

On motion of Alderman Burke, the said proposed order transmitted with the foregoing committee report was *Passed* by yeas and nays as follows:

*Yeas* -- Aldermen Granato, Haithcock, Tillman, Preckwinkle, Hairston, Lyle, Beavers, Beale, Pope, Balcer, Olivo, Burke, T. Thomas, Coleman, L. Thomas, Murphy, Rugala, Troutman, Zalewski, Chandler, Solis, Ocasio, Burnett, E. Smith, Carothers, Wojcik, Suarez, Matlak, Mell, Austin, Colom, Banks, Mitts, Allen, Laurino, O'Connor, Doherty, Natarus, Daley, Hansen, Levar, Shiller, Schulter, Moore, Stone -- 45.

*Nays* -- None.

Alderman Beavers moved to reconsider the foregoing vote. The motion was lost.

The following is said order as passed:

*Ordered*, That the Corporation Counsel is hereby authorized and directed to enter into and execute a settlement agreement in the following matter: *Haggerty vs Daniels and the City of Chicago*, Number 99 L 6486, in the amount of \$18,000,000.00.

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AUTHORIZATION FOR AMENDMENT TO REDEVELOPMENT  
AGREEMENT WITH AND ISSUANCE OF TAX  
INCREMENT FINANCING GRANT TO THE  
ART INSTITUTE OF CHICAGO.

The Committee on Finance submitted the following report:

CHICAGO, June 27, 2001.

*To the President and Members of the City Council:*

Your Committee on Finance, having had under consideration an ordinance authorizing the Commissioner of the Department of Planning and Development to enter into and execute an amended redevelopment agreement with The Art Institute of Chicago in an amount of \$1,000,000, having had the same under advisement,

REPORTS OF COMMITTEES

61695

6/27/2001

begs leave to report and recommend that Your Honorable Body *Pass* the proposed ordinance transmitted herewith.

This recommendation was concurred in by a viva voce vote of the members of the Committee.

Respectfully submitted,

(Signed) EDWARD M. BURKE,  
*Chairman.*

On motion of Alderman Burke, the said proposed ordinance transmitted with the foregoing committee report was *Passed* by yeas and nays as follows:

*Yeas* -- Aldermen Granato, Haithcock, Tillman, Preckwinkle, Hairston, Lyle, Beavers, Beale, Pope, Balcer, Olivo, Burke, T. Thomas, Coleman, L. Thomas, Murphy, Rugai, Troutman, Zalewski, Chandler, Solis, Ocasio, Burnett, E. Smith, Carothers, Wojcik, Suarez, Matlak, Mell, Austin, Colom, Banks, Mitts, Allen, Laurino, O'Connor, Doherty, Natarus, Daley, Hansen, Levar, Shiller, Schulter, Moore, Stone -- 45.

*Nays* -- None.

Alderman Beavers moved to reconsider the foregoing vote. The motion was lost.

The following is said ordinance as passed:

WHEREAS, The City is a home rule unit of government under Section 6(a), Article VII of the 1970 Constitution of the State of Illinois and has the power to regulate for the protection of the public health, safety, morals and welfare of its inhabitants, and pursuant thereto, has the power to encourage private development in order to enhance the local tax base, create employment opportunities and to enter into contractual agreements with private parties in order to achieve these goals; and

WHEREAS, The City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq., as amended from time to time ("T.I.F. Act"), to finance projects that eradicate blighted conditions and conservation area factors through the use of tax increment allocation financing for redevelopment projects; and

WHEREAS, An ordinance approving the North Loop Tax Increment Redevelopment Plan and Project ("North Loop T.I.F. Plan"), an ordinance establishing the North Loop Tax Increment Redevelopment Project Area ("North Loop Project Area") and an ordinance authorizing tax increment allocation financing for the North Loop Project Area were each approved by the City Council on June 20, 1984; and

WHEREAS, By ordinances of the City Council adopted on February 7, 1997, there was established the Central Loop Project Area ("Central Loop Project Area") and there was approved and adopted tax increment financing ("Central Loop T.I.F. Plan") for the Project Area; and

WHEREAS, The North Loop T.I.F. Plan, as previously amended in September, 1987, was amended and supplemented by, and incorporated into the Central Loop T.I.F. Plan by ordinance of the City Council adopted on February 7, 1997; and

WHEREAS, By ordinance adopted November 4, 1998 the City Council of the City of Chicago authorized the sale of certain property within the Central Loop Project Area, legally described on Exhibit A attached hereto and made a part hereof ("Property"), to The Art Institute of Chicago ("Developer"); and

