

This document prepared by and after recording return to:
Judith A. El-Amin, Esq.
Assistant Corporation Counsel
Department of Law
121 North LaSalle Street, Room 600
Chicago, IL 60602

SECOND AMENDMENT TO REDEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT (this "Second Amendment") is made and entered into as of the 15th day of June, 2010 between the City of Chicago (the "City") by and through its Department of Community Development or its successor department ("DPD") and New West Kedzie, LLC, an Illinois limited liability company (the "Developer").

RECITALS

A. On April 11, 2006 (the "Closing Date"), the Developer purchased certain property within the Midwest Redevelopment Project Area and generally located between 706 -817 South Kedzie Avenue, 905-925 South Kedzie Avenue, and 3207 W. Flournoy Street, Chicago, Illinois 60612 (the "Initial Property"). In connection with such acquisition the Developer executed, delivered and recorded that certain Redevelopment Agreement dated April 11, 2006 and recorded on April 12, 2006 in the Office of the Recorder as Document No.610218029 (the "Original Agreement").

B. On the Closing Date, the City issued the City Note, as defined in the Original Agreement, to the Developer.

C. Subsequent to the Closing Date the Developer commenced the construction of approximately 102 new residential units on six separate sites with buildings that include Market-Rate Units and Affordable Units (a minimum of 25% of the total number Market-Rate and Affordable Units), as further defined in the Original Agreement, on the Initial Property (the "Project")

D. The Original Agreement was amended by a certain Amendment to the Redevelopment Agreement between DPD and the Developer, dated as of September 21, 2007 and recorded in the Office of the Recorder of Deeds of Cook County, Illinois as Document No. 0726844011 on September 25, 2007 (the "First Amendment" together with the Original Agreement are collectively referred to herein as the "Amended Agreement"). The First Amendment added certain property, generally located at 700 South Kedzie Avenue and 901 South Kedzie Avenue, Chicago, Illinois 60612, as described therein (the "Additional Property" together with the Initial Property are collectively referred to herein as the "Property"), to the Project that the City was unable to convey to the Developer on the Closing Date.

E. Pursuant to the Amended Agreement, the City is obligated to issue a completion certificate (the "Certificate") after the Developer has constructed and sold 90% of approximately 77 Market-Rate Units and all of the Affordable Units and the other requirements as defined Section 7.01 of the Amended Agreement. Upon the issuance of the Certificate, interest on the City Note is scheduled to begin to accrue and the City shall be obligated to commence making payments on the City Note.

F. Subsequent to the Closing Date, the City Council of the City (the "City Council") adopted an ordinance on April 9, 2008, which approved that certain Agreement for the Sale and Redevelopment of Land (the "704 S. Kedzie RDA") between the City and the Developer relating to the City's sale and the Developer's purchase of the real property commonly known as 704 South Kedzie Avenue, Chicago, Illinois, as described on Exhibit A, attached hereto (the "704 Property") and the construction of a single family home thereon.

F. The Developer has (i) constructed 50 Market-Rate Units of the 77 Market Rate Units and sold 28 Market-Rate Units, and (ii) constructed and sold 25 Affordable Units (collectively (i) and (ii) are referred to here in as the "Current Completion"). Due to housing market conditions, the Developer was unable (i) to meet the requirements for the issuance of the Certificate by March 9, 2009, which has delayed the commencement of the accrual of interest on the City Note and payments on the City Note and (ii) to complete the Project by December 30, 2009 (the "Original Completion Date").

H. The Developer and the City desire to amend the Amended Agreement to reflect the change in housing market and credit conditions, pursuant to an ordinance passed by the City Council on January 13, 2009, the City Council (the "Original Second Ordinance"), as amended by an ordinance passed by the City Council on January 13, 2010 the modified Original Second Ordinance (the "Second Ordinance") to (i) extend the Original Completion Date for three additional years from the Original Completion Date through December 31, 2012 in order to provide the Developer additional time to complete the Project, (ii) to issue a Substantial Completion Certificate (as further defined in this Second Amendment) based upon the Current Completion of the Project and modify the definition of the Certificate, (iii) reissue and modify the terms of the City Note upon the issuance of the Substantial Completion Certificate, (iv) add the 704 Property to the definition of the Property for the Project, (v) extend the closing,

commencement and completion dates set forth in **Sections 4** and **12** of the 704 S. Kedzie RDA, (vi) extend the date for the Developer to apply for all necessary building permits and other required permits and approvals as set forth in **Section 7** of the 704 S. Kedzie RDA, and (vii) waive the failure of the Developer to renew the Irrevocable Standby Letter of Credit, as required in the Amended Agreement (the "Performance L/C") due to the current credit market conditions.

NOW, THEREFORE, for good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Developer and the City agree as hereinafter set forth:

AGREEMENTS

1. **Incorporation of Recitals.** The above recitals are incorporated herein by reference and constitute a material part hereof.

