



Office of the Chicago City  
Clerk



O2011-9757

Office of the City Clerk

City Council Document Tracking Sheet

<b>Meeting Date:</b>	12/14/2011
<b>Sponsor(s):</b>	Emanuel, Rahm (Mayor)
<b>Type:</b>	Ordinance
<b>Title:</b>	Lease agreement with Klairmont Enterprises, Inc.
<b>Committee(s) Assignment:</b>	Committee on Housing and Real Estate

## ORDINANCE

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:**

**SECTION 1:** On behalf of the City of Chicago as Tenant, the Commissioner of the Department of General Services is authorized to execute a Lease with Klairmont Enterprises, Inc. as Landlord governing the access to vacant land located at 1965 West Pershing Road for use by the Department of Fleet and Facility Management; such Lease to be approved as to form and legality by the Corporation Counsel in substantially the following form:

**1965 West Pershing Road  
Department of Fleet and Facility Management  
Lease No. 14226**

**SECTION 2:** This Ordinance shall be effective from and after the date of its passage and approval.

**LEASE**

This **LEASE** (this "Agreement") is made as of \_\_\_\_\_, 2011, by and between the **CITY OF CHICAGO**, an Illinois Municipal Corporation and home rule unit (the "Tenant"), having its principal offices at City Hall, 121 North LaSalle Street, Chicago, Illinois 60602, acting by and through its Department of General Services, and **KLAIRMONT ENTERPRISES, INC.**, an Illinois Corporation (the "Landlord") having its principal offices at 4747 West Peterson Avenue, Chicago, Illinois 60646.

**RECITALS**

**WHEREAS**, Landlord owns the real property located at 1901 West Pershing Road within the vacated portion of Wolcott Avenue (part of PIN# 20-06-200-003) as delineated in **Exhibit A** attached hereto and made a part hereof, in Chicago, Illinois (the "Premises"); and

**WHEREAS**, Landlord owns the real property located within the 1965 West Pershing Road complex as delineated in **Exhibit A** attached hereto and made a part hereof, in Chicago, Illinois (the "1965 Pershing Complex"); and

**WHEREAS**, Tenant owns the real property located at 1869 West Pershing Road, in Chicago, Illinois (the "West Building"); and

**WHEREAS**, Tenant is performing tuck-pointing repairs to the West Building and Tenant needs to place scaffolding around the perimeter of the West Building while these repairs to the West Building take place; and

**WHEREAS**, Tenant has requested that Landlord allow Tenant to use approximately \_\_\_\_\_ square feet of vacant land within the Premises as a place to place the scaffolding as detailed in **Exhibit B** attached hereto and made a part hereof while repairs to the West Building take place; and

**WHEREAS**, Landlord has agreed grant the Tenant access to the Premises solely to allow Tenant to place scaffolding around the West Building and to use such scaffolding for Tenant's tuck-pointing repairs to the West Building (the "Use") upon the terms, protections, and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein; and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals constitute an integral part of this Agreement and are incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the parties.

2. **Grant.** Landlord hereby leases to Tenant the following described premises situated in the City of Chicago, County of Cook, State of Illinois, to wit:

Approximately \_\_\_\_\_ square feet of vacant land located on the Premises as detailed in **Exhibit B.**

This grant extends to, and the Tenant shall be responsible for, its agents, employees, contractors, subcontractors and consultants, including, without limitation, \_\_\_\_\_ . This Lease agreement is non-assignable.

3. **Term.** The term of this Lease ("Term") shall commence on the date of Lease execution ("Commencement Date") and shall end on December 31, 2013 unless sooner terminated, or extended, as set forth in this Lease.

4. **Cost.** Tenant shall pay base rent for the Premises in the amount of One Dollar (\$1.00) for the entire Term with the receipt and sufficiency of said sum hereby acknowledged by both parties. The Tenant shall be responsible for all costs and expenses associated with the Tenant Use.

5. **Indemnification.** The Tenant shall indemnify, defend and hold the Landlord, and its officers, agents, and employees, harmless from and against any and all negligent actions, claims, suits, losses, damages, liens, liabilities, fines, costs and expenses (including, without limitation, reasonable attorney's fees and court costs) incurred in connection with, arising out of or incident to (a) any act or omission of the Tenant or its agents, employees, contractors, subcontractors or consultants, or (b) any entry upon or use of the Premises by or on behalf of the Tenant in connection with this agreement. The foregoing indemnity shall survive any termination of this agreement. Landlord agrees to use commercially reasonable efforts to deliver notice of any claim for indemnification no later than thirty (30) days after the termination of the Lease.

