements*"), as substantially set forth in Exhibit F-2, attached hereto and made a part hereof, pursuant to the plans and specifications prepared by the City and pursuant to the Governmental Requirements. The City's obligation to pay for the City Development Public Improvements shall be limited to actual costs but shall not exceed the allocated amounts indicated and set forth on Exhibit F-2. The City's obligation to construct the City Development Public Improvements shall be as follows:

(i) within 30 days after the conveyance of the portion of the Conveyed Property to the Developer for a particular Phase, the Developer shall provide the City with a cost estimate and schedule for construction of the City Development Public Improvements for that Phase, including a Developer's construction management fee of 5%;

(ii) if the Developer's estimate exceeds the budget amounts in Exhibit F-2 for that Phase, the City and Developer shall cooperatively work for an additional 15 days after the 30 day period provided in Section 3.2(C) (i) above to reduce the cost to comply with the budget amount as provided in Exhibit F-2 for that Phase;

(iii) prior to expiration of the 15 day period as provided in Section 3.2(C) (ii) above the City, in its sole and absolute discretion, shall determine the scope of work for the City Development Public Improvements for that Phase but in no event shall the scope of work so determined by the City for that particular Phase be for less than 80% of the dollar amounts provided in Exhibit F-2 for that Phase;

(iv) within 30 days of the 15 day period, as provided in Section 3.2(C) (ii) above the Developer shall submit to the City a revised cost estimate and schedule to the City based on the City's determination in (iii) above;

(a) within 15 days thereafter, the City shall have the sole and exclusive right to approve the Developer's estimate and award the City Development Public Improvement work for that particular Phase to Developer, pursuant to the scope of work prepared by the City; or

(b) reject the Developer's estimate and the City shall perform the work so determined by the City for that particular Phase but for amounts not less than 80% of the budgeted dollar amounts set forth on Exhibit F-2 for that Phase and within the scheduled time for that Phase.

(C) The City shall be responsible for constructing the public improvements (the "*City Public Improvements*") substantially described in Exhibit F-3, attached hereto and made a part

hereof, the direct and indirect costs of which shall be, paid by the City and to the extent permissible, reimbursed and/or funded by the Tax Increment (as defined in Section 5.2).

(D) The City shall pay for a portion of the costs of the environmental remediation of the Conveyed Property, not to exceed Sixty Thousand Dollars ($60,000.00). These costs shall be paid directly by the City upon the submittal by the Developer of a "Reimbursement Application" in the form attached hereto as Exhibit H together with accompanying invoices all in compliance with Section 5.3 below. The City shall not be obligated to arrange for, coordinate or otherwise undertake any of said environmental remediation, and further provided that the Developer shall be responsible for all costs of remediation in excess of the said Sixty Thousand Dollars ($60,000.00). The City shall be responsible for the costs incurred for the services provided by the environmental consultant, Huff and Huff Incorporated, including the cost of securing no further remediation (NFR) letters for each phase of the Project for the remediation of the Conveyed Property.

(E) The City shall pay an amount not to exceed Sixty Thousand Four Hundred Ninety Four Dollars ($60,494.00), towards road impact fees, if any, imposed by the County of Kane phased as follows:

(i) Phase 1 - $35,818..00
(ii) Phase 2 - $12,804.00
(iii) Phase 3 - $11,872.00

These costs shall be paid directly by the City upon the submittal by the Developer of a "Reimbursement Application" in the form attached hereto as Exhibit H together with accompanying invoices all in compliance with Section 5.3 below. The Developer shall be responsible for all road impact fees in excess of the said Sixty Thousand Four Hundred Ninety Four Dollars ($60,494.00).

(F) In the event a third party files an application with the City for approval of a project and/or use within the Redevelopment Project Area or property contiguous therewith, the City shall use its best efforts to provide the Developer with notice of such application; provided, however, that the failure of the City to provide such notice shall not be deemed to be a breach or default of this Agreement.

3.3 **Satisfaction of Pre-Conditions.** Notwithstanding anything contained herein to the contrary, the City shall not be obligated to perform any of the obligations assumed by it hereunder or otherwise, to the Developer or others, unless and until prior to or contemporaneously with the City's consideration for approval and execution of this Agreement, First Street LLC Development and the City shall have executed and entered into a mutually agreeable mutual release, waiver and termination agreement relative to that certain City of St. Charles Tax Increment Financing Redevelopment Agreement dated December 15, 2006;

Failure to satisfy, or otherwise waive by the City, the pre-conditions in this Section 3.3, shall constitute an automatic termination of this Agreement, without further action required by the parties.

ARTICLE IV.
USE AND DEVELOPMENT OF THE PROPERTY AND THE TIF IMPROVEMENTS

4.1 **Redevelopment Project.**

(A) In furtherance of the objectives of the Redevelopment Plan, the Developer shall, subject to the terms of this Agreement, Substantially Complete (as hereinafter defined) each Phase of the Project undertaken by Developer in accordance with the objectives of the Redevelopment Plan, the Site Plan, the Scope of Project and all Governmental Requirements.

(B) Subject to and conditioned upon Developer satisfying and funding the construction escrow for each Phase, in a timely manner and pursuant to the default dates outlined in Exhibit G, the Developer shall have the right to develop and construct each Phase, in accordance with the Construction Phasing Schedule set forth in Exhibit E, provided, however, that each previous Phase of the Project is reasonably progressing in accordance with the Construction Phasing Schedule as shown in Exhibit E. The opening of the construction escrows and deposit by the City of the applicable Conveyed Property for construction loan funding for a particular Phase on or before the dates identified in Exhibit G shall satisfy the construction escrow funding default dates.

4.2 **Zoning Approval**. This Agreement is contingent upon and the City's conveyance of the Conveyed Property to the Developer for a particular Phase is subject to the City Council approving applications for such zoning relief and subdivision platting as may be necessary to develop the Project, or any particular Phase thereof, including the approval of any rezoning, special uses, site plans, and plats therefore. The Developer shall timely submit applications for zoning relief to the City for review and processing, including any required Plan Commission public hearings, if any, to comply with and permit any Phase of the Project to be developed in accordance with the Property Conveyance Schedule set forth on Exhibits E and G. The City shall timely prepare and submit applications for subdivision platting for review and processing. Provided that the Developer shall have first caused proper and complete applications for desired zoning and subdivision relief to have been filed with the City, should the approval of relief requested under the provisions of this Section 4.2 be unreasonably delayed solely by the City and said such delay unreasonably hinders the Developer from timely compliance with the dates provided in Exhibits E and G, then the dates provided in said Exhibits shall be extended, as appropriate, so as to give the Developer a reasonable amount of additional time as may be needed to comply with said timely compliance. The preceding sentence is intended to provide the Developer with relief when such delay occurs solely as a result of the City's inaction and not otherwise caused by the Developer.

4.3 INTENTIONALLY OMITTED.

4.4 **Public Parking Deck.** As part of the improvements to be constructed in conjunction with Phase I of the Project, the Developer shall construct, or caused to be constructed, a two-level parking deck containing at least 110 parking spaces, and appurtenants (the "*Public Deck*"), on land

owned by the City ("*City Deck Property*") in accordance with the Site Plan and Scope of Project and Governmental Requirements incorporated herein as Exhibits D-1, D-2 and D-3. The Public Deck shall be constructed in conformance with the plans and specifications approved by the City. Subject to the contribution by the City of the Public Deck Cost, as provided for in this section, the entire cost to Substantially Complete construction of the Public Deck shall be paid for by Developer, regardless if the total cost exceeds the City's contribution of the Public Deck Costs. The City shall pay the Developer cash for the actual cost of the Public Deck but not to exceed the amount of One Million Eight Hundred Nine Thousand Five Hundred Dollars ($1,809,500.00) (the "*Public Deck Cost*"), plus a construction management fee of 5%), for a total of One Million Nine Hundred Thousand ($1,900,000.00) Dollars, as set forth in Exhibit F-1. The Public Deck Cost shall be paid to Developer in one or more progress payments, regardless of whether the Public Deck is partially or Substantially Complete (as hereinafter defined) as provided in this Section 4.5 and shall be made in accordance with Section 5.3 upon Developer's submittal of a Reimbursement Application as provided in Exhibit H. The amount of an actual progress payment shall be the lesser of the following: (A) the dollar amount of the progress payment applied for and approved pursuant to Section 5.3; or (B) the dollar amount calculated as follows:

$$\text{Maximum progress payment} = \frac{\text{Actual Public Deck Construction Costs incurred to date by Developer}}{\text{Total Estimated Construction Cost of Public Deck}} \times \text{Public Deck Cost}$$

Prior to commencement of construction of the Public Deck, the City shall provide to and enter into with Developer a mutually agreed upon construction license agreement, pursuant to which Developer shall construct the Public Deck on the City Deck Property ("Deck License Agreement"). If, as reasonably determined by the City Representative and subject to Force Majeure : (A) Developer falls more than forty-five (45) days behind the time schedule to commence, or fails to diligently pursue to Substantial Completion (as hereinafter defined) or complete construction of the Public Deck of the Project as set forth on Exhibit E; or (B) the Developer is otherwise in default under this Agreement, then, notwithstanding any other rights the City may have hereunder, then such events shall constitute a default under this Agreement. If the Developer does not cure any and all such defaults within thirty (30) days of receipt of the notice of default, then the City shall have the right, at its election, to (i) terminate the Deck License Agreement and (ii) suspend and/or terminate any further progress payments for any work commenced or to be completed. The election by the City to suspend and/or terminate any progress, as previously provided, shall not operate as the City's sole remedy in this event and it shall be entitled to pursue any and all other remedies available to it under this Agreement. Further, notwithstanding anything contained herein to the contrary, the City shall not be obligated to pay all or any part of the Developer's five percent (5%) management fee for the Public Deck, unless and until the Public Deck has been Substantially Completed (as hereinafter defined).

Prior to the temporary occupancy permit for the Phase 1 building, the City and Developer shall enter into a reciprocal easement and operating agreement concerning cross access easements,

operating and maintenance rights, duties and obligations between the Public Deck and the Phase 1 building, in a form satisfactory to the Parties, to permit a Public Deck.