2. **Capitalized Terms.** Capitalized terms used in this Second Amendment shall have the meanings set forth herein or, if not defined herein, shall have the meanings given in the Amended Agreement.

3. Section 2 **Definitions.** The following definitions are hereby revised or new definitions added, with a revision shown as a ~~strikethrough~~ for deleted language and double underlined for added language:

a. **"Certificate of Substantial Completion" shall have the meaning set for in Section 7.01 hereof.**

b. **"City Note"** shall mean the City of Chicago Tax Increment Allocation Revenue Note (Midwest Redevelopment Project Area), Series 200610 to be in the form attached hereto as **Exhibit L**, in the maximum principal amount of \$1,750,000, issued by the City to the Developer after the issuance of the Certificate of Substantial Completion, bearing interest at the City Note Interest Rate, and as more fully described in **Section 4.03**, hereof.

c. **"City Note Interest Rate"** shall mean an annual rate equal to the median rate of a 10-year Treasury bond as published by ~~Bloomberg~~ in the Federal Reserve Statistical Release for 15 business days prior to the date of issuance of the City Note plus 300 basis points, but in no event exceeding nine percent (9%).

4. Section 3.01 **The Project** is hereby amended with a revision shown as a ~~strikethrough~~ for the deleted language and double underlined for added language.

With respect to the Facility, the Developer shall, pursuant to the Plans and Specifications and subject to the provisions of **Section 18.17** hereof: (i) commence construction no later than six months after the Closing Date; and (ii) complete construction of the Project no later than **[December 30], 200912]**.

5. Section 4.03 **City Funds** is hereby amended with a revision shown as a ~~strikethrough~~ for the deleted language and double underlined for added language.

(b)(ii) **City Note.** The City will issue the City Note to the Developer upon the issuance of the Substantial Completion Certificate in a principal amount not to exceed the lesser of: (i) One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000) or (ii) an amount equal to

the Available Incremental Taxes; and provided, however, that (1) the principal amount of the City Note may be reduced in the event that the Developer realizes Excess Profits on the Project as described in paragraph (c) below, and (2) that payments under the City Note are subject to the amount of Available Incremental Taxes deposited into the Midwest Redevelopment Project Area TIF Fund being sufficient for such payments. Interest on the City Note will accrue at the City Note Interest Rate from its date of issuance, as more fully described in Exhibit L, and will compound annually

(c) Excess Profit Provision. (i) Prior to the issuance of the Certificate, the Developer shall submit to DPD an updated pro forma, including an updated Project Sources and Uses, using the final Project data. If the Developer realizes an Excess Profit, for every \$1.00 of Excess Profit, the principal amount of the City Note will be decreased by \$.50. The amount of that the City Note shall be decreased, which shall be determined prior to the issuance of a the Certificate, and the principal amount of the City Note shall be adjusted accordingly. The City Note shall be reissued at the reduced amount.

6. Section 701 Certificate of Completion is hereby amended with a revision shown as a ~~strikethrough~~ for the deleted language and double underlined for added language.

Section 701 Certificates of Substantial and Final Completion. Upon completion of construction of the Project and the sale of the Affordable Units and the Market-Rate Units in accordance with the terms of this Agreement, and upon the Developer's written request, DPD shall issue to the Developer the Certificate of Final Completion (the "Certificate") in recordable form certifying that the Developer has fulfilled its obligation to complete the Project in accordance with the terms of this Agreement. The City agrees to partial releases of this Agreement from time to time upon the sale of the residential units so that the Developer may convey title to the residential units.

- (a) The Substantial Completion Certificate will not be issued until:
- (i) The Developer has notified the City in writing that the Project has been substantially completed as defined in this Agreement, including the designation of each residential unit as Energy Star compliant; and
 - (ii) The Developer has received a Certificate of Occupancy or other evidence acceptable to DPD (for example, a certificate from a licensed architect) that the Developer has complied with building permit requirements; and
 - (iii) The Developer has sold all of the Affordable Units and constructed 50 of the 77 (65%) of the Market Rate Units.
 - (iv) The Developer has complied with its obligations under the terms of the affordable housing requirements for the Project as set forth in, but not limited to, Section 8.20 of this Agreement; and
 - (v) The City's Monitoring and Compliance Unit has verified that the Developer is in full compliance with the City requirements set forth in Section 10 and Section 8.09 (M/WBE, City Residency and Prevailing Wage) with respect to construction of 50 Market-Rate Units and 25 Affordable Units; and

- (vi) The Excess Profit amount, if any, has been determined.
- (b) The Certificate will not be issued until:
 - (i) The Developer has notified the City in writing that the Project has been completed as defined in this Agreement, including the designation of each residential unit as Energy Star compliant; and
 - (ii) The Developer has received a Certificate of Occupancy or other evidence acceptable to DPD (for example, a certificate from a licensed architect) that the Developer has complied with building permit requirements; and
 - (iii) The Developer has sold all of the Affordable Units (25) and 90% of the Market Rate Units (77), however, if the total number of units for the Project reach 105 or more, then the number of Affordable Units must increase to maintain the requirement that 25% of total units must be Affordable Units; and
 - (iv) The Developer has complied with its obligations under the terms of the affordable housing requirements for the Project as set forth in, but not limited to, Section 8.20 of this Agreement; and
 - (v) The City's Monitoring and Compliance Unit has verified that the Developer is in full compliance with City requirements set forth in Section 10 and Section 8.09 (M/WBE, City Residency and Prevailing Wage) with respect to construction of the Project; and
 - (vi) The Excess Profit amount, if any, has been determined.