6. **Completion.** Upon completion of the Tenant Use, the Tenant shall remove all equipment placed on the Premises by the Tenant or its agents, employees, contractors, subcontractors or consultants.

7. **Amendment.** This Agreement may not be amended or modified without the written consent of the parties hereto.

8. **Entire Agreement.** This Agreement embodies the entire agreement and understanding between the parties regarding the Tenant Use and the Tenant's right of entry and supersedes any prior oral or written agreements with respect to the matters stated herein.

9. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original instrument and all of which together shall constitute one and the same instrument. A facsimile signature shall be deemed an original signature.

10. **No Alterations and Additions.** Tenant shall have no rights to make any alterations, additions, or improvements on the Premises.

11. **Termination.** Tenant and Landlord shall have the right to terminate this agreement without penalty by providing the other party with thirty (30) days prior written notice.

12. **Condition on Termination.** Upon expiration of the term, Tenant shall surrender the Premises to Landlord in the same condition of the Premises at the beginning of this agreement. Tenant must remove all equipment and materials placed on the Premises upon termination of this agreement.

13. **Landlord Use.** Tenant affirms that Landlord uses the Premises for access to Landlord's adjoining 1965 Pershing Complex. Tenant shall not use the Premises in a way that interferes with Landlord's access to and from Landlord's adjoining 1965 Pershing Complex. Landlord shall have access to the Premises at all times. Tenant shall at no time interfere with Landlord's operations at the 1965 Pershing Complex. This prohibition includes, but is not limited to, Landlord's unfettered access to any dock space, ramps, and gates located within the 1965 Pershing Complex. As much as logistically possible, Tenant shall refrain from using the west end of the Premises so as to not interfere with operations at the 1965 Pershing Complex. At all times, Tenant shall coordinate all activities associated with access to the Premises through Landlord's representative on site.

14. **Licensing and Permits.** For any activity which Tenant desires to conduct on the Premises in which a license or permit is required, said license or permit must be obtained by Tenant prior to using the Premises for such activity

15. **Repairs for Tenant Negligence, Vandalism, or Misuse.** Tenant shall assume all responsibility for any repairs to the Premises or Landlord's adjoining storage facility necessitated by the use, negligence, vandalism, or misuse of the Premises or equipment therein by Tenant's employees, invitees, agents, or contractors.

16. **No Snow Removal or Maintenance.** Tenant agrees that Tenant has inspected the Premises and accepts the Premises in "as-is" condition. Landlord shall have no obligation to maintain the Premises. Landlord shall have no obligation to keep the Premises free of ice or snow.

17. **Removal of Scaffolding.** At the termination of this Lease, Tenant shall remove all scaffolding.

18. **Prohibition against Parking.** The Premises shall not be used for parking of any private vehicles. The Tenant warrants that the Premises are only to be used for scaffolding, placement of any equipment required for such staging, and use of such scaffolding for Tenant's tuck-pointing repairs to the West Building.

19. **Protection of Premises.** Tenant, or Tenant's contractor, shall place plywood or other protective underlayment on those portions of the Premises which shall be subject to placement of heavy material or equipment loads.

20. **Cement Pads.** During the Term of the Lease, but by no later than the termination of this Lease, Tenant shall fill in with cement all former cement pads or ramps (collectively the "Pads") previously placed and removed on the Premises by or on behalf of Tenant. Such Pads are identified in **Exhibit B.**

21. **Miscellaneous Provisions.**

21.1 **Notice.** All notices, demands and requests which may be or are required to be given demanded or requested by either party to the other shall be in writing. All notices, demands and requests by Landlord to Tenant shall be delivered by national overnight courier or shall be sent by United States registered or certified mail, return receipt requested, postage prepaid addressed to Tenant as follows:

Department of Fleet and Facility Management  
Office of Real Estate Management  
30 North LaSalle Street  
Suite 300  
Chicago, Illinois 60602

or at such other place as Tenant may from time to time designate by written notice to Landlord and to Tenant at the Premises. All notices, demands, and requests by Tenant to Landlord shall be delivered by a national overnight courier or shall be sent by United States registered or certified mail, return receipt requested, postage prepaid, addressed to Landlord as follows:

Klairmont Enterprises, Inc.  
C/O Imperial Realty Company  
4747 West Peterson Avenue  
Chicago, Illinois 60646

or at such other place as Landlord may from time to time designate by written notice to Tenant. Any notice, demand or request which shall be served upon Landlord by Tenant, or upon Tenant by Landlord, in the manner aforesaid, shall be deemed to be sufficiently served or given for all purposes hereunder at the time such notice, demand or request shall be mailed.

