



Doc#: 0936210021 Fee: \$68.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/28/2009 02:53 PM Pg: 1 of 17

This agreement was prepared by
and after recording return to:
William A. Nyberg, Esq.
City of Chicago Law Department
121 North LaSalle Street, Room 600
Chicago, IL 60602

Amendment No. 1
to
Chicago Klee Development, LLC
Redevelopment Agreement

This Amendment No. 1 (the "**Amendment**") is made as of this 23^d day of December, 2009, to that certain Chicago Klee Development, LLC Redevelopment Agreement dated as of January 14, 2005 by and between the City of Chicago, an Illinois municipal corporation (the "**City**"), through its Department of Community Development ("**DCD**") (formerly known as the Department of Planning and Development ("**DPD**") and Chicago Klee Development, LLC, an Illinois limited liability company ("**Developer**") ("**the Agreement**").

RECITALS:

- A. In the Agreement, Developer agreed to redevelop the Klee Building and construct two adjacent buildings into an integrated structure located at 4001-13 N. Milwaukee Avenue in the City (collectively the "**Project**").
- B. At completion, the Project would consist of 64 residential condominium units (13 units to be sold as affordable housing), approximately 20,000 square feet of retail/commercial space on the ground floors of the 3 buildings comprising the Project, and 23 short-term outdoor parking spaces for customers of the retail merchants.
- C. As provided in the Agreement, at closing, the City sold to Developer, the Klee Building located at 4001-13 N. Milwaukee Avenue and the adjacent property located at 4022-32 N. Cicero Avenue.
- D. The Klee Building was served by an electrical vault/switchgear vault located under a public right-of-way adjacent to the 4001-13 N. Milwaukee Avenue location and electrical switchgear and transformers were located in the vault, all of which was expected to be available for use by Developer for the Project.
- E. After closing, Developer applied for various permits necessary for the Project. In this process, Developer was advised that the Chicago Department of Transportation ("**CDOT**") objected to the retention of the existing vault. CDOT believed that the retention of the existing vault would adversely impact its Milwaukee Avenue streetscape improvement project.
- F. Because the existing vault could no longer be used in the Project, and because post-closing, Developer became now subject to mandated Project completion dates under the Agreement, Developer undertook to construct a new vault in a new location which met with the approval of CDOT. This new location construction effort required a complete redesign of the electrical components, the purchase of entirely new switching gear, and the construction of a new vault. A new vault housing entirely new equipment was located under a sidewalk near the original vault.
- G. The City acknowledges that the costs incurred by Developer in connection with completing the Project because of Developer's inability to utilize the previously available vault were \$479,000 and included costs for the design and construction of a new vault, design of new switching gear, purchase of new switching gear, installation of new feeder conduits for electric company interconnection, redesign of electrical piping for the Klee Building, and other costs.

- H. Developer completed the Project on or about October 15, 2007, and has received its certificate of occupancy. Developer has also materially met its Project sales and leasing benchmarks necessary for its certificate of completion under the Agreement.
- I. Developer has submitted its request, together with all appropriate and required documentation to DCD for additional City Funds to reimburse Developer for the \$479,000 of additional redevelopment costs comprising additional TIF-Funded Improvements as defined in the Agreement ("**Extraordinary Costs**"). DCD supports Developer's request, subject to the terms and conditions contained in this Amendment.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements contained in this Amendment No. 1 to the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

AGREEMENT:

SECTION ONE: INCORPORATION OF RECITALS

The recitals stated above are an integral part of this Amendment and are hereby incorporated into this Amendment by reference and made a part of this Amendment.

SECTION TWO: DEFINITIONS

The definitions stated above in the preamble and in the recitals are hereby incorporated into this Amendment by reference and made a part of this Amendment. Capitalized terms not otherwise defined in this Amendment have the definition stated in the Agreement.

SECTION THREE: REAFFIRMATION OF REPRESENTATIONS, WARRANTIES AND COVENANTS.

Developer reaffirms each and every representation, warranty and covenant made in the Agreement, as amended by this Amendment.

SECTION FOUR: AMENDED TERMS

- 4.01 Agreement Section 4.03 (a)(ii)(Uses of City Funds) is amended and restated as follows:

City Funds may be used to reimburse Developer only for costs of TIF-Funded Improvements that constitute Redevelopment Project Costs. Exhibit E states, by line

item, the TIF-Funded Improvements for the Project contingent upon receipt by the City of documentation satisfactory in form and substance to DPD evidencing such costs and their respective eligibility as a Redevelopment Project Cost. Reimbursement of costs through City Funds shall be allowed for the following:

- (A) \$90,000 from Incremental Taxes on the Closing Date.
- (B) \$90,000 from Incremental Taxes when Developer obtains the Certificate as provided in Section 7.01,
- (C) \$479,000 from Incremental Taxes for Extraordinary Costs when Developer obtains the Certificate as provided in Section 7.01, and
- (D) payment of principal and interest under the Note from Available Incremental Taxes.