WHEREAS, On November 23, 1998 the City and the Developer entered into a redevelopment agreement for the development of the Property ("Agreement"); and

WHEREAS, The Property was conveyed to the Developer by quitclaim deed dated December 21, 1998; and

WHEREAS, A portion of the Property consists of a structure known as the Butler Building, which structure was to be rehabilitated by the Developer pursuant to the terms of the Agreement; and

WHEREAS, The Developer has completed the rehabilitation of the Butler Building in accordance with the terms of the Agreement; and

WHEREAS, In order to assist the Developer in fulfilling those objectives regarding the use and occupancy of the project which are outlined in Recital H of the Agreement, the City desires to provide the Developer with certain financial assistance in the form of a grant as allowed under the T.I.F. Act ("T.I.F. Grant") for expenditures associated with the rehabilitation of the Butler Building; and

WHEREAS, The City has a longstanding interest in the development of a theater district within the Central Loop Project Area; and

6/27/2001

/2001

WHEREAS, In exchange for the T.I.F. Grant the Developer agrees to contribute certain funds toward the construction of theater space within the Project, as defined in the Agreement, for use as a live performance venue as permitted by Recital H of the Agreement;

Now, Therefore, In consideration of the promises and the mutual obligations of the parties hereto, each of them hereby covenant and agree with the other as follows:

*Be It Ordained by the City Council of the City of Chicago:*

SECTION 1. The foregoing recitals are hereby adopted as the findings of the City Council.

SECTION 2. The City is hereby authorized to issue a T.I.F. Grant to the Developer in the sum of One Million Dollars (\$1,000,000), said T.I.F. Grant to be subject to the City and the developer entering into an amendment to the Agreement. The Commissioner of the Department is authorized to enter into an amendment to the Agreement with the developer, substantially in the form attached hereto, and to execute such other documents as may be necessary to implement the issuance of the T.I.F. Grant, subject to the approval of the Corporation Counsel.

SECTION 3. This ordinance shall take effect immediately upon its passage.

[Exhibit "A" referred to in this ordinance unavailable at time of printing.]

Amendment to Agreement with The Art Institute of Chicago referred to in this ordinance reads as follows:

*First Amendment To Agreement.*

This first amendment ("Amendment") to that certain Agreement for the Sale and Redevelopment of Land dated November 23, 1998 and recorded January 5, 1999 as Document Number 99006782 ("Agreement") is made on or as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the City of Chicago, an Illinois municipal corporation ("City"), having its principal offices at City Hall, 121 North LaSalle Street, Chicago, Illinois 60602 and The Art Institute of Chicago, an Illinois not-for-profit corporation ("Developer"), having its principal office at 111 South Michigan Avenue, Chicago, Illinois 60603. Except as otherwise defined herein, all capitalized

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terms used in this Amendment shall have the same meanings as those capitalized terms defined in the Agreement.

*Recitals.*

Whereas, The City is a home rule unit of government under Section 6(a), Article VII of the 1970 Constitution of the State of Illinois and has the power to regulate for the protection of the public health, safety, morals and welfare of its inhabitants, and pursuant thereto, has the power to encourage private development in order to enhance the local tax base, create employment opportunities and to enter into contractual agreements with private parties in order to achieve these goals; and

Whereas, The City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq., as amended from time to time ("T.I.F. Act"), to finance projects that eradicate blighted conditions and conservation area factors through the use of tax increment allocation financing for redevelopment projects; and

Whereas, By ordinance adopted November 4, 1998 the City Council of the City of Chicago authorized the sale of certain property within the Redevelopment Area and legally described on Exhibit A of the Agreement ("Property") to the Developer; and

Whereas, The Property was conveyed to the Developer by quitclaim deed dated December 21, 1998 and recorded as Document Number \_\_\_\_\_; and

Whereas, A portion of the Property consists of a structure known as the Butler Building, which structure was to be rehabilitated by the Developer as part of the project and pursuant to the terms of the Agreement; and

Whereas, The Developer has completed the rehabilitation of the Butler Building in accordance with the terms of the Agreement; and

Whereas, As an inducement to encourage the Developer to complete the build-out of the project and to select tenants in accordance with the Agreement, the City has requested that the Developer enter into this Amendment; and

Whereas, In order to assist the Developer in fulfilling those objectives regarding the use and occupancy of the project which are outlined in Recital H of the Agreement, the City desires to provide the Developer with certain financial assistance in the form of a grant as allowed under the T.I.F. Act ("T.I.F. Grant") for expenditures associated with the rehabilitation of the Butler Building, specifically the rehabilitation of floors one (1) through three (3) of the Butler Building, which are

6/27/2001

leased by the Developer to State/Randolph, L.L.C. and occupied by tenants other than the Developer ("Butler Building Master Leased Space"); and

Whereas, The City has a longstanding interest in the development of a theater district within the Redevelopment Area; and

Whereas, In consideration of the issuance of the T.I.F. Grant the Developer agrees to contribute certain funds ("Developer Grant") toward the construction of theater space within the project for use as a live performance venue ("Performance Theater") as permitted by Recital H of the Agreement; now, therefore,

In consideration of the promises and the mutual obligations of the parties hereto, each of them hereby covenants and agrees with the other as follows:

*Section 1.*

*Incorporation Of Recitals.*

The recitals set forth above constitute an integral part of this Amendment and are incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the parties.