7. **Amendment to the First Amendment. Section 3. Addition of Additional Property to Legal Description** is hereby amended with a revision to the First Amendment shown as a ~~strikethrough~~ for the deleted language and double underlined for added language.

The legal description for the Initial Property, as originally attached to the Redevelopment Agreement as Exhibit A B, is hereby amended to include the legal description for the Additional Property, which is attached to this Amendment as Exhibit A.

8. **Addition of 704 Property to Legal Description.** The legal description for the Property, as attached to the Amended Agreement as Exhibit B, is hereby amended to include the legal description for the 704 Property, which is attached to this Second Amendment as Exhibit A.

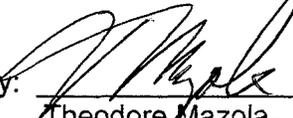
9. **Subjection of the 704 Property to the Redevelopment Agreement.** The City and the Developer agree the 704 Property shall be subject to the terms and conditions of the Amended Agreement, as amended by this Second Amendment (the Amended Agreement together with this Second Amendment are collectively referred to herein as the "Redevelopment Agreement"). The defined term "Property," as defined in the Amended Agreement, shall include the 704 Property, less such portions as may from time to time be conveyed to homebuyers in accordance with the terms of the Amended Agreement.

10. **Full Force and Effect.** Except as amended hereby, the Redevelopment Agreement shall remain in full force and effect, and the terms of such Redevelopment Agreement are incorporated herein by reference, as if fully set forth herein.

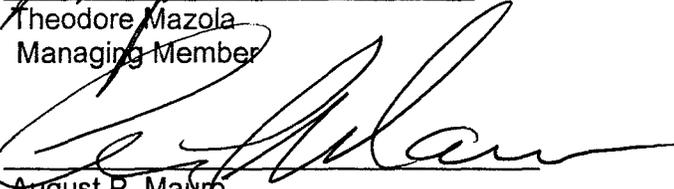
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IN WITNESS WHEREOF, this Second Amendment has been signed as of the date first written above.

NEW WEST KEDZIE, LLC
an Illinois limited liability company

By: 
Theodore Mazola

Its: Managing Member

By: 
August P. Mauro

Its: Managing Member

CITY OF CHICAGO, acting by and through its Department
of Community Development

By: _____

Its: _____

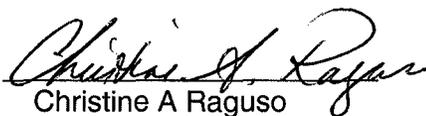
IN WITNESS WHEREOF, this Second Amendment has been signed as of the date first written above.

NEW WEST KEDZIE, LLC
an Illinois limited liability company

By: _____
Theodore Mazola
Its: Managing Member

By: _____
August P. Mauro
Its: Managing Member

CITY OF CHICAGO, acting by and through its Department
of Community Development

By: 
Christine A Raguso
Its: Acting Commissioner

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a notary public in and for the County and State aforesaid, DO HEREBY CERTIFY THAT Christine Raguso, personally known to me to be the Acting Commissioner of the Department of Community Development of the City of Chicago, Illinois (the "City") and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Commissioner, (s)he signed and delivered the said instrument pursuant to authority, as his/her free and voluntary act, and as the free and voluntary act and deed of said City, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this *15th* day of *June*, 2010.



Notary Public

My Commission Expires

9-4-2011

(SEAL)



STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a notary public in and for the County and State aforesaid, DO HEREBY CERTIFY THAT Theodore Mazola and August P. Mauro, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that in their capacity as Managing Members of New West Kedzie, LLC (the "Developer"), each individual signed and delivered the said instrument pursuant to authority, as his free and voluntary act, and as the free and voluntary act of the Developer, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this *15th* day of *June*, 2010.

Marie A Czapinski



Notary Public

My Commission Expires

9-4-2011

(SEAL)

EXHIBIT A

Legal Description

704 Property

THE EAST 73 FEET OF LOT 2 IN BLOCK 3 IN GEORGE K. SCHOENBERGER'S SUBDIVISION OF THE EAST ONE QUARTER OF THE NORTH 40 RODS OF THE SOUTHEAST ONE QUARTER OF SECTION 14 AND THE NORTHWEST ONE QUARTER OF THE NORTHWEST ONE QUARTER OF THE SOUTHWEST ONE QUARTER OF SECTION 13, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 704 South Kedzie
Permanent Index Numbers: 16-14-407-044-0000