4.5 **Tax Information**. Developer shall use its best efforts to include in all leases for the Retail Component a provision providing that the tenants shall file with the City copies of the ST-1 monthly sales tax forms, or any appropriate successor forms, that are filed by retailers with the State of Illinois. For all leases in which the tenant is required to provide to Developer its gross income and sales tax returns with respect to the portion of the Retail Component being leased by such tenant, and/or including all original sales records as defined in any such lease, Developer shall provide the City with copies of all such documents. Developer also agrees that, with respect to all leases which do not provide for the release of such information to Developer or the City under the terms of the lease, Developer shall use its best efforts to secure from each such tenant a letter substantially in the form as shall be reasonably required by the City and the Illinois Department of Revenue in order to release such information to the City. Such information shall be used solely for the purposes of determining sales tax due to the City and shall otherwise be kept confidential, except to the extent required by applicable law.

ARTICLE V.
REIMBURSEMENT OF REDEVELOPMENT PROJECT COSTS

5.1 **Reimbursement of Redevelopment Project Costs Incurred by Developer**. For purposes of this Agreement, "*Redevelopment Project Costs*" shall mean and include all costs defined as "redevelopment project costs" in Section 5/11-74.4-3(q) of the Act (as amended from time to time) which are eligible for reimbursement under the Act and which have been approved in the Redevelopment Plan.

5.2 **Establishment of Fund; Use of Tax Increment.**

(A) In connection with its establishment and ongoing administration of the Redevelopment Project Area, the City has established a special tax allocation fund pursuant to the requirements of the Act (the "*Tax Allocation Fund*"). None of the monies contained in the Fund shall, at any time, be commingled with any other funds of the City.

(B) It is the obligation of the City to pay or reimburse Redevelopment Project Costs, which may be satisfied by the issuance of Bonds, as hereinafter defined in Section 5.4 hereof, or from the Tax Allocation Fund. The Tax Allocation Fund shall hold that portion of the real property taxes collected with respect to taxable real property in the Redevelopment Project Area that is required to be paid to the City Treasurer for deposit to the Tax Allocation Fund pursuant to Section 11-74.4-8 of the Act, as such provision may be amended from time to time, and/or the proceeds of any other tax or other source of legally available revenue which the City designates as part of the Tax Allocation Fund, and interest or other investment income earned on monies on deposit in the Tax Allocation Fund.

(C) For purposes of this Agreement, "*Tax Increment*" shall mean all ad valorem real property taxes, if any, arising from the levies upon the Property attributable to the then current

equalized assessed valuation of the Property over and above the initial equalized assessed value of the Property, all as determined pursuant to Section 5/11-74.4-8 of the Act.

(D) The Parties shall comply with 65 ILCS 5/11-74.4-3 (q) (7.5) of the Act.

5.3 **Method of Reimbursement for Redevelopment Project Costs**. Prior to, and as a precondition to any payment or reimbursement to the Developer for eligible Redevelopment Project Costs, as provided for under this Agreement, the Developer shall submit to the City a signed application for payment or reimbursement in essentially the form set forth in Exhibit H hereto (the "*Reimbursement Application*"). The City Representative shall have 21 calendar days upon receipt of a complete Reimbursement Application to approve or reasonably disapprove such Reimbursement Application. If approved, the City Representative, or his designee, shall reimburse the Developer said approved amount within 30 calendar days of receipt of the Reimbursement Application. In the event the City Representative shall reasonably disapprove any portion of a Reimbursement Application (the "*Deficiencies*"), the City Representative shall notify the Developer of the Deficiencies, if any, within 21 days of its receipt of Reimbursement Application. No reimbursement shall be made until the particular Deficiencies have been corrected by the Developer. Notwithstanding anything herein to the contrary, the Developer's reimbursement shall be limited to the sums as provided for in Section 3.2D and E above and as are provided for in Exhibits F-1 and F-2. Notwithstanding the foregoing, the City shall be obligated to pay Developer for all approved items under the Reimbursement Application and a Certificate of Substantial Completion (as hereinafter defined), if Reimbursement Application is for a completed Phase, and may withhold only allocated amounts for such Deficiencies until approved.

5.4 **Substantial Completion.** As used herein, the terms "*Substantial Completion*" and "*Substantially Complete*," or words of similar import, shall be deemed to mean that certain identified improvements have been completed in accordance with all Governmental Requirements. The Developer will notify the City approximately 60 days prior to the date on which Developer estimates any Phase of the Project, the City Development Public Improvements or the Developer Public Improvements will be Substantially Complete. When the Developer believes that a certain identified Phase of the Project, the City Development Public Improvements or the Developer Public Improvements are Substantially Complete, it shall tender to the City a Reimbursement Application in the form of Exhibit H attached hereto and a Certificate of Substantial Completion in the form of Exhibit I attached hereto and made a part hereof. Within 15 business days of the date on which the City receives any Reimbursement Application and Certificates of Substantial Completion, the City Administrator or designee (the "*City Representative*") shall cause the Phase of the Project, the City Development Public Improvements and/or the Developer Public Improvements identified in said Reimbursement Application and Certificate of Completion to be inspected and reviewed for the purpose of determining whether they have been completed in a manner which substantially complies with all applicable Governmental Requirements. Should the City Representative reasonably determine that the Project, City Development Public Improvements and/or Developer Public Improvements identified in the Reimbursement Application and Certificate of Substantial Completion do not substantially comply with all applicable Governmental Requirements, the City Representative shall notify the Developer of the deficiencies in required improvements. The Developer shall correct each of the identified deficiencies in the Project, City Development Public

Improvements and/or Developer Public Improvements noted by the City Representative and resubmit the Reimbursement Application and Certificate of Substantial Completion for review and approval, or reasonable disapproval in accordance with the provisions set forth in this Section 5.4. Notwithstanding the foregoing to the contrary contained herein, the City shall be obligated to pay Developer for all approved items under this Reimbursement Application and Certificates of Substantial Completion and may only withhold allocated amounts for such deficiencies until approved.

ARTICLE VI.
CONVEYANCE OF PROPERTY

6.1 **Conveyance of Property.** Subject to the terms and conditions set forth herein, including but not limited to Developer's satisfaction of the provisions of Section 3.1A above and the pre-conditions in Section 3.3 above, the City represents and warrants to the Developer that the City owns, or shall own, fee simple title to the Conveyed Property or has jurisdiction over the Conveyed Property, sufficient to convey the Conveyed Property to the Developer subject only to Permitted Exceptions as hereinafter provided. The City has disclosed to, and made available for inspection by, the Developer all environmental, title documentation and other documentation and information in its possession concerning the Conveyed Property. In the event the Developer desires to enter upon the City Property to review and inspect any portion of the City Property for purposes of constructing and developing the Project, the Developer shall request permission to enter the City Property for such review. The Developer shall be accompanied by a representative of the City at all times. In the event the Developer desires to undertake any tests on the City Property, the Developer shall disclose the nature of each such test and request from the City permission to undertake such tests which permission shall not be unreasonably withheld.

6.2 **Permitted Title Exceptions.** The Conveyed Property, or any portion thereof, shall be conveyed by quit claim deed to the Developer subject to the following:

(A) all covenants, conditions and restrictions of record, and provided they do not estop the Developer from undertaking and completing the Project;

(B) all easements of record;

(C) all zoning and building laws, building lines, and use and occupancy restrictions;

(D) all drainage ditches, feeders and laterals, if any;

(E) all such other reasonable encumbrances, provided they do not prevent the Developer from undertaking and completing the Projector; and

(F) all general real estate taxes and special assessments not yet due.

Conveyance by the City of the Conveyed Property in accordance with, and subject to, these permitted title exceptions shall be deemed by the Developer to satisfy the City's obligations with respect to the Conveyed Property.

6.3 **Property Conveyance Schedule.** The Conveyed Property shall be conveyed to the Developer and the Developer shall accept the Conveyed Property on or before the dates set forth in the Property Conveyance Schedule set forth in Exhibit G, attached hereto and made a part hereof, provided the Pre-Conditions to Conveyance set forth in Section 6.4 have been satisfied.

6.4 **Pre-Conditions to Conveyance.** The City shall not convey any of the Conveyed Property until such time as: (A) the Developer has opened a construction loan escrow for 100% of the senior construction financing reasonably necessary and sufficient to complete construction of all private improvements for the subject Phase of the Project, as evidenced by the opening of a construction loan escrow with Chicago Title and Trust Company acceptable to the City and the Developer for the subject Phase of the Project by the Default Date set forth in Exhibit G, and the Developer has provided the City with written evidence of the opening the construction escrow prior to the Default Date; (B) the Developer has provided the City with written evidence of the necessary Developer equity contribution as determined by the senior debt lender for the subject Phase of the Project; and (C) the escrowee has reviewed the documentation submitted by the Developer and verified the sufficiency of the deposits in the construction escrow to enable construction of the private improvements for the subject Phase of the Project.

In the event the Developer does not timely open a construction loan escrow for the subject Phase of the Project by the Default Date set forth in Exhibit G, the City shall have no obligation to convey that portion of the Conveyed Property necessary for the construction and development of the subject Phase of the Project or any portion of the Conveyed Property necessary for the construction and development of any subsequent Phases of the Project. The Corporate Authorities of the City may, after considering all of the factors pertaining to the Developer's failure to timely open a required construction loan escrow, terminate this Agreement.

6.5 **City's Right of Reconveyance**. Within one hundred twenty (120) days following the conveyance by the City of the portion of the Conveyed Property into escrow for a particular Phase, the Developer shall commence construction of the structural improvements (*i.e.* pouring of footings) for the buildings in such Phase. If the Developer fails to comply with the requirements set forth in the previous sentence on or before that date, one hundred twenty (120) days following conveyance of a particular Phase to Developer, as provided for on Exhibit G ("*Commencement of Construction Default Date*"), the City shall have the option, in addition to any and all remedies available to it under this Agreement, exercise upon written notice to the Developer, to have the Conveyed Property for such Phase, together with any improvements thereon, if any, reconveyed to the City for no consideration, free and clear of any liens and encumbrances created by the act or default of the Developer, with taxes, water, sewer and other utility charges prorated as of the date of such reconveyance, and/or terminate this Agreement.