The City acknowledges and agrees that DCD has received and approved all of the documentation necessary to allow for reimbursement of the costs stated in this Section 4.03(a)(ii).

4.02 Agreement Section 4.03(b)(Sources of City Funds) is amended and restated as follows:

Sources of City Funds. Subject to the terms and conditions of this Agreement, including this Section 4.03 and Article Five, the City hereby agrees to provide City Funds to Developer in the form of: \$90,000 in cash assistance on the Closing Date; \$90,000 in cash assistance when a Certificate as provided in Section 7.01 has been issued by the City to Developer; \$479,000 in cash assistance for Extraordinary Costs when a Certificate as provided in Section 7.01 has been issued by the City to the Developer; and by issuing a Note at closing for a maximum amount of \$983,000. The \$180,000 in cash assistance, and the \$479,000 in cash assistance for Extraordinary Costs will be paid from Incremental Taxes available in the Irving/Cicero Redevelopment Project Area Special Tax Allocation Fund. Any payments under the Note are subject to the amount of Available Incremental Taxes and Incremental Taxes for the Redevelopment Area, as applicable, being sufficient for such payments. Developer and Developer's consultant will prepare for the City's review a schedule of estimated Available Incremental Taxes reflecting the Property and the Project at the time of issuance of the Certificate. The total amount of City Funds under this Agreement will be not greater than \$1,642,000.

The City hereby acknowledges and agrees that, as of the date of this Amendment, and on the Closing Date for this Amendment, there are and will be Incremental Taxes available to make the \$90,000 cash-assistance-at-Certificate payment, and the \$479,000 Extraordinary Costs payment required to be made pursuant to this Amendment.

- 4.03 The parties hereby agree to the following new text to become a new Section 18.27 in the Agreement as follows:

18.27 Mutual Release. Although the City admits no legal obligation for the payment of Extraordinary Costs incurred by Developer, but has authorized the payment thereof as provided in this Amendment given the circumstances surrounding the incurrence of such costs, the parties are nonetheless treating such payments as being in complete settlement and discharge of any and all claims Developer has asserted in connection with the Extraordinary Costs, or may assert at any time after the date of this Amendment in connection with the Extraordinary Costs (collectively, the "**Claims**"). Each party does hereby release the other party from any and all Claims. The City and Developer do hereby warrant and represent to each other that, as of the date of this Amendment, neither party has knowledge of any Claim that has not been settled and discharged by this Amendment.

SECTION FIVE: ADDITIONAL DEVELOPER UNDERTAKINGS AND AGREEMENTS

5.01 Offset. Developer agrees that the City may offset the \$62,946.72 liquidated damages assessment against Developer for the City residency shortfall as provided in Agreement Section 10.02 against the \$90,000 payment due to Developer at Certificate for a net payment to Developer at Certificate of \$27,053.28.

5.02 Affordable Housing Undertaking. Developer specifically reaffirms its commitment to sell 13 condominium units at affordable sales prices as provided in Agreement Section 3.14(b). To date, Developer has sold 12 such units. The City hereby agrees to extend Developer's date for the sale of the 1 remaining units until December 31, 2011 and agrees that Developer has otherwise materially complied with this undertaking for purposes of issuing a Certificate. Developer agrees to use its best efforts to complete the sale of the 1 remaining affordable unit prior to December 31, 2011.

SECTION SIX: ADMINISTRATIVE PROVISIONS

The following are the administrative provisions governing this Amendment:

6.01 The terms of this Amendment shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto, and their respective successors, administrators, executors, beneficiaries and/or assigns.

6.02 This Amendment shall be construed in accordance with, and its validity and effect (including any claims of breach of any of the terms hereof) shall be governed by, the laws of the State of Illinois (without regard to Illinois law regarding choice of law).

6.03 Each of the parties hereto represents and warrants that it has had the advice of counsel concerning the terms and conditions of this Amendment and in entering into it.

6.04 This Amendment may not be altered, amended, changed, terminated, or modified in any material respect without the express, written consent of the parties hereto. No waiver by any party hereto of any breach or default hereunder shall be deemed a waiver of any other or subsequent breach or default.