*Section 2.*

*Effect On Agreement.*

Any executory terms, conditions, responsibilities and obligations, indemnity provisions, and ongoing representations and warranties of the parties set forth in the Agreement and that certain Joinder of Agreement dated March 8, 1999 and recorded as Document Number 99222026 shall remain in full force and effect except as expressly modified by this Amendment. In the event of a conflict between the terms or conditions of the Agreement and this Amendment, the terms and conditions of this Amendment shall govern.

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*Section 3.*

*T.I.F. Grant.*

In consideration of such promises and representations being made by the Developer herein, and subject to the terms, covenants and conditions of the Agreement and this Amendment, the City agrees to provide the Developer with a T.I.F. Grant in the amount of One Million and no/ 100 Dollars (\$1,000,000.00). The T.I.F. Grant shall provide funds to reimburse the Developer for certain T.I.F.-eligible costs, consisting of costs relating to the rehabilitation and remodeling of the Butler Building Master Leased Space, as permitted in the T.I.F. Act.

*Section 4.*

*The Closing.*

On \_\_\_\_\_ but in no event prior to the occurrence of those conditions set forth below in Section 6, the City shall cause to be delivered to the Developer the sum of One Million and no/ 100 Dollars (\$1,000,000.00) ("Closing") as the T.I.F. Grant.

*Section 5.*

*Master Lease.*

The City acknowledges that, as allowable under the terms of the Redevelopment Agreement, the Developer has entered into a master lease for floors one (1) through three (3) in the project, that would include space to be used for the Performance Theater, with State/Randolph, L.L.C. ("Master Lease").

6/27/2001

*Section 6.**Conditions Precedent To Closing.*

Not less than thirty (30) days prior to the Closing, the Developer shall submit or cause to be submitted the following documents and evidence to D.P.D. for approval:

A. A certification, in a form reasonably acceptable to the City, by the principal architect of the rehabilitation of the Butler Building Master Leased Space of the hard and soft costs of said rehabilitation as well as an allocation of those costs.

B. Either: (i) evidence that the construction of the Performance Theater has been completed and fully funded; or (ii) a project budget and evidence of committed and available funds adequate to finance the construction of the Performance Theater, which may be obtained from the sublessee under the sublease (as those capitalized terms are hereinafter defined).

C. A copy of an executed sublease for the Performance Theater ("Sublease") between State Randolph, L.L.C. and a live performance theatrical company ("Sublessee"), said sublessee to be approved by D.P.D. as provided for in the Agreement, which sublease by its terms shall allow the sublessee to proceed thereunder and adhere to time frames for certain action leading up to its intended occupancy. The Sublease shall contain the following terms:

i. Construction of the Performance Theater shall be completed within a specified time period after the execution of the Sublease as would reasonably be necessary for completion of the Sublessee's work.

ii. State/Randolph, L.L.C. and the Sublessee shall use reasonable efforts to meet residency and employment requirements contained in Section VI of the Agreement as to the construction of the Performance Theater.

iii. The Sublessee shall not discriminate based upon race, color, religion, sex, national origin or ancestry, military status, sexual orientation, source of income, age, handicap, in the use or occupancy of the Performance Theater.

iv. The Sublease shall have a duration of ten (10) years, with two (2) possible five (5) year extensions.