6.6 **Property Conveyed "AS IS/WHERE IS, WITH ALL FAULTS."** The Conveyed Property in its entirety or any portion thereof, shall be conveyed to the Developer "AS IS/WHERE

IS, WITH ALL FAULTS," and in such condition as the same may be on the date of conveyance, without any representations or warranties by the City as to the condition of that portion of the Conveyed Property conveyed. The City does not make any guarantee, warranty or representation, express or implied, as to the quality, character or condition of the portion of the Conveyed Property. Upon conveyance, the Developer shall be solely responsible for preparing the Conveyed Property or any portion thereof conveyed, for development and construction of the Project, including but not limited to environmental remediation that is specifically cited and identified in the Huff & Huff Incorporated reports, dated January 17, 2015 which has been provided to the Developer.

6.7 **Adjustments in Legal Descriptions/Plats of Subdivision**. The City and Developer recognize and acknowledge that the legal description(s) of the Conveyed Property as set forth in Exhibit D may have to be minimally adjusted for purposes of the development of the Project and do hereby agree to take such actions as may be necessary to make such minor adjustments. Additionally, the City and Developer agree that the Conveyed Property shall be conveyed, at the time that Developer undertakes construction of a particular Phase, as provided for under this Agreement in accordance with Plats of Subdivision to be processed by the City as part of the approval of the Project. The City and Developer shall cooperate in the preparation, approval and recording of such Plats of Subdivision.

ARTICLE VII.
CONVEYANCE OF PROJECT, ASSIGNMENT OF RIGHTS AND INTERESTS, PROHIBITED DEVELOPER ACTIONS, AND DISCLOSURE

7.1 **Conveyance of Project**. The Developer may not sell, lease, transfer, assign or otherwise convey all or any portion of its interest in any Phase of the Project, or any portion thereof (including all or any portion of the beneficial interest in any land trust which holds legal title to all or a portion of the Property comprising a part of the Project) (any such sale, transfer, assignment or conveyance being herein referred to as a "*Conveyance*") until the Phase which is the subject of the Conveyance is Substantially Complete or the Corporate Authorities of the City have formally consented to the Conveyance, in which case the City Administrator shall advise the Developer of such consent.

7.2 **Assignment.** The Developer shall not assign its rights and interests in this Agreement without the formal written consent of the Corporate Authorities of the City, which consent shall not be unreasonably withheld, conditioned or delayed. The Developer shall be permitted to grant and convey to third parties (each a "*Mortgagee*") mortgage liens and other liens and encumbrances upon that portion of the Conveyed Property owned by the Developer as security for financing extended to the Developer from time to time in connection with the Project, or any Phase thereof (each a "*Mortgage*"), without the prior consent of the City. The Developer shall be permitted to collaterally assign and grant a security interest in its rights and interests under this Agreement for that portion of the Conveyed Property for a particular Phase to such Mortgagee pursuant to a security agreement in a form acceptable to the City ("*Assignment*"). In the event that any Mortgagee shall succeed to the Developer's interest in any portion of the Project pursuant to the exercise of remedies under any such Mortgage or Assignment, whether by foreclosure, deed in lieu of foreclosure and/or exercise of any

rights under such documents, the City hereby agrees to attorn to and recognize such party as the successor in interest to the Developer for all purposes under this Agreement, so long as such party enters into an assumption agreement in a form acceptable to the City ("*Assumption Agreement*") but which shall provide, among other things, that any Mortgagee or successor shall be bound by and shall be required to perform the terms of this Agreement. Execution of the Assumption Agreement shall not relieve the Developer from liability for any default of the Developer which occurred prior to the execution of the Assumption Agreement. If such Mortgagee does not enter into an Assumption Agreement, such party shall be entitled to no rights and benefits under this Agreement, and such party shall be bound by the provisions of this Agreement, which are deemed covenants expressly running with the land and the City shall not be obligated to make any disbursement of any proceeds of any Bonds or to pay any other economic incentive set forth in this Agreement to such Mortgagee or any successor to such Mortgagee, unless agreed to by the City in writing. Notwithstanding the foregoing, under all circumstances, the Conveyed Property and every portion thereof shall only be developed in accordance with this Agreement.

Notwithstanding the foregoing, should the Developer's interest in any Phase undertaken by the Developer or any portion thereof, be conveyed to a Mortgagee or other lien holder by virtue of a foreclosure or deed in lieu of foreclosure, such occurrence shall constitute an event of default and the Developer's rights, but not its obligations and liabilities, under this Agreement shall thereafter be deemed to be null, void and of no further force and effect. Upon the institution of any legal action to enforce any right or remedy under a Mortgage or other lien recorded against any of the Property, the City shall not thereafter be required to perform any term or condition of this Agreement unless and until the Developer, any Mortgagee or successor shall cure any deficiency under, or violation of the terms of, the Mortgage or other lien which gave rise to such legal action.

7.3 **Use of Plans**. If Developer does not exercise or fails to commence with its development rights under this Agreement or with respect to construction of any Phase, or in the event of exercise by the City of its rights under Section 9.4 hereof, Developer shall assign to the City, or as the City shall direct, all of its right, title and interest in and to any and all development and/or construction plans, renderings, drawings and specifications developed and created for the Governmental Requirements and as may be prepared for construction of any Phase ("*Development Plans*") for the Project. At such time the City conveys a portion of the Conveyed Property for a particular Phase, the Developer shall deliver to the City letters from the architect, engineer and all other consultants that have provided development services to the Developer that prepared the Development Plans permitting the City or its assignee to use them, in accordance with this Section 7.3, without charge to complete the Project or redevelop the Property, or any Phase thereof, with any other plan or redevelopment. Developer shall be responsible to pay the architect, engineer and other consultants for any outstanding and completed work.

7.4 **Prohibited Developer Actions**. During the term of this Agreement, the Developer shall not, without the consent of the Corporate Authorities of the City, which consent shall not be unreasonably withheld:

(A) merge or consolidate its non-Project assets with another entity; or

(B) subject to receipt of a Certificate of Substantial Completion for a particular Phase, to liquidate the majority of its assets unless directed to do so by Court Order; or

(C) enter into any transaction outside the ordinary course of business that would materially or adversely affect the ability of the Developer to complete the Project; or

(D) assume or guarantee the obligations of any other person or entity that would materially or adversely affect the ability of the Developer to complete the Project; or

(E) except as limited by 7.4(B) above, enter into a transaction that would cause a material and detrimental change to the Developer's condition; notwithstanding anything contained herein to the contrary the Developer shall be entitled to add additional equity investors.

7.5 **Disclosure**. Developer shall disclose to the City the names and addresses of all persons or entities that comprise Developer and shall promptly inform the City of any changes. Any proposed change in the Persons that comprise any portion of Developer, or in any ownership interests, shall be reported to the City no less than thirty (30) days prior to the effective date of such change. To the extent practicable and permitted by law, the City shall give Developer at least thirty (30) days prior notice of, and permit Developer to contest, any public disclosure to be made in response to a claim that such disclosure is required by applicable law. This subsection shall survive termination of this Agreement.

ARTICLE VIII.
AUTHORITY

8.1 **Powers.**

(A) The City hereby represents and warrants to the Developer that the City believes it has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and the foregoing has been, or will be, duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City, and is enforceable in accordance with its respective terms and provisions and the execution of this Agreement does not require the consent of any other governmental authority.

(B) The Developer hereby represents and warrants to the City that the Developer has full lawful right, power and authority, under currently applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and the foregoing has been or will be duly and validly authorized and approved by all necessary Developer actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the Developer, is enforceable in accordance with its terms and provisions and does not require the consent of any other party.

8.2 **Authorized Parties**. Except in cases where the approval or authorization of the City's Corporate Authorities is required by law, whenever, under the provisions of this Agreement, or other related documents and instruments or any duly authorized supplemental agreements, any request, demand, approval, notice or consent of the City or the Developer is required, or the City or the Developer is required to agree to, or to take some action at, the request of the other, such request, demand, approval, notice or consent, or agreement shall be given for the City, unless otherwise provided herein, by the Mayor or his designee and for the Developer by any officer of the Developer so authorized (and, in any event, the officers executing this Agreement are so authorized). Any Party shall be authorized to act on any such request, demand, approval, notice or consent, or agreement or other action and neither Party hereto shall have any complaint against the other as a result of any such action taken.

ARTICLE IX.
GENERAL PROVISIONS

9.1 **Time of Essence**. Time is of the essence of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

9.2 **Force Majeure.** For the purposes of this Agreement, neither the Developer nor the City shall be considered to be in breach of any of its obligations hereunder if said Party is unable to perform as a result of any Force Majeure Delay as hereinafter defined. "Force Majeure Delay" means any delay in the construction caused by any one or combination of the following, which are beyond the reasonable control of and/or without the fault of the party relying thereon, destruction by fire or other casualty, or performance is prevented by strike or other labor troubles, other than those intentionally caused by Developer, governmental restrictions, takings, and limitations arising subsequent to the date hereof, war or other national emergency; fire, flood or other casualties, shortage of material, not attributable to any intentional action or conduct by Developer, extreme adverse weather conditions, such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures, tornadoes or cyclones, change orders requested by the City, any delay in the performance by Developer resulting from the nonperformance of the City's responsibilities, and any other extraordinary events or conditions beyond the reasonable control of the Developer or the City including but not limited to delays directly or indirectly related to environmental matters identified and cited in the Huff & Huff Incorporated reports that have been delivered to Developer or the City by Huff & Huff Incorporated, including but not by way of limitation the letter report dated January 17, 2015, which, in fact, materially interfere with the ability of the Developer or the City to discharge its respective obligations hereunder. Force Majeure Delay shall not include: (1) economic hardship or impracticability of performance (except as may be provided herein), (2) commercial or economic frustration of purpose (except as may be provided herein), or (3) a failure of performance by a contractor (except as caused by events which are Force Majeure Delay as to the contractor).