6.05 If any term or provision of this Amendment is declared to be invalid by a court of competent jurisdiction or if any term or provision of this Amendment conflicts with any applicable state or federal law, such term or provision of this Amendment shall be severable from, and shall not affect the validity of, any other term or provision of this Amendment.

6.06 This Amendment may be executed in one or more counter-parts, each of which shall be deemed an original but all of which shall together constitute one and the same agreement.

6.07 Each party hereto represents and warrants that its undersigned officer has full authority and capacity to execute this Amendment on that party's behalf.

SECTION SEVEN: TIMING OF PAYMENTS

The parties agree that the cash payments contemplated by this Amendment will occur on the Closing Date at a date, time and location mutually acceptable to the parties, but no later than December 18, 2009.

SECTION EIGHT: NO OTHER AMENDMENTS TO AGREEMENT

Except as set forth herein, and except as modified by this Amendment, the Agreement is not amended.

SECTION NINE: OBLIGATIONS TO RECORD AND TO PROVIDE DOCUMENTS:

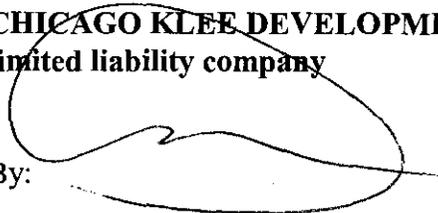
9.01 Developer shall execute and deliver to the City such documents as may be required by the Corporation Counsel of the City, including, but not limited to, the City's current form of Economic Disclosure Statement and an opinion of counsel in substantially the form set forth in the Agreement.

9.02 Developer will record this Amendment and otherwise comply with Agreement Section 8.17.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK
AND THE SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to be signed on or as of the day and year first above written.

CHICAGO KLEE DEVELOPMENT, LLC, an Illinois limited liability company

By: 

Printed

Name: JOSEPH ESHINSKI

Title: MANAGER

CITY OF CHICAGO

By:

Commissioner,
Department of Community Development

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to be signed on or as of the day and year first above written.

CHICAGO KLEE DEVELOPMENT, LLC, an Illinois limited liability company

By: _____

Printed Name: _____

Title: _____

CITY OF CHICAGO

By: Christina Payne

ACTING Commissioner,
Department of Community Development

CHICAGO KLEE DEVELOPMENT, LLC

Amendment No. 1 to Chicago Klee
Development, LLC Redevelopment Agreement

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Legal description of Parcels 1, 2, 3, 4 and Parcel 5, and the Alley, comprising the "Property" as defined in the Redevelopment Agreement and Amendment No.1 are attached to this exhibit cover sheet.

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PARCEL 1 (4001-13 NORTH MILWAUKEE AVENUE)

LOTS 1, 2 AND 3 IN E.C. DICKINSON'S MILWAUKEE AVENUE SUBDIVISION NUMBER 3, BEING A SUBDIVISION OF THAT PART EAST OF MILWAUKEE AVENUE OF LOT

12 (EXCEPT THE NORTH 33.00 FEET THEREOF) OF SCHOOL TRUSTEES' SUBDIVISION OF SECTION 16, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD

PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2 (4015 NORTH MILWAUKEE AVENUE)

LOT 4 IN E.C. DICKINSON'S MILWAUKEE AVENUE SUBDIVISION NUMBER 3, BEING A SUBDIVISION OF THAT PART EAST OF MILWAUKEE AVENUE OF LOT 12 (EXCEPT

THE NORTH 33.00 FEET THEREOF) OF SCHOOL TRUSTEES' SUBDIVISION OF SECTION 16, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL

MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3 (4015 NORTH MILWAUKEE AVENUE)

LOTS 5, 6, 7 AND 8 IN E.C. DICKINSON'S MILWAUKEE AVENUE SUBDIVISION UNIT NUMBER 3, BEING A SUBDIVISION OF THAT PART EAST OF MILWAUKEE AVENUE

OF LOT 12 (EXCEPT THE NORTH 33.00 FEET THEREOF) OF SCHOOL TRUSTEES' SUBDIVISION OF SECTION 16, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD

PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

AND

THAT PART OF THE VACATED 16.00 FOOT WIDE PUBLIC ALLEY LYING NORTHEASTERLY ADJACENT TO SAID LOTS 5, 6, 7 AND 8 DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF THE NORTH 9.00 FEET OF LOT 13 IN SAID E.C. DICKINSON'S MILWAUKEE AVENUE