21.2 **Partial Invalidity.** If any covenant, condition, provision, term or agreement of this Lease shall, to any extent, be held invalid or unenforceable, the remaining covenants, conditions, provisions, terms and agreements of this Lease shall not be affected thereby, but each covenant, condition, provision, term or agreement of this Lease shall be valid and in force to the fullest extent permitted by law.

21.3 Governing Law. This Lease shall be construed and be enforceable in accordance with the laws of the State of Illinois.

21.4 Entire Agreement. All preliminary and contemporaneous negotiations are merged into and incorporated in this Lease. This Lease contains the entire agreement between the parties and shall not be modified or amended in any manner except by an instrument in writing executed by the parties hereto.

21.5 Captions and Section Numbers. The captions and section numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections of this Lease nor in any way affect this Lease.

21.6 Binding Effect of Lease. The covenants, agreements, and obligations contained in this Lease shall extend to, bind, and inure to the benefit of the parties hereto and their legal representatives, heirs, successors, and assigns.

21.7 No Principal/Agent or Partnership Relationship. Nothing contained in this Lease shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto.

21.8 Authorization to Execute Lease. The parties executing this Lease hereby represent and warrant that they are the duly authorized and acting representatives of Landlord and Tenant respectively and that by their execution of this Lease, it became the binding obligation of Landlord and Tenant respectively, subject to no contingencies or conditions except as specifically provided herein.

21.9 Termination of Lease. Tenant and Landlord shall have the right to terminate this Lease any time after Lease execution without prepayment or penalty upon thirty (30) days prior written notice.

21.10 Force Majeure. When a period of time is provided in this Lease for either party to do or perform any act or thing, the party shall not be liable or responsible for any delays due to strikes, lockouts, casualties, acts of God, wars, governmental regulation or control, and other causes beyond the reasonable control of the party, and in any such event the time period shall be extended for the amount of time the party is so delayed.

21.11 Amendments. From time to time, the parties hereto may amend this Lease Agreement with respect to any provisions reasonably related to Tenant's use of the Premises and/or Landlord's administration of said Lease Agreement. Provided, however, that such amendment(s) shall not serve to extend the Lease term hereof nor serve to otherwise materially alter the essential provisions contained herein. Such amendment(s) shall be in writing, shall establish the factual background necessitating such alteration, shall set forth the terms and conditions of such modification, and shall be duly executed by both Landlord and Tenant. Such



amendment(s) shall only take effect upon execution by both parties. Upon execution, such amendment(s) shall become a part of this Lease and all other provisions of this Lease shall otherwise remain in full force and effect.

21.12 Holding Over. Any holding over by Tenant (including failure to remove all scaffolding, equipment, and materials) shall be construed to be a tenancy from month to month only beginning on January 1, 2014 and the rent shall be One Hundred and 00/100 Dollars (\$100.00) per diem, unless both parties are engaging in good faith discussions relative to any Lease extension. During such holding over all other provisions of this Lease shall remain in full force and effect.

## 22. Disclosure Provisions.

22.1 Business Relationships. Landlord acknowledges (a) receipt of a copy of Section 2-156-030 (b) of the Municipal Code of Chicago, (b) that it has read such provision and understands that pursuant to such Section 2-156-030 (b) it is illegal for any elected official of the City of Chicago, or any person acting at the direction of such official, to contact, either orally or in writing, any other City of Chicago official or employee with respect to any matter involving any person with whom the elected City of Chicago official or employee has a "Business Relationship" (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a Business Relationship, and (c) notwithstanding anything to the contrary contained in this Agreement, that a violation of Section 2-156-030 (b) by an elected official, or any person acting at the direction of such official, with respect to any transaction contemplated by this Agreement shall be grounds for termination of this Agreement and the transactions contemplated hereby. Landlord hereby represents and warrants that no violation of Section 2-145-030 (b) has occurred with respect to this Agreement or the transactions contemplated hereby.

22.2 Patriot Act Certification. Landlord represents and warrants that neither Landlord nor any Affiliate (as hereafter defined) thereof is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City of Chicago may not do business under any applicable Laws: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. As used in this Section, an "Affiliate" shall be deemed to be a person or entity related to Landlord that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with Landlord, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

22.3 Prohibition on Certain Contributions-Mayoral Executive Order No. 2011-4. Landlord agrees that Landlord, any person or entity who directly or indirectly has an ownership or beneficial interest in Landlord of more than 7.5 percent ("Owners"), spouses and domestic partners of such Owners, Landlord's contractors (i.e., any person or entity in direct contractual privity with Landlord regarding the subject matter of this Agreement) ("Contractors"), any person or entity who directly or indirectly has an ownership or beneficial interest in any Contractor of more than 7.5 percent ("Sub-owners") and spouses and domestic partners of such Sub-owners (Landlord and all the other preceding classes of persons and entities are together the "Identified Parties"), shall not make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee (a) after execution of this Agreement by Landlord, (b) while this Agreement or any Other Contract (as hereinafter defined) is executory, (c) during the term of this Agreement or any Other Contract, or (d) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated. This provision shall not apply to contributions made prior to May 16, 2011, the effective date of Executive Order 2011-4.