In each case were a Party hereto believes its performance of any specific obligation, duty or covenant is delayed or impaired by reason of an event of Force Majeure Delay, the Party claiming the benefit of this Section 9.2 shall notify the other Party of the nature of the event claimed to constitute Force Majeure Delay and, specifically, the obligation, duty or covenant which it believes is delayed

or impaired by reason of the designated event. Notification shall be provided in accordance with Section 9.10 hereof. Performance of the obligation, duty or covenant impaired by reason of the designated event shall be tolled for that period of time reasonably necessary to remove or otherwise cure the impediment to performance and the Party relying on the event of Force Majeure Delay shall be obligated to pursue such remedy or cure with reasonable diligence given the nature of the impairment, to the extent the same may be reasonably cured. In no case shall an event of Force Majeure Delay toll the performance of any obligation, duty or covenant not directly or indirectly implicated in the claimed event of Force Majeure Delay. Further, nothing herein shall be deemed to preclude the right of the Party entitled, by the terms of this Agreement, to receive the performance of any obligation, duty or covenant to challenge the validity of a claimed event of Force Majeure Delay.

9.3 **Events of Default**.

A. The following shall be Developer Events of Default with respect to this Agreement:

i. If any material representation made by the Developer in this Agreement, or in any certificate, notice, demand or request made by a Party hereto, in writing and delivered to the City pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made provided, however, that such default shall constitute an event of default only if the Developer does not remedy the default within 30 days after written notice from the City

ii. Failure of the Developer to comply with any material covenant or obligation contained in this Agreement, or any other agreement, financing or otherwise, concerning the Project, or the existence, structure or financial condition of the Developer.

iii. The Developer: (i) is unable, or admits in writing its inability to pay, its debts as they mature; or (ii) makes a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its or their property; or (iii) is adjudicated a bankrupt; or (iv) files a petition in bankruptcy or to effect a plan or other arrangement with creditors; or (v) files an answer to a creditor's petition (admitting the material allegations thereof) for an adjudication of bankruptcy or to effect a plan or other arrangement with creditors; or (vi) applies to a court for the appointment of a receiver for any asset; or (vii) has a receiver or similar official appointed for any of its assets, or, if such receiver or similar official is appointed without the consent of the Developer and such appointment shall not be discharged within 60 days after his appointment or the Developer has not bonded against such receivership or appointment; or (viii) a petition described in (iv) is filed against the Developer and remains pending for a period of 60 consecutive days, unless the same has been bonded, and as a result thereof, the Developer ceases to operate; or (ix) files any lawsuit, claim and/or legal, equitable or administrative action affecting the City's ability to collect any such sales tax revenue hereunder.

iv. Failure to have funds or the ability to raise funds to meet Developer's obligations, which failure or inability materially interferes with and adversely affects Developer's ability to meet its obligations for the Project, in the ordinary course of business.

v. The Developer abandons the Project. Abandonment shall be deemed to have occurred when work stops on a Phase of this Project for more than 45 consecutive days for any reason other than: (i) Uncontrollable Circumstances and or Force Majeure (ii) if the Developer is ahead of its planned construction schedule on the Project Schedule, or (iii) work stoppage caused by an action or inaction of the City that is not in compliance with the terms of this Agreement.

vi. The Developer materially fails to comply with applicable governmental codes and regulations in relation to the construction and maintenance of the buildings contemplated by this Agreement.

vii. Failure to timely pay when due all real estate property taxes on the Project.

B. The following shall be City Events of Default with respect to this Agreement:

i. If any material representation made by the City in this Agreement, or in any certificate, notice, demand or request made by a Party hereto, in writing and delivered to the Developer pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an event of default only if the City does not remedy the default within 60 days after written notice from the Developer.

ii. Failure of the City to comply with any of its obligations under this Agreement, including without limitation its obligations to make any payment to the Developer, as and when due, under this Agreement.

9.4 **Remedies of Default**. In the case of an Event of Default hereunder:

A. The defaulting party shall, upon written notice from the non-defaulting party, take immediate action to cure or remedy such event of default. If, in such case, any monetary event of default is not cured within 15 days, or if in the case of a non-monetary event of default, action is not taken or not diligently pursued, or if action is taken and diligently pursued but such event of default or breach shall not be cured or remedied within a reasonable time, but in no event more than 30 additional days after receipt of such notice, unless extended by mutual agreement, the non-defaulting party may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance of the defaulting party's obligations under this Agreement.

B. In case the City shall have proceeded to enforce its rights under this Agreement and such proceedings shall have been discontinued or abandoned for any reason, then, and in every such case, the Developer and the City shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Developer and the City shall continue as though no such proceedings had been taken.

C. In the case of an event of default by the Developer, and its failure to cure such default after due notice and within the time frames provided for in this Agreement, in addition to any other remedies at law or in equity, the City may terminate this Agreement and upon such termination shall be relieved of its obligations under this Agreement, including but not limited to its obligations to convey any Conveyed Property to the Developer.

D. In the case of an event of default by the City and its failure to cure such default after due notice and within the time period provided for in this Agreement, in addition to any other remedies at law or in equity, the Developer may terminate this Agreement and recover from the City payment for reimbursable Redevelopment Project Costs and Parking Deck Costs as provided for in this Agreement actually incurred and any related 5% construction management fee earned by Developer.

E. In the case of an event of default by the Developer occurring prior to the commencement of construction, the City agrees that it shall have no remedy of specific performance to force the Developer to commence construction.

9.5 **Amendment**. This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the Parties evidenced by a written amendment, by the adoption of an ordinance or resolution of the City approving said written amendment, as provided by law, and by the execution of said written amendment by the Parties or their successors in interest.

9.6 **Entire Agreement**. This Agreement sets forth all agreements, understandings and covenants between and among the Parties relative to the matters herein contained. This Agreement supersedes all prior agreements, negotiations and understandings, written and oral, and shall be deemed a full integration of the entire agreement of the Parties.

9.7 **Severability**. If any provisions, covenants, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement and, to that end, all provisions, covenants, agreements or portions of this Agreement are declared to be severable.

9.8 **Consent or Approval.** Except as otherwise provided in this Agreement, whenever consent or approval written or otherwise of any Party to this Agreement is required, such consent or approval shall not be unreasonably withheld, delayed or conditioned.

9.9 **Illinois Law**. This Agreement shall be construed in accordance with the laws of the State of Illinois.

9.10 **Notice.** Any notice to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be (i) delivered personally, with a receipt requested therefore; or (ii) sent by telecopy facsimile or electronic mail; or (iii) sent by a recognized overnight courier service; or (iv) delivered by United States registered or certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the Parties at their

respective addresses set forth below, and the same shall be effective (a) upon receipt or refusal if delivered personally or by telecopy facsimile; (b) one (1) business day after depositing with such an overnight courier service, or (c) two (2) business days after deposit in the mail, if mailed. A Party may change its address for receipt of notices by service of a notice of such change in accordance herewith. All notices by telecopy facsimile shall be subsequently confirmed by U.S. certified or registered mail.

If to the City:

City of St. Charles
Attn: City Administrator
Two East Main Street
St. Charles, Illinois 60174
Attention: City Administrator
Fax No. (630) 377-4440
email: cao@stcharlesil.gov

with a copy to:

John M. McGuirk
Hoscheit, McGuirk, McCracken & Cuscaden P.C.
1001 East Main Street
Suite G
St. Charles, Illinois 60174
Fax No. (630) 513-8799
email: jmc@hmcpc.com

with a copy to:

Nicholas S. Peppers
Storino Ramello & Durkin
9501 West Devon Avenue
8th Floor
Rosemont, Illinois 60018
Fax No. (847) 318-9509
email: npeppers@srd-law.com

If to the Developer:

First Street Development II, LLC
Attention: Bob Rasmussen
P.O. Box 3970
409 East Illinois Street
St. Charles, Illinois 60174
email: bob@midwestcustomhomes .com

with a copy to:

William F. Bochte
Bochte & Kuzniar, P.C.
2580 Foxfield Road, Suite 200
St. Charles, Illinois 60174
Fax No. (630) 377-3479
email: wbochte@bknlaw.com

9.11 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

9.12 **Term of Agreement; Extension of Term of TIF.** The term ("*Term*") of this Agreement shall commence on the date first above written and continue until the earlier of issuance of the Phase 3 Certificate of Completion and December 31, 2038 the date which 23 years after the establishment of the Redevelopment Project Area. In the event the City pursues and receives an extension of the term of the Redevelopment Project Area and associated tax increment allocation financing, the Developer shall have no additional rights under the terms and provisions of this Agreement and this Agreement shall terminate on December 31, 2038.

9.13 **Nature of Developer Public Improvements and City Public Improvements**. The City and the Developer hereby expressly covenant, warrant and agree that no special legal entitlements to the Developer Public Improvements or any portion of the Developer Public Improvements or the City Public Improvements or any portion of the City Public Improvements shall at any time inure to the Developer, any successor to or assignee of the Developer or any other nongovernmental person, it being the express intent of the parties hereto that the Developer Public Improvements and the City Public Improvements (together, the "*Public Improvements*") are and shall at all times be publicly owned, operated and maintained as part of the public capital infrastructure systems of the City. The City and the Developer hereby expressly acknowledge that Bond Counsel may rely upon this Section 9.13 in rendering its approving legal opinion on any Bonds, in the event any Bonds are issued bearing interest which is excludable from the gross income of the owners thereof for purposes of federal income taxation.

9.14 **Taxes of General Applicability**. The parties agree that security for the Bonds and payments of debt service on the Bonds may include special service area taxes, which are other than taxes of general applicability. Each of the Developer and the City accordingly hereby expressly agrees and recognizes that use, directly or indirectly, in any trade or business carried on by a person other than a governmental unit of any portion of the Public Improvements to be financed with Bond proceeds may cause the Bonds to be classified as private activity bonds under the Internal Revenue Code and promulgated regulations. Accordingly, each of the Developer and the City covenants not to enter into or enforce any agreements with any party, including the Developer or the City, that would permit any use, directly or indirectly, in any trade or business carried on by a person other than a governmental unit of any portion of the Public Improvements financed with any Bond proceeds without an opinion of Bond Counsel that such agreement will not adversely affect the tax exempt status of interest on any Bonds issued on a tax-exempt basis for federal income tax purposes. No provision of this Agreement will be enforced for the benefit of any nongovernmental user (other than

a member of the general public) of any portion of the Public Improvements financed by any Bond proceeds.