SUBDIVISION NUMBER 3 WITH THE NORTHEASTERLY LINE OF THE SAID ALLEY;

THENCE SOUTHWESTERLY, A DISTANCE OF 8.00 FEET ALONG A LINE PERPENDICULAR TO THE SAID NORTHEASTERLY LINE OF ALLEY, TO THE POINT OF BEGINNING

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OF THE PARCEL HEREIN DESCRIBED;

THENCE CONTINUING ALONG THE LAST DESCRIBED COURSE EXTENDED, A DISTANCE OF 8.00 FEET TO A POINT ON THE NORTHEASTERLY LINE OF AFORESAID LOT 8

IN E.C. DICKINSON'S MILWAUKEE AVENUE SUBDIVISION NUMBER 3, SAID POINT LYING 9.83 FEET SOUTHEASTERLY FROM THE NORTHEASTERLY CORNER OF SAID LOT

8;

THENCE SOUTHEASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, BEING ALONG THE NORTHEASTERLY LINE OF SAID LOTS 8, 7, 6 AND 5, A DISTANCE

OF 92.12 FEET TO THE NORTHERLY TERMINUS OF THE COMMON LINE BETWEEN LOTS 5 AND 4 IN SAID E.C. DICKINSON'S MILWAUKEE AVENUE SUBDIVISION NUMBER

3;

THENCE NORTHEASTERLY ALONG THE PROLONGATION OF THE SAID COMMON LINE BETWEEN LOTS 5 AND 4, A DISTANCE OF 8.81 FEET TO A POINT ON THE

CENTERLINE OF SAID VACATED ALLEY;

THENCE NORTHWESTERLY ALONG THE SAID CENTERLINE OF VACATED ALLEY, A DISTANCE OF 88.11 FEET TO THE POINT OF BEGINNING.

PARCEL 4 (4022-32 NORTH CICERO AVENUE)

LOT 11 IN E.C. DICKINSON'S MILWAUKEE AVENUE SUBDIVISION UNIT NUMBER 3, BEING A SUBDIVISION OF THAT PART EAST OF MILWAUKEE AVENUE OF LOT 12

(EXCEPT THE NORTH 33.00 FEET THEREOF) OF SCHOOL TRUSTEES' SUBDIVISION OF SECTION 16, TOWNSHIP 40 NORTH, RANGE 13 EAST, OF THE THIRD PRINCIPAL

MERIDIAN, IN COOK COUNTY ILLINOIS, EXCEPT THAT PART OF SAID LOT 11 LYING SOUTH OF A SEGMENTED LINE BEGINNING AT A POINT ON THE EAST LINE OF

SAID LOT 11 DISTANT 9.00 FEET SOUTH FROM THE NORTHEAST CORNER THEREOF; THENCE WESTERLY A DISTANCE OF 65.72 FEET TO A POINT 9.52 FEET

(MEASURED PERPENDICULARY) SOUTH OF THE NORTH LINE OF SAID LOT 11, SAID POINT BEING ALSO ON THE NORTHEASTERLY PROJECTION OF THE COMMON LINE

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BETWEEN LOTS 4 AND 5 IN SAID SUBDIVISION; THENCE SOUTHWESTERLY ALONG THE SAID PROJECTED COMMON LINE BETWEEN LOTS 4 AND 5, A DISTANCE OF 8.16

FEET TO A POINT ON THE WESTERLY LINE OF SAID LOT 11, BEING THE TERMINUS OF THE AFORESAID SEGMENTED LINE.

LOTS 12, 13, AND 14 (EXCEPT THE NORTH 4.00 FEET THEREOF) IN E.C. DICKINSON'S MILWAUKEE AVENUE SUBDIVISION NUMBER 3, BEING A SUBDIVISION OF

THAT PART EAST OF MILWAUKEE AVENUE OF LOT 12 (EXCEPT THE NORTH 33.00 FEET THEREOF) OF SCHOOL TRUSTEES' SUBDIVISION OF SECTION 16, TOWNSHIP 40

NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

AND

THAT PART OF THE VACATED 16.00 FOOT WIDE LYING SOUTHWESTERLY ADJACENT TO SAID LOTS 11, 12 AND 13 DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF THE NORTH 9.00 FEET OF SAID LOT 13 WITH THE NORTHEASTERLY LINE OF SAID ALLEY;

THENCE SOUTHWESTERLY A DISTANCE OF 8.00 FEET TO THE CENTERLINE OF SAID VACATED ALLEY ALONG A LINE PERPENDICULAR TO THE SAID NORTHEASTERLY