D. A copy of the executed grant agreement between the Developer and the Sublessee ("Developer Grant Agreement") committing the Developer to contribute

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One Million and no/100 Dollars (\$1,000,000.00) toward the construction of the Performance Theater. If construction of the Performance Theater has not been fully completed and has been funded by funds other than the Developer Grant, then disbursement of the Developer Grant shall be made into a construction escrow established with a title company; if the Performance Theater has been completed otherwise, the Developer Grant may be disbursed directly. In all events, there shall be the requirement that the Sublessee present certificates of its architect, contractor's sworn statements and mechanic's lien waivers showing that the work covered by each disbursement, including final disbursement, has been completed free of mechanic lien claims and that all lien waivers have been received. The Developer Grant Agreement shall contain the following terms and conditions:

- i. Sublessee shall enter into a valid Sublease with State/Randolph, L.L.C. (as described in subsection C above) prior to the disbursement of the Developer Grant.
- ii. The Sublease shall be in effect on the date of each Developer Grant disbursement.
- iii. Construction of the Performance Theater shall be done in compliance with the terms of the Sublease, the Master Lease and the Agreement (as amended by this Amendment).
- iv. At each Developer Grant disbursement, the Sublessee shall be required to present evidence that it has expended or will expend out of its own funds (either equity or lender financing) a sum equal to that particular disbursement amount on the construction of the Performance Theater. Evidence of Sublessee expenditures on the Performance Theater shall be a condition to future Developer Grant disbursements.

*Section 7.*

*Completion Of Performance Theater.*

Upon completion of the Performance Theater, the Developer shall provide evidence, the form and sufficiency of which shall be solely determined by D.P.D. in its reasonable judgment, that the Developer has contributed not less than One Million and no/100 Dollars (\$1,000,000.00) toward the construction of the Performance Theater. If such evidence is acceptable to D.P.D., and if all other terms and

6/27/2001

2001

conditions contained in this Amendment have been complied with, then the City shall furnish the Developer with a document in recordable form certifying that the Developer has complied in full with the terms of this Amendment and has no further obligations hereunder ("Certificate"). Within forty-five (45) days after receipt of a written request by the Developer for a Certificate, the City shall provide the Developer with either the Certificate or a written statement indicating in adequate detail how the Developer has failed to comply with the terms of this Amendment and what measures or acts will be necessary, in the sole opinion of the City in its reasonable judgment, for the Developer to take or perform in order to obtain the Certificate. If the City requires **additional measures or acts to assure compliance**, the Developer shall resubmit a written request for the Certificate upon compliance with the City's response.

Section 8.

Performance And Breach.

A. **Time Of The Essence.** Time is of the essence in the parties' performance of their obligations under this Amendment.

B. **Breach.**

1. **Generally.** Except as otherwise provided in this Amendment, in the case of an Event of Default, as defined below, by either party in the performance of its obligations under this Amendment, the defaulting party, upon written notice from the other, shall cure or remedy the default not later than sixty (60) days after receipt of such notice. If the default is not capable of being cured within the sixty (60) day period but the defaulting party has commenced action to cure the default and is diligently proceeding to cure the default within the sixty (60) day period, then the sixty (60) day period shall be extended for the length of time that is reasonably necessary to cure the default.
2. **Event Of Default.** For purposes of this Amendment, the occurrence of any one (1) or more of the following shall constitute an "Event of Default":
  - a. the Developer fails to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations required under this Amendment or the Agreement; or

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- b. a petition is filed by or against the Developer under the Federal Bankruptcy Code or any similar state or federal law, whether now or hereinafter existing, which is not vacated, stayed or set aside within thirty (30) days after filing; or
  - c. the Developer fails to materially comply with the terms of any other written agreement entered into with the City or any loan issued by the City resulting in an event of default under such agreement or loan.
3. Prior To Closing. If prior to the Closing, the Developer defaults in any specific manner described in this Section 8.B, the City may, as its sole remedy, terminate this Amendment.
  4. After Closing. If subsequent to the Closing an Event of Default occurs which is not cured in the manner prescribed herein, the Developer shall, within thirty (30) days of written notice by the City, pay to the City as its sole remedy, as reimbursement for the T.I.F. Grant, an amount equal to any portion of the grant from the Developer to the Sublessee not utilized in the construction of the Performance Theater. In the event that the Developer fails to remit said funds, the City, by written notice to the Developer, may utilize any and all remedies available to the City at law or in equity to collect such amount.

C. Waiver And Estoppel. Any delay by a non-defaulting party to this Amendment in instituting or prosecuting any actions or proceedings or otherwise asserting its rights hereunder shall not operate as a waiver of such rights or operate to deprive said non-defaulting party of or limit such rights in anyway. No waiver made by a non-defaulting party with respect to any specific default by the defaulting party shall be construed, considered or treated as a waiver of the rights of the non-defaulting party with respect to any other defaults under this Amendment.

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6/27/2001

Section 9.

*Conflict Of Interest; City's Representatives  
Not Individually Liable.*

The Developer warrants that no agent, official, or employee of the City shall have any personal interest, direct or indirect, in this Amendment, nor shall any such agent, official or employee participate in any decision relating to this Amendment which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested. No agent, official, or employee of the City shall be personally liable to the Developer or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Amendment.

Section 10.