9.15 **Good Faith and Fair Dealing.** City and Developer acknowledge their duty to exercise their rights and remedies hereunder and to perform their covenants, agreements and obligations hereunder, reasonably and in good faith.

9.16 **Drafting.** Each Party and its counsel have participated in the drafting of this Agreement therefore none of the language contained in this Agreement shall be presumptively construed in favor of or against either Party.

9.17 **Recording**. The Parties agree to record this Agreement with the Kane County Recorder of Deeds.

9.18 **Covenants Run with the Land**. It is intended that the covenants, conditions, agreements, promises, obligations and duties of each Party as set forth in this Agreement shall be construed as covenants and that, to the fullest extent legally possible, all such covenants shall run with and be enforceable against both the covenanter and the Project. Such covenants shall terminate upon termination or expiration of this Agreement.

9.19 **Right to Enjoin**. In the event of any violation or threatened violation of any of the provisions of this Agreement by a Party or Occupant, any other Party shall have the right to apply to a court of competent jurisdiction for an injunction against such violation or threatened violation, and/or for a decree of specific performance.

9.20 **Partial Funding**. Except as otherwise set for in this Agreement, the Developer acknowledges and agrees that the economic assistance to be received by the Developer as set forth in this Agreement is intended to be and shall be a source of partial funding for the Project and agrees that any additional funding above and beyond said economic assistance shall be solely the responsibility of the Developer. The Developer acknowledges and agrees that the amount of economic assistance set forth in this Agreement represents the maximum amount of economic assistance to be received by the Developer, provided the Developer complies with the terms and provisions set forth in this Agreement. The Developer further acknowledges and agrees that the City is not a joint developer or joint venturer with the Developer, and the City is in no way responsible for completion of any portion of the Project except for the City Public Improvements.

9.21 **Attorney Fees.** Should it become necessary to bring legal action or proceedings to enforce this Agreement, or any portion thereof, or to declare the effect of the provisions of this Agreement, the prevailing party shall be entitled to recover or offset against sums due, its costs, including reasonable attorney's fees, in addition to whatever other relief the prevailing party may be entitled.

9.22 **Cancellation**. In the event the Developer or the City shall be prohibited, in any material respect, from performing covenants and agreements or enjoying the rights and privileges herein contained, or contained in the Redevelopment Project Area, including the Developer's duty to build the Project, by the order of any court of competent jurisdiction, or in the event that all or any part of the Act or any ordinance adopted by the City in connection with the Project, shall be declared invalid or unconstitutional, in whole or in part, by a final decision of a court of competent jurisdiction (collectively the "Involuntary Termination Events"), and such declaration shall materially affect the Redevelopment Project Area or the covenants and Agreements or rights and privileges of the Developer or the City to such extent that the Project cannot be completed in substantial conformance with this Agreement, then and only in any such event, the Party so materially affected may, at its election, terminate this Agreement in whole (or in part with respect to that portion of the Project so materially affected) by giving written notice thereof to the other within 60 days after such final decision or amendment. If the City terminates this Agreement pursuant to this Section 9.22, the City, at its option, may also terminate its duties, obligation and liability under all or any related documents and agreements the execution of which is not possible because of an Involuntary Termination Event. Further, the termination of this Agreement shall have no effect on the authorizations granted to the Developer for buildings permitted and under construction to the extent permitted by any Involuntary Termination Event; and termination of this Agreement shall have no effect on perpetual easements contained in any recorded, properly executed document. If the City terminates this Agreement or any related documents and agreements pursuant to this Section 9.22, it shall pay Developer for reimbursable Redevelopment Project Costs and Parking Deck Costs as provided for in this Agreement actually incurred and any related 5% construction management fee earned by Developer, prior to the Involuntary Termination Event.

9.23 **No Joint Venture, Agency or Partnership Created**. Nothing in this Agreement, or any actions of the Parties to this Agreement, shall be construed by the Parties or any person to create the relationship of a partnership, agency or joint venture between or among such Parties.

9.24 **No Personal Liability of Officials of the City or the Developer**. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of the corporate authorities, any elected official, officer, partner, member, director, agent, employee or attorney of the City or the Developer, in his or her individual capacity, and no elected official, officer, partner, member, director, agent, employee or attorney of the City or the Developer shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery and performance of this Agreement, or any failure in that connection.

[SIGNATURE PAGE FOLLOWS IMMEDIATELY]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

CITY OF ST. CHARLES,
an Illinois Municipal Corporation

By:_____
Mayor

ATTEST:

_____
City Clerk

FIRST STREET DEVELOPMENT II, LLC

By:_____
Its Managing Member

ATTEST:

_____
Its: _____

EXHIBITS

A. REDEVELOPMENT PROJECT AREA

A-1. MAP OF REDEVELOPMENT PROJECT AREA

B. LEGAL DESCRIPTION - CITY PROPERTY

B-1. MAP OF CITY PROPERTY

C. LEGAL DESCRIPTION – CONVEYED PROPERTY

C-1. MAP OF CONVEYED PROPERTY

D-1. SITE PLAN

D-2. SCOPE OF PROJECT

D-3. GOVERNMENTAL REQUIREMENTS

E. CONSTRUCTION PHASING SCHEDULE

F-1. DEVELOPER PUBLIC IMPROVEMENTS

F-2. CITY DEVELOPMENT PUBLIC IMPROVEMENTS

F-3. CITY PUBLIC IMPROVEMENTS

G. PROPERTY CONVEYANCE SCHEDULE

H. REIMBURSEMENT APPLICATION

I. CERTIFICATE OF SUBSTANTIAL COMPLETION

EXHIBIT A

REDEVELOPMENT PROJECT AREA

CENTRAL DOWNTOWN
REDEVELOPMENT PROJECT AREA

That part of the South Half of Section 27 and the North Half of Section 34 in Township 40 North, Range 8 East of the Third Principal Meridian in the City of St. Charles, Kane County, Illinois, described as follows:

Beginning at the southwesterly corner of Block 22 in the Original Town of St. Charles, recorded May 8, 1837, in Book 19, page 2; thence southeasterly, 340 feet along the easterly line of 3rd Avenue to the northwest corner of Block 6 of said subdivision; thence southwesterly, 260 feet along the southerly line of Main Street to the northwest corner of Block 4 of said subdivision; thence southeasterly, 608.3 feet along the easterly line of Second Avenue to a line parallel with and 111.7 feet northerly of (as measured along the easterly line thereof) the southerly line of Block 15 in said subdivision; thence westerly, along said parallel line to the westerly line of said Block 15; thence southeasterly, along said westerly line and the southeasterly extension thereof to the easterly extension of the northerly line of Brownstone, recorded January 2, 2001, as Document No. 2001K000149; thence southwesterly, along said extension and said northerly line, to the northwest corner of said Brownstone; thence southeasterly, along the westerly line of said Brownstone to the easterly extension of the southerly line of Lot 7 in Phase I of First Street Redevelopment Subdivision, recorded March 29, 2007, as Document No. 2007K035551; thence South 78 degrees 42 minutes 53 seconds West along said extension and the southerly line of said Lot 7 to the southwest corner thereof; thence North 11 degrees 17 minutes 02 seconds West, 231.95 feet along the west line of Lots 7 and 14 in said subdivision to the northwest corner of said Lot 14; thence North 78 degrees 35 minutes 36 seconds East, 66.48 feet along the north line of said Lot 14 to the northeast corner thereof; thence North 11 degrees 30 minutes 41 seconds West, 25.00 feet along an east line of Lot 5 in said subdivision to the southeast corner of Lot 6 in said subdivision; thence South 78 degrees 35 minutes 36 seconds West, 84.96 feet along the south line of said Lot 6 to the southwest corner thereof; thence North 11 degrees 39 minutes 20 seconds West, 197.00 feet along a westerly line of said Lot 6 to a jog in said westerly line; thence South 78 degrees 20 minutes 40 seconds West, 41.90 feet along said jog to the westerly line of said Lot 6; thence North 11 degrees 13 minutes 55 seconds West along said westerly line and the northerly extension thereof to the southerly line of Lot 3 in the Amended Phase II First Street Redevelopment Subdivision, recorded July 8, 2008, as Document No. 2008K056095; thence North 78 degrees 37 minutes 37 seconds East along the southerly line of said Lot 3 to a curve in said southerly line; thence northeasterly, 44.24 feet along said curve, having a radius 28.00 feet, the chord of said curve bears North 33 degrees 21 minutes 37 seconds East, 39.78 feet to the easterly line of said Lot 3; thence North 11 degrees 54 minutes 23 seconds West, 441.52 feet along the easterly line of Lots 3 and 13 in said subdivision to the northeast corner of said Lot 13; thence North 78 degrees 29 minutes 30 seconds East, 12.31 feet along the easterly extension of the north line of said Lot 13 to the westerly line of 1st Street, according to the plat recorded January 25, 1844, in Book 4, page 342; thence northwesterly, 37.52