Landlord represents and warrants that from the later of (a) May 16, 2011, or (b) the date the Tenant approached Landlord, or the date Landlord approached the Tenant, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

Landlord agrees that it shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

Landlord agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 2011-4 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

Notwithstanding anything to the contrary contained herein, Landlord agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this Lease or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted, unless the Tenant, in its sole discretion, elects to grant such an opportunity to cure. Such breach and default entitles the Tenant to all remedies (including, without limitation, termination for default) under this Agreement, and under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

If Landlord intentionally violates this provision or Mayoral Executive Order No. 2011-4 prior to the Closing, the Tenant may elect to decline to close the transaction contemplated by this Agreement.

For purposes of this provision:

(a) "Bundle" means to collect contributions from more than one source, which contributions are then delivered by one person to the Mayor or to his political fundraising committee.

(b) "Other Contract" means any other agreement with the Tenant to which Landlord is a party that is (i) formed under the authority of Chapter 2-92 of the Municipal Code of Chicago; (ii) entered into for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the City Council.

(c) "Contribution" means a "political contribution" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

(d) Individuals are "domestic partners" if they satisfy the following criteria:

(i) they are each other's sole domestic partner, responsible for each other's common welfare; and

(ii) neither party is married; and

(iii) the partners are not related by blood closer than would bar marriage in the State of Illinois; and

(iv) each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and

(v) two of the following four conditions exist for the partners:

(1) The partners have been residing together for at least 12 months.

(2) The partners have common or joint ownership of a residence.

(3) The partners have at least two of the following arrangements:

(A) joint ownership of a motor vehicle;

(B) joint credit account;

(C) a joint checking account;

(D) a lease for a residence identifying both domestic partners as Landlords.

- (4) Each partner identifies the other partner as a primary beneficiary in a will.

(e) "Political fundraising committee" means a "political fundraising committee" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

22.4 Waste Ordinance Provisions. In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, Landlord warrants and represents that it, and to the best of its knowledge, its contractors and subcontractors, have not violated and are not in violation of any provisions of Section 7-28 or Section 11-4 of the Municipal Code (the "Waste Sections"). During the period while this Agreement is executory, Landlord's, any general contractor's or any subcontractor's violation of the Waste Sections, whether or not relating to the performance of this Agreement, constitutes a breach of and an event of default under this Agreement, for which the opportunity to cure, if curable, will be granted only at the sole designation of the Chief Procurement Officer. Such breach and default entitles the Tenant to all remedies under the Agreement, at law or in equity. This section does not limit Landlord's, general contractor's and its subcontractors' duty to comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later, and whether or not they appear in this Agreement. Non-compliance with these terms and conditions may be used by the Tenant as grounds for the termination of this Agreement, and may further affect the Landlord's eligibility for future contract awards.

22.5 Failure to Maintain Eligibility to do Business with City of Chicago. Failure by Landlord or any controlling person (as defined in Section 1-23-010 of the Municipal Code of Chicago) thereof to maintain eligibility to do business with the City of Chicago as required by Section 1-23-030 of the Municipal Code of Chicago shall be grounds for termination of this Agreement and the transactions contemplated thereby. Developer shall at all times comply with Section 2-154-020 of the Municipal Code of Chicago.

22.6 Cooperation with Office of Inspector General and Legislative Inspector General. It is the duty of Developer and any bidder, proposer, contractor, subcontractor, and every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners, and employees of any such grantee, subgrantee, bidder, proposer, contractor, subcontractor or such applicant to cooperate with the Legislative Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-55 of the Municipal Code, and to cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Municipal Code. Landlord represents and warrants that it understands and will abide by all provisions of Chapter 2-55 and Chapter 2-56 of the Municipal Code and that Landlord will inform its contractors and subcontractors of this provision and require their compliance.

*(Signature Page Follows)*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**CITY OF CHICAGO,**  
an Illinois municipal corporation and home rule unit of government,

BY: THE DEPARTMENT OF FLEET AND FACILITY MANAGEMENT

By: \_\_\_\_\_  
Commissioner

**KLAIRMONT ENTERPRISES, INC.,**  
an Illinois Corporation

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Deputy Corporation Counsel

**EXHIBIT A**  
*To Come*

**EXHIBIT B**  
*To Come*