LINE OF THE ALLEY (SAID PERPENDICULAR LINE, IF EXTENDED, TERMINATING AT A POINT ON THE NORTHEASTERLY LINE OF LOT 8 IN SAID SUBDIVISION 9.83

FEET SOUTHEASTERLY DISTANT FROM A NORTHEASTERLY CORNER OF SAID LOT 8);

THENCE SOUTHEASTERLY ALONG THE CENTERLINE OF SAID VACATED ALLEY, A DISTANCE OF 88.11 FEET TO A POINT ON THE NORTHEASTERLY PROJECTED COMMON

LINE BETWEEN LOTS 4 AND 5 IN SAID SUBDIVISION;

THENCE NORTHEASTERLY ALONG THE SAID PROJECTED COMMON LINE BETWEEN LOTS 4 AND 5, A DISTANCE OF 8.81 FEET TO THE AFORESAID NORTHEASTERLY LINE

OF THE ALLEY;

THENCE NORTHWESTERLY ALONG THE SAID NORTHEASTERLY LINE OF THE ALLEY, A

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DISTANCE OF 85.16 FEET TO THE POINT OF BEGINNING.

PARCEL 5 (PART OF VACATED ALLEY)

THAT PART OF A 16.00 FOOT WIDE PUBLIC ALLEY LYING SOUTHWESTERLY ADJACENT TO LOT 14, AND NORTHEASTERLY ADJACENT TO LOT 8 IN E.C. DICKINSON'S

MILWAUKEE AVENUE SUBDIVISION NUMBER 3, BEING A SUBDIVISION OF THAT PART OF LOT 12 LYING EAST OF MILWAUKEE AVENUE (EXCEPT THE NORTH 33.00 FEET

THEREOF) IN SCHOOL TRUSTEES' SUBDIVISION OF SECTION 16, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY,

ILLINOIS DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 14 IN E.C. DICKINSON'S MILWAUKEE AVENUE SUBDIVISION NUMBER 3;

THENCE SOUTH ALONG THE WEST LINE OF SAID LOT 14, A DISTANCE OF 17.16 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED;

THENCE SOUTHEASTERLY ALONG A LINE MAKING AN ANGLE OF 130 DEGREES 42 MINUTES 11 SECONDS MEASURED CLOCKWISE, NORTH TO SOUTHEASTERLY FROM THE

LAST DESCRIBED COURSE, BEING ALSO A WESTERLY LINE OF SAID LOT 14, A DISTANCE OF 17.12 FEET;

THENCE SOUTHEASTERLY ALONG A LINE MAKING AN ANGLE OF 204 DEGREES 33 MINUTES 23 SECONDS MEASURED CLOCKWISE, NORTHWESTERLY TO SOUTHEASTERLY

FROM THE LAST DESCRIBED COURSE, BEING ALSO A WESTERLY LINE OF SAID LOT 14 AND ITS EXTENSION, A DISTANCE OF 13.31 FEET, BEING A POINT ON THE

WESTERLY LINE OF LOT 13 IN AFORESAID E.C. DICKINSON'S MILWAUKEE AVENUE SUBDIVISION NUMBER 3, SAID POINT LYING 9.00 FEET PERPENDICULARLY

DISTANT SOUTH FROM THE NORTH LINE OF SAID LOT 13;

THENCE SOUTHWESTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 16.00 FEET TO A POINT ON A NORTHEASTERLY LINE OF LOT 8 IN

SAID E.C. DICKINSON'S MILWAUKEE AVENUE SUBDIVISION NUMBER 3;

THENCE NORTHWESTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE,

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BEING ALONG THE SAID NORTHEASTERLY LINE OF LOT 8, A DISTANCE OF 9.83 FEET;

THENCE NORTHWESTERLY ALONG A LINE MAKING AN ANGLE OF 204 DEGREES 33 MINUTES 23 SECONDS MEASURED COUNTER-CLOCKWISE, SOUTHEASTERLY TO

NORTHWESTERLY, BEING ALONG THE NORTHEASTERLY LINE OF SAID LOT 8, A DISTANCE OF 7.42 FEET;

THENCE NORTHERLY ALONG A LINE MAKING AN ANGLE OF 111 DEGREES 13 MINUTES 54 SECONDS MEASURED COUNTER-CLOCKWISE, SOUTHEASTERLY TO NORTHERLY

FROM THE LAST DESCRIBED COURSE, A DISTANCE OF 17.16 FEET TO THE POINT OF BEGINNING.

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