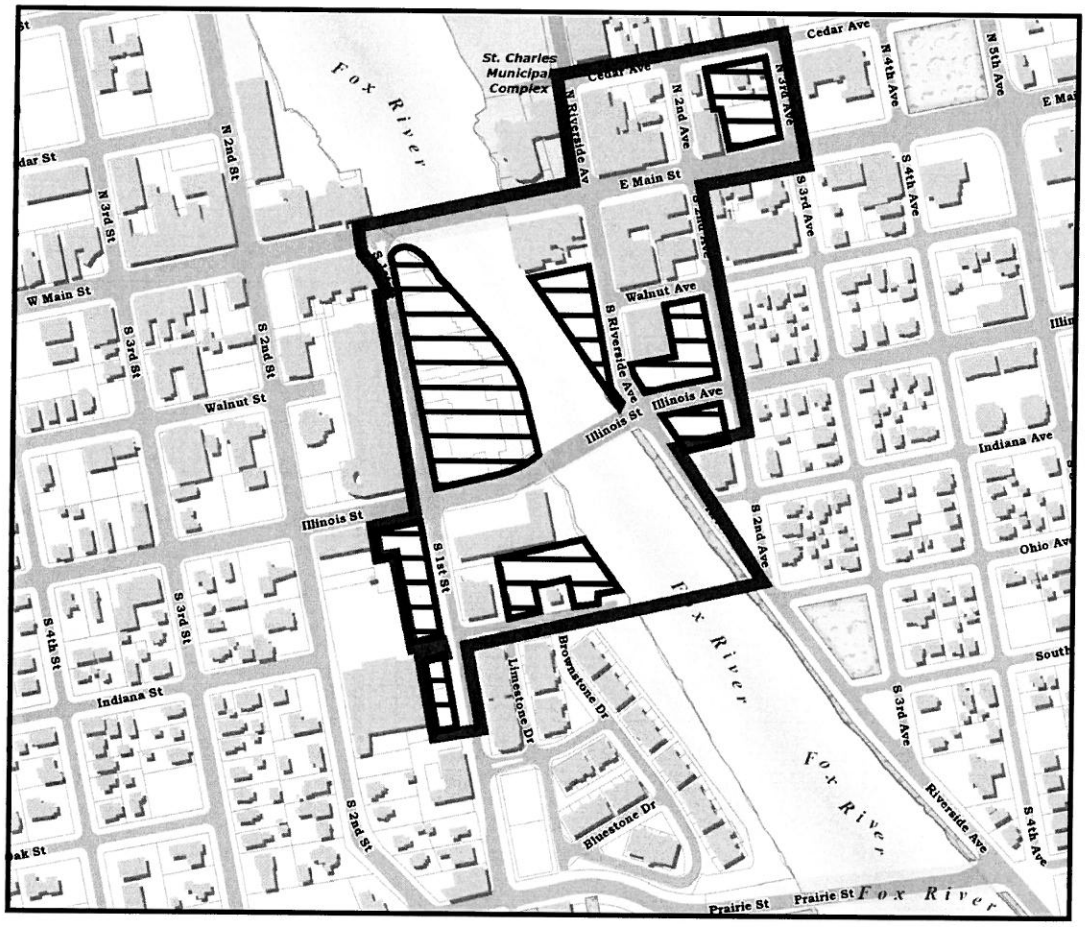
feet along said right-of-way to an angle point in said line; thence northwesterly, 59.15 feet along said right-of-way to the northerly line of Block 39 in said Original Town of St. Charles; thence northeasterly along said northerly line to the northeast corner thereof; thence northerly to the southeast corner of the Hotel Baker Subdivision, recorded December 2, 1982, as Document No. 1623173; thence northeasterly along the northerly line of Illinois Route 64 (Main Street) to the southwest corner of Lot 5 in Block 2 of County Clerk's 1899 Assessment Division East of the Fox River; thence continuing northeasterly along the southerly line of said Block 2 to the northwesterly right-of-way line of Illinois Route 64 (Main Street) and 1st Avenue per Document Number 96K045968; thence northeasterly 21.22 feet along said line to the easterly line of said Block 2; thence northwesterly along the westerly line of 1st Avenue to the southeast corner of Block 3 in said County Clerk's 1899 Assessment Division; thence northeasterly, 580 feet along the north line of Cedar Avenue to the Point of Beginning.

The Redevelopment Project Area is generally bounded by 1st Street on the west, 3rd Avenue on the east, Indiana Street on the south and Main Street (west of Fox River) and Cedar Avenue (east of Fox River) on the north.

EXHIBIT A-1

MAP OF REDEVELOPMENT PROJECT AREA

Central Downtown TIF RPA Development Map



City of St. Charles
Central Downtown TIF RPA

Mixed Use
Commercial
Office
Residential
Public/Parks/Openspace

Central Downtown TIF Boundary

**All other properties shall retain the land use designation shown on the Central Downtown Existing Land Use Map

N

EXHIBIT B

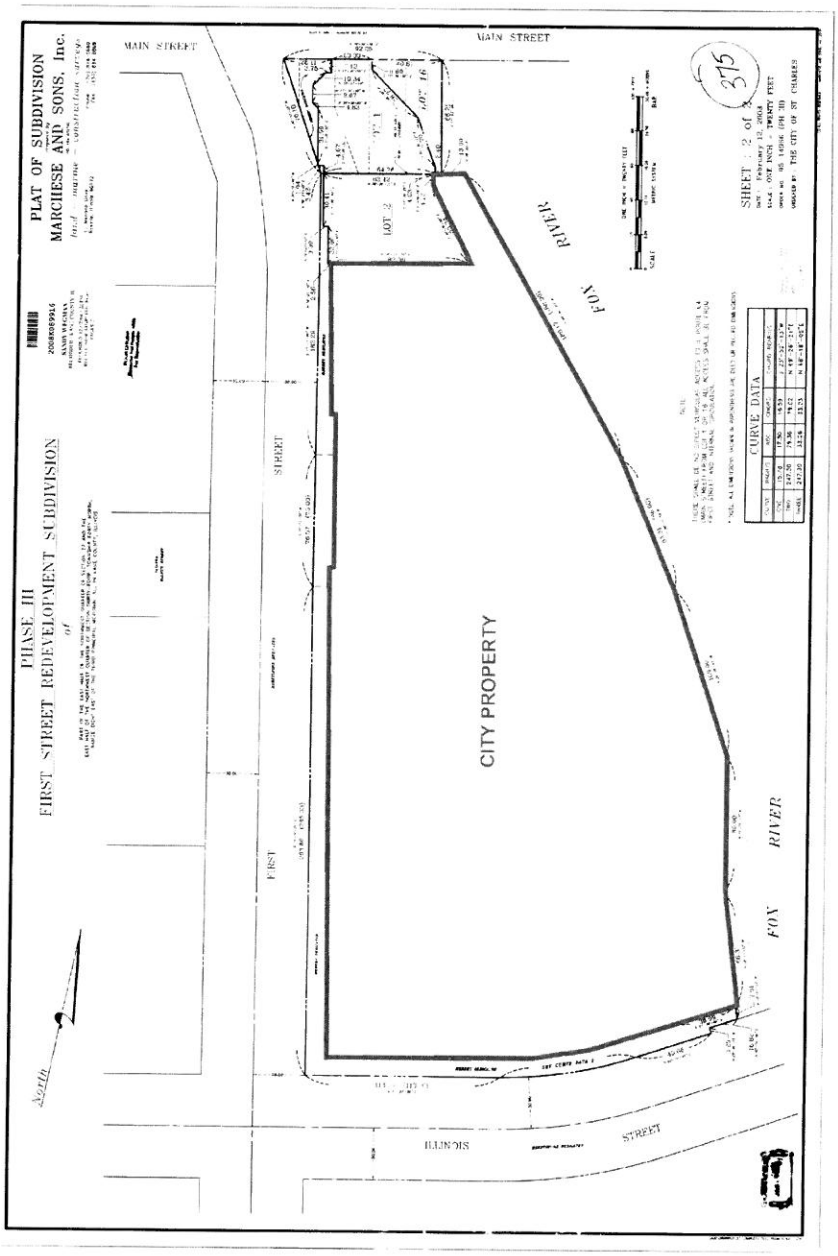
LEGAL DESCRIPTION

CITY PROPERTY

Lots 3, 4, 5 11 and 12 in the Phase III First Street Redevelopment Subdivision, according to the plat thereof recorded as Document No. 2008K089916, in the City of St. Charles, Kane County, Illinois.

EXHIBIT B-1

MAP OF CITY PROPERTY



521021.2

EXHIBIT C

LEGAL DESCRIPTION

CONVEYED PROPERTY

Phase 1
PROPOSED LOT 1 OF THE PLAT OF RESUBDIVISION OF 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 34, TOWNSHIP 40 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL IN KANE COUNTY, ILLINOIS

PHASE 2
PROPOSED LOT 2 OF THE PLAT OF RESUBDIVISION OF 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 34, TOWNSHIP 40 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL IN KANE COUNTY, ILLINOIS

PHASE 3
PROPOSED LOT 3 OF THE PLAT OF RESUBDIVISION OF PHASE III FIRST STREET REDEVELOPMENT SUBDIVISION OF PART OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 27 AND THE E AST HALF OF THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 40 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL IN KANE COUNTY, ILLINOIS