*Indemnification.*

The Developer agrees to indemnify, defend and hold the City harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including, without limitation, attorneys' fees and court costs) suffered or incurred by the City arising from or in connection with: (i) the failure of the Developer to perform its obligations under this Amendment; (ii) the failure of the Developer, its agents and assigns, or any contractor to pay contractors, subcontractors or material suppliers in connection with the construction of the Performance Theater; (iii) a material misrepresentation or omission in the Redevelopment Agreement which is the result of information supplied or omitted by the Developer or by any agents, employees, contractors or persons acting under the control or at the request of the Developer; (iv) the failure of the Developer to redress any misrepresentations or omissions in this Amendment or any other agreement relating hereto. This indemnification shall survive any termination of this Amendment.

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*Section 11.*

*Headings.*

The headings of the various sections of this Amendment have been inserted for convenient reference only and shall not in any manner be construed as modifying, amending, or affecting in any way the express terms and provisions thereof.

*Section 12.*

*Governing Law.*

This Amendment shall be governed by and construed in accordance with the laws of the State of Illinois.

*Section 13.*

*Entire Agreement.*

This Amendment constitutes the entire agreement between the parties and supersedes and replaces completely any prior agreements between the parties with respect to the subject matter hereof except for the Agreement and the Joinder of Agreement. This Amendment may not be modified or amended in any manner other than by supplemental written agreement executed by the parties.

*Section 14.*

*Severability.*

If any provision of this Amendment, or any paragraph, sentence, clause, phrase or word, or the application thereof is held invalid, the remainder of this Amendment shall be construed as if such invalid part were never included and this Amendment shall be and remain valid and enforceable to the fullest extent permitted by law.

6/27/2001

REPORTS OF COMMITTEES

61707

*Section 15.*

*Notices.*

Any notice, demand or communication required or permitted to be given hereunder shall be given in writing at the addresses set forth below by any of the following means: (a) personal service; (b) electronic communications, whether by telex, telegram or telecopy; (c) overnight courier; or (d) registered or certified first class mail, postage prepaid, return receipt requested:

If To The City:

City of Chicago  
Department of Planning and Development  
121 North LaSalle Street  
Room 1000 -- City Hall  
Chicago, Illinois 60602  
Attention: Commissioner

With A Copy To:

City of Chicago  
Department of Law  
30 North LaSalle Street  
Suite 1610  
Chicago, Illinois 60602  
Attention: Real Estate Division

If To The Developer:

The Art Institute of Chicago  
111 South Michigan Avenue  
Chicago, Illinois 60604  
Attention: Robert E. Mars

With A Copy To:

Eckhart, McSwain, Silliman & Sears  
One First National Plaza  
Suite 3160  
Chicago, Illinois 60603-2006  
Fax: (Omitted for printing purposes)  
Attention: Raymond P. Kolak

Any notice, demand or communication given pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means, respectively. Any notice, demand or communication given pursuant to clause (c) shall be deemed received on the day immediately following deposit with

the overnight courier. Any notice, demand or communication sent pursuant to clause (d) shall be deemed received three (3) business days after mailing. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, demands or communications shall be given.

*Section 16.*

*Counterparts.*

This Amendment may be executed in counterparts, each of which shall constitute an original instrument.

*Section 17.*

*Organization And Authority.*

The Developer (if other than an individual) represents and warrants that it is duly organized and validly existing under the laws of the State of Illinois, with full power and authority to redevelop the Property, and that the person(s) signing this Amendment on behalf of the Developer has the authority to do so.

*Section 18.*

*Successors And Assigns.*

Except as otherwise provided in this Amendment, the terms and conditions of this Amendment shall apply to and bind the successors and assigns of the parties.

*Section 19.*

*Termination.*

In the event that the Closing has not occurred within twelve (12) months from the

REPORTS OF COMMITTEES

61709

6/27/2001

date of this Amendment, either party may terminate this Amendment upon written notice to the other.

Section 20.

Recordation Of Amendment.

Either party may record this Amendment against the Property at the Office of the Cook County Recorder of Deeds. The party so choosing to record this Amendment shall pay the recording fees.

In Witness Whereof, The City has caused this Amendment to be duly executed in its name and behalf by its Commissioner of Planning and Development, and the Developer has signed the same on or as of the day and year first above written.

City of Chicago,  
an Illinois municipal corporation

By: \_\_\_\_\_  
Alicia Mazur Berg,  
Commissioner of Planning  
and Development

The Art Institute of Chicago,  
an Illinois not-for-profit corporation

By: \_\_\_\_\_  
Robert E. Mars,  
Executive Vice President for  
Administrative Affairs

6/27/2001

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