EXHIBIT C-1

PHASE BY PHASE MAPS OF CONVEYED PROPERTY

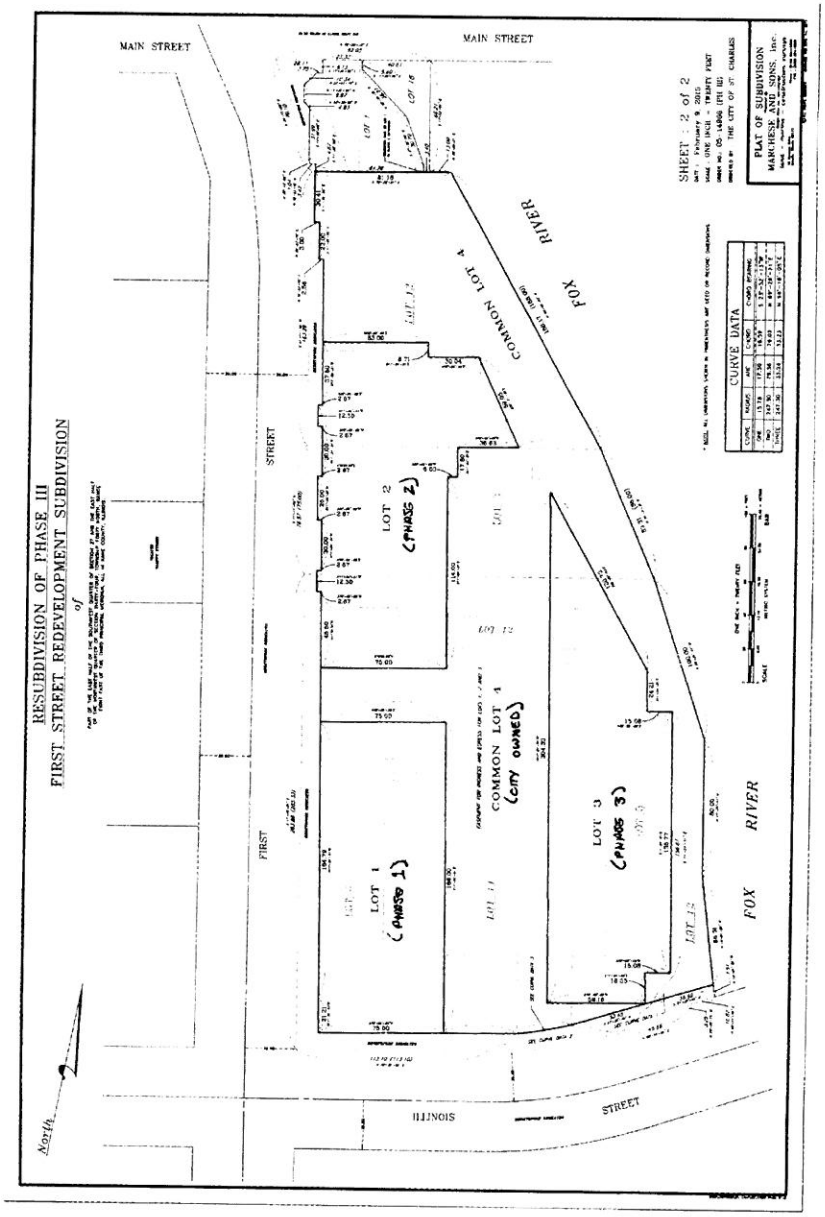
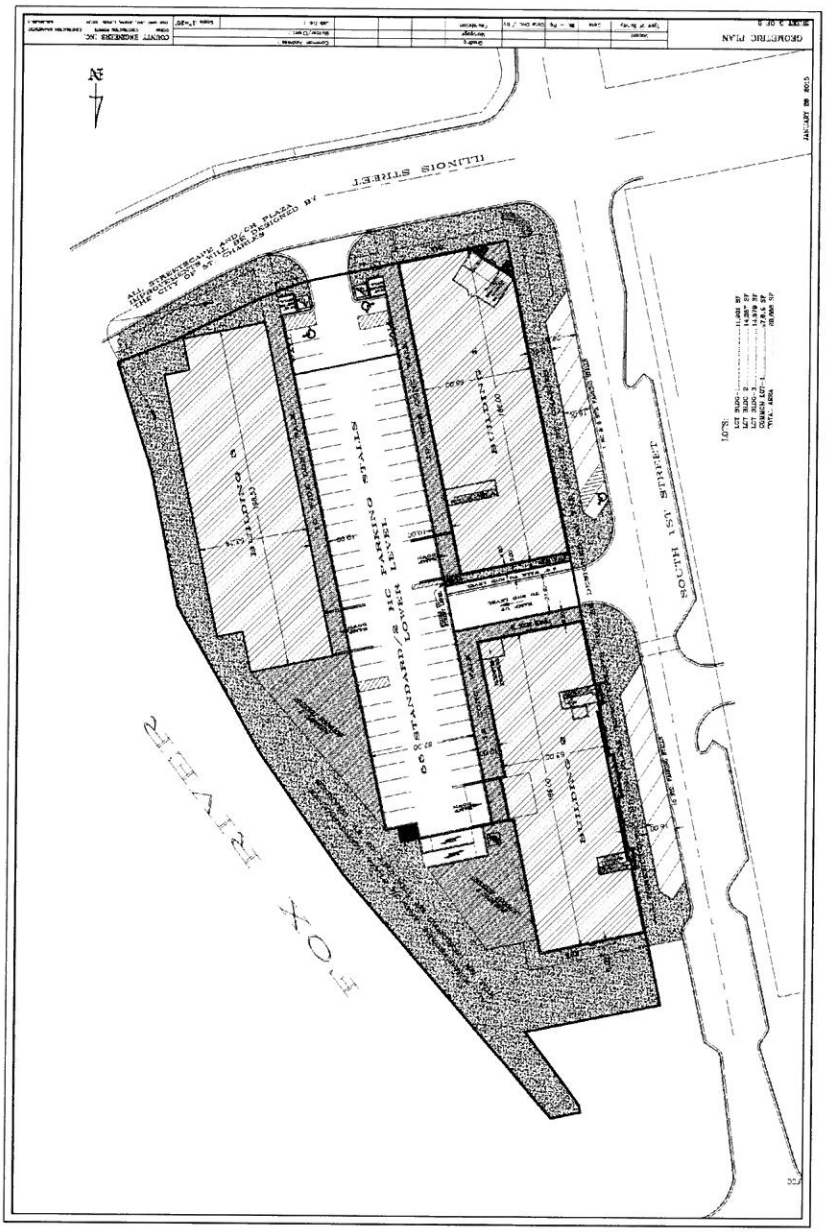


EXHIBIT D-1

SITE PLAN



521021.2

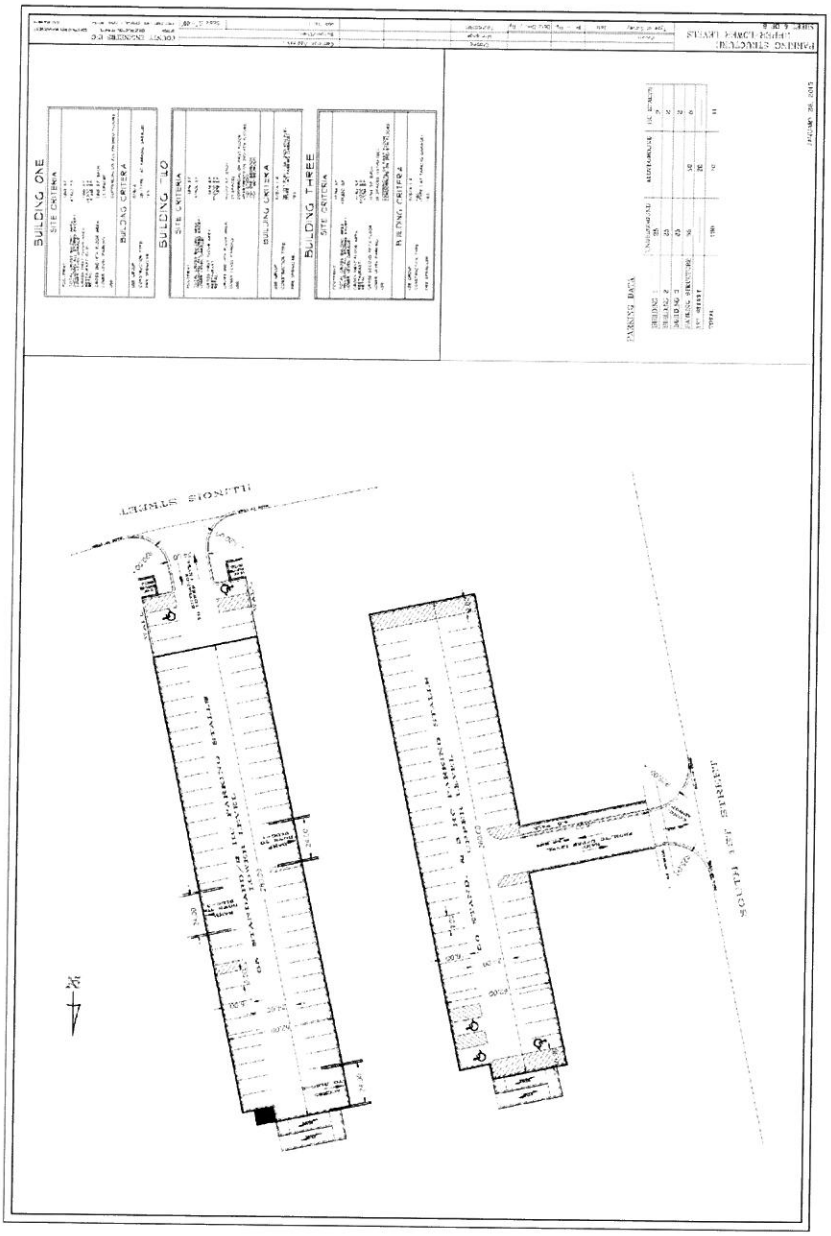

BUILDING ONE
SITE CRITERIA
BUILDING CRITERIA
BUILDING TWO
SITE CRITERIA
BUILDING CRITERIA
BUILDING THREE
SITE CRITERIA
BUILDING CRITERIA
PARKING DATA
ILLINOIS STREET
SOUTH 1ST STREET

EXHIBIT D-2

SCOPE OF PROJECT

Private Development Program				
Phase	**Timing**	**Buildings**	**Development Program Summary**	
1	Construction 7/1/15-12/31/16	Retail/Office	Retail/Commercial Office	11,865 SF 35,595 SF
			Underground Private Parking	27 Spaces
		City-Owned Public Parking Deck	Public Parking Spaces	110 Spaces
2	Construction 4/1/16-10/1/17	Retail/Apartment	Retail/Commercial Residential Apartment	11,898 SF 36,000 SF 36 Units
			Underground Private Parking Spaces	27 Total Spaces
3	Construction 4/1/17-10/1/18	Retail/Condominium	Retail/Commercial	11,966 SF
			For-Sale Residential	47,864 SF 32 Units
			Underground Private Parking Spaces	25 Total Spaces

EXHIBIT D-3

GOVERNMENTAL REQUIREMENTS

City of St. Charles, Illinois
Ordinance No. 2015-Z-___

An Ordinance Granting Approval of a PUD Preliminary Plan for a portion of Phase 3 of the First Street Redevelopment PUD (Buildings 1, 2, 3 and Parking Deck)

WHEREAS, an application has been filed for PUD Preliminary Plan for a portion of Phase 3 of the First Street Redevelopment PUD, said realty being legally described on Exhibit "A" attached hereto and incorporated herein (the "Subject Realty"); and,

WHEREAS, said application was filed with the City on or about November 3, 2014, by First Street Development II, L.L.C. ("Applicant") and authorized by the record owner of the Subject Realty, the City of St. Charles ("Record Owner"); and,

WHEREAS, the Historic Preservation Commission recommended approval of the PUD Preliminary Plan on or about November 19, 2014; and,

WHEREAS, the Plan Commission recommended approval of the PUD Preliminary Plan on or about December 16, 2014; and,

WHEREAS, the Planning & Development Committee of the City Council recommended approval of the PUD Preliminary Plan on or about _____2015; and,

WHEREAS, the City Council of the City of St. Charles has received the recommendations of the Plan Commission and Planning & Development Committee and has considered the same.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ST. CHARLES, KANE AND DUPAGE COUNTIES, ILLINOIS, as follows:

1. The preambles set forth hereinabove are incorporated herein as substantive provisions of this Ordinance as though fully set out in this Section 1.

2. That passage of this Ordinance shall constitute approval of the PUD Preliminary Plan, incorporated herein as Exhibit "B", such that the following documents and illustrations are hereby approved, reduced copies of which are attached hereto and, subject to compliance with such conditions, corrections, and modifications as may be required by the Director of Community & Economic Development and the Director of Public Works to comply with the requirements of the St. Charles Municipal Code:

- Development Data, dated _____

- Preliminary Engineering Plans titled "1st Street Phase 3", prepared by County Engineers, Inc., dated _____
- Building Architectural Elevations for Building 1, Building 2, and the Parking Deck prepared by Marshall Architects, dated _____.

3. Preliminary Plans shall be submitted for review by the Historic Preservation Commission and Plan Commission and approval by the City Council for the following:

- Streetscape Improvements for First and Illinois Streets. Streetscape improvements adjacent to each building shall be installed concurrently with the construction of each building.
- Building Architectural Elevations for Building #3.
- Riverwalk Improvements along the Fox River frontage. The portion of Riverwalk improvements located directly east of Buildings 2, 3 and the Parking Deck shall be installed concurrently with the construction of Building #3.
- Plaza area north of Building #2

4. That the subject property may be developed and used only in accordance with all ordinances of the City now in effect or hereafter amended or enacted.

5. That after the adoption and approval hereof, the Ordinance shall (i) be printed or published in book or pamphlet form, published by the authority of the Council, or (ii) within thirty (30) days after the adoption and approval hereof, be published in a newspaper published in and with a general circulation within the City of St. Charles.

PRESENTED to the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois this ____ day of _____, 2015.

PASSED by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois this ____ day of _____, 2015.

APPROVED by the Mayor of the City of St. Charles, Kane and DuPage Counties, Illinois this ____ day of _____, 2015.

_____
Raymond P. Rogina, Mayor

Attest:

_____
Nancy Garrison, City Clerk

Vote:
Ayes:
Nays:
Absent:
Abstain:
Date:_____

APPROVED AS TO FORM:

_____
City Attorney
DATE: _____

EXHIBIT "A"

LEGAL DESCRIPTION

Lots 3, 4, 5 11 and 12 in the Phase III First Street Redevelopment Subdivision, according to the plat thereof recorded as Document No. 2008K089916, in the City of St. Charles, Kane County, Illinois.

EXHIBIT "B"

PUD PRELIMINARY PLAN

- Development Data
- Preliminary Engineering Plans
- Building Architectural Elevations

EXHIBIT E

CONSTRUCTION PHASING SCHEDULE

Phase	Building/Improvement to be Constructed	Target Start Date	Completion Date
1	Retail/Office and City-Owned Public Parking Deck	7/1/15	12/31/16
2	Retail/Apartment	4/1/16	10/1/17
3	Retail/Condominium	4/1/17	10/1/18

EXHIBIT F-1

DEVELOPER PUBLIC IMPROVEMENTS
Developer's Responsibility to Construct
City to Reimburse

	Costs	Construction Dates
Phase 1 (Two (2) Structured Parking Deck with a minimum of not less than 110 spaces Parking Deck by Developer	$1,809.500.00	7/1/15-12/31/16
Developer Management Fee 5%	$91,500.00	
Public Improvements - Developer	**$1,900,000.00**	

EXHIBIT F-2

CITY DEVELOPMENT PUBLIC IMPROVEMENTS
Developer Optional to Construct
City to Reimburse

Phase 1 (Retail/Office Building)	7/1/15-12/31/16	
Streetscaping (Includes street lighting, irrigation, furniture, plantings, other improvements similar in design and concept to match streetscaping improvements located on the west side of First Street)	$360,000	adjacent to Phase 1, along part of Illinois and First Street
Construction Management Fee 5%	$18,000	
Public Improvements -Developer		**$378,000**
Phase 2 (Retail/Apartment Building)	4/1/16-10/1/17	
Streetscaping (Includes street lighting, irrigation, furniture, plantings, other improvements similar in design and concept to match streetscaping improvements located on the west side of First Street)	$150,000	adjacent to Phase 2, along First Street
Construction Management Fee 5%	$7,500	
Public Improvements -Construction		**$157,500**
Phase 3 (Riverfront Retail/Residential)	4/1/17-10/1/18	
Streetscaping (Includes street lighting, irrigation, furniture, plantings, other improvements similar in design and concept to match streetscaping improvements located on the west side of First Street)	$95,000	Adjacent to Phase 3, along Illinois St
Construction Management Fee 5%	$4,750	
Public Improvements -Construction		**$99,750**

EXHIBIT F-3

CITY PUBLIC IMPROVEMENTS
City Responsibility

The City shall, upon substantial completion by Developer of Phase 3, commence and diligently complete construction of the River Walk Improvements and Civic Plaza Areas immediately adjoining Phases 1 and 2, materially consistent and substantially conforming with the scope of the City's construction of existing Plaza, Streetscape and River Walk Improvements in the immediate vicinity.

EXHIBIT G

PROPERTY CONVEYANCE SCHEDULE

	Failure to Open Construction Escrow Default Date	**Failure to Commence Construction Default Date**
Phase 1 Property	11/1/15	12/1/15
Phase 2 Property	7/1/16	8/1/16
Phase 3 Property	7/1/17	8/1/17

EXHIBIT H

REIMBURSEMENT APPLICATION

Application No. _____

Date: _____

Pursuant to the Redevelopment Agreement ("Agreement") between the City of St. Charles, Kane and DuPage Counties, Illinois, and First Street Development II, LLC ("Developer"), the undersigned hereby requests reimbursement in the amount of _____ Dollars ($_____) for Eligible Project Costs incurred as follows:

Total reimbursement requested (including Developer Management Fees) to date:	$_____
Total reimbursement received to date:	$_____
This request:	$_____

Developer hereby certifies to the City that as of this date it has submitted to the City:

If the reimbursement requested is for real property, a copy of the ALTA Owner's Policy of Title Insurance showing that record fee simple title to all of the real property is vested in the Developer except for public rights of way therein, together with satisfactory evidence of the acquisition price of said real property.

If the reimbursement requested is not for real property, copies of all bills, invoices and other reasonable information requested by the City to evidence the Developer's costs and expenses for the amount of reimbursement requested.

If the reimbursement application is for progress payments including but not limited to payments for Developer Public Improvements ,Parking Deck Costs and Developer Management fees, copies of all contractors sworn statements and trailing partial or final waivers and other reasonable information requested by the City to evidence the Developer's costs and expenses for the amount of reimbursement requested.

Undersigned hereby certifies that the amount requested herein is for Redevelopment Project Costs incurred by the Developer and not previously reimbursed by the City.

FIRST STREET DEVELOPMENT II, LLC

By: _____

Date: _____

The City authorizes the disbursement of funds to _____ in the amount of $_____ in accordance with the Agreement.

CITY OF ST. CHARLES, ILLINOIS

By: _____

EXHIBIT I

CERTIFICATE OF SUBSTANTIAL COMPLETION

THIS CERTIFICATE OF SUBSTANTIAL COMPLETION (this "Certificate") is made as of _____, 20__, by First Street Development II, LLC, an Illinois limited liability company ("Developer"), and _____, an Illinois corporation ("Architect").

RECITALS:

A. By that certain Central Downtown Tax Increment Financing Redevelopment Agreement (First Street) (the "Agreement") dated the ____ day of _____ 20____, the parties have agreed to implement a Tax Increment Redevelopment Plan and Redevelopment Project for the First Street Redevelopment Project Area (the "Redevelopment Plan") pursuant to the Agreement and the Redevelopment Plan all as more particularly described in the Agreement.

B. In accordance with the definition of "Substantial Completion" set forth in the Agreement on or promptly after the date on which Developer and Architect determine that substantial completion as defined in the Agreement has been achieved, Developer and Architect shall issue this Certificate to the City.

C. Developer and the architect have determined that substantial completion of Phase _____ has been achieved, and, therefore, Developer and Architect are issuing this Certificate to the City in accordance with the Agreement.

D. Unless otherwise provided herein, all capitalized words and terms in this Certificate shall have the same meanings ascribed to such words and terms as in the Agreement.

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and Architect hereby certifies to the best of its knowledge and professional opinions, as follows:

1. Phase _____ has been constructed and completed in a good, workmanlike, and substantial manner, in conformity with good construction and architectural practices, and in accordance with the plans and specifications.

2. Phase _____ is free from damage and structural defects including damage caused by fire, flood, earthquake, other casualty or improper deferred maintenance.

3. Phase _____ fully complies with all applicable laws, rules, regulations, ordinances, resolutions and permits of every nature and description, including zoning, building and fire codes

and ordinances and subdivision control and environmental laws, rules and regulations, as reviewed and approved by the City of St. Charles, Illinois, or Kane, County, Illinois, and comply with all other applicable covenants, conditions and restrictions applicable to, or affecting, the Phase _____. Phase _____ has been inspected and accepted by the City of St. Charles, Illinois.

4. All permits, licenses and approvals required for the commencement of Phase including, but not limited to, building permits, have been issued and are in full force and effect, and no other permits, licenses or approvals of any governmental authority are required for the construction or use of Phase _____, except for a Certificate of Occupancy, which Developer have no reason to believe will not be issued upon completion of minor punch list items.

5. Satisfactory means of access to and from Phase _____ to adjoining public ways are available, sufficient to meet the needs of Phase _____ and all applicable requirements of public and private authorities. Sanitary water supply, storm sewer, sanitary sewer facilities and all other utilities are sufficient to satisfy the requirements of public and private authorities and Phase _____. All approvals, licenses, permits and the like necessary for such access and utilities have been obtained and are in full force and effect and are in accordance with all applicable laws and regulations.

6. This Certificate shall be binding upon Developer and Architect and their respective successors and assigns, and shall inure to the benefit of The City of St. Charles and its successors and assigns

IN WITNESS WHEREOF, Developer and Architect Have executed this Certificate as of the date and year first above written.

ARCHITECT:	**DEVELOPER:**
_____	First Street Development II, LLC
By:_____	By: _____