



Office of the Chicago City
Clerk



O2011-5545

Office of the City Clerk

City Council Document Tracking Sheet

Meeting Date:	7/6/2011
Sponsor(s):	Mayor Emanuel
Type:	Ordinance
Title:	Lease agreement with Village of Niles
Committee(s) Assignment:	Committee on Housing and Real Estate

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OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

July 6, 2011

TO THE HONORABLE, THE CITY COUNCIL
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of General Services, I transmit herewith ordinances authorizing the execution of lease agreements.

Your favorable consideration of these ordinances will be appreciated.

Very truly yours,

Mayor

ORDINANCE

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

SECTION 1: The Commissioner of the Department of General Services is authorized to execute on behalf of the City of Chicago, as Landlord, a Lease with the Village of Niles, as Tenant, for the Village of Niles's use of approximately 8,628 square feet of vacant City-owned property located on the southeast corner of Harlem Avenue and Milwaukee Avenue for use public open space; such Lease to be approved as to form and legality by the Corporation Counsel in substantially the following form:

Southeast Corner of Harlem Avenue and Milwaukee Avenue
Village of Niles
Lease No. 20003

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

LEASE

THIS LEASE is made and entered into this _____ day of _____, 2011, by and between, **THE CITY OF CHICAGO**, an Illinois Municipal Corporation and home rule unit of government (hereinafter referred to as "Landlord") and **THE VILLAGE OF NILES**, an Illinois Municipal Corporation and home rule unit of government, (hereinafter referred to as "Tenant").

RECITALS

WHEREAS, Landlord is the owner of the property located on the south east corner of the Harlem Avenue and Milwaukee Avenue intersection, Niles, Cook County, Illinois; and

WHEREAS, Landlord has agreed to lease to Tenant, and Tenant has agreed to lease from Landlord approximately 8,628 square feet of vacant land located on the southeast corner of the Harlem Avenue and Milwaukee Avenue intersection to be used by Tenant strictly as a public park;

NOW THEREFORE, in consideration of the covenants, terms and conditions set forth herein, the parties hereto agree and covenant as follows:

SECTION 1. GRANT

1.1 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 8,628 square feet of vacant land located on that certain parcel of real estate more commonly known as Lots 1, 2 and 3 in Block 46 in the Hulbert Milwaukee Avenue Subdivision of Blocks 41 to 46 in Lill and Diversey's subdivision of the west ½ of the southwest ¼ of Section 30, township 41 North, Range 13 East of the Third Principal Meridian. (PIN# 10-30-308-011; 10-30-308-012; 10-30-308-013 - the "Premises").

SECTION 2. TERM

2.1 Term. The term of this Lease ("Term") shall commence on the date of execution of this Agreement ("Commencement Date"), and shall end on December 31, 2017, unless sooner terminated as set forth in this Lease.

SECTION 3. RENT, TAXES, AND UTILITIES

3.1 Rent. 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.

3.2 Utilities. Tenant shall pay when due all charges for gas, electricity, light, heat, water, power and telephone or other communication service, and all other utility services used in or supplied to the Premises.

3.3 Taxes. Tenant shall pay when due any real estate or leasehold taxes assessed or levied on the subject Premises. Tenant shall contact the appropriate taxing body to ascertain the tax amount assessed on the subject Premises. Tenant shall provide Landlord with proof of payment in full within thirty (30) days of such payment. Tenant's failure to pay any such taxes shall constitute a default under this Lease. Notwithstanding the foregoing, nothing herein shall preclude Tenant from contesting any charge or tax levied against the subject Premises. The failure of Tenant to pay such taxes during the pendency of the contest shall not constitute a default under this Lease. Tenant's tax responsibilities under this section shall survive the expiration, cancellation, or termination of this Lease agreement.

3.4 Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than any installment or payment of the rent due hereunder shall be deemed to be other than on account of the amount due, and no endorsement of statement or any check or any letter accompanying any check or payment of rent shall be deemed an accord and satisfaction. Landlord may accept such check or payment without prejudice as to Landlord's right to recover the balance of such installment or payment to pursue any other remedies available to Landlord.

SECTION 4. ENJOYMENT OF PREMISES, ALTERATIONS AND ADDITIONS, SURRENDER

4.1 Covenant of Quiet Enjoyment. Landlord covenants and agrees that Tenant, upon paying the rent and upon observing and keeping the covenants, agreements and conditions of this Lease on its part to be kept, observed and performed, shall lawfully and quietly hold, occupy and enjoy the Premises (subject to the provisions of this Lease) during the Term without hindrance or molestation by Landlord or by any person or persons claiming under Landlord.

4.2 Tenant's Duty to Maintain Premises and Right of Access. Unless otherwise provided in this lease, Tenant shall, at Tenant's expense, keep the Premises in a condition of thorough repair and good order, and in compliance with all applicable provisions of the Municipal Code of Chicago, including but not limited to those provisions in Title 13 ("Building and Construction"), Title 14 ("Electrical Equipment and Installation"), Title 15 ("Fire Prevention") and all applicable provisions of the Landscape Ordinance of the City of Chicago. If Tenant shall refuse or neglect to make needed repairs within thirty (30) days after written notice thereof sent by Landlord, unless such repair cannot be remedied by thirty (30) days, and Tenant shall have commenced and is diligently pursuing all necessary action to remedy such repair, Landlord is authorized to make such repairs and Tenant will promptly and within thirty (30) business days of demand reimburse Landlord for the reasonable cost thereof or Landlord can immediately terminate this Lease by providing the Tenant with written notice. Landlord shall have the right of access to the Premises for the purpose of inspecting and making repairs to the Premises, provided that except in the case of emergencies, Landlord shall first give notice to Tenant of its desire to enter the Premises and will schedule its entry so as to minimize any interference with Tenant's use of Premises.

4.3 Use of the Premises. Tenant shall not use the Premises in a manner that would violate any Law. Tenant further covenants not to do or suffer any waste or damage, comply in all respects with the laws, ordinances, orders, rules, regulations, and requirements of all federal, state and municipal governmental departments which may be applicable to the Premises or to the use or manner of use of the Premises, disfigurement or injury to any building or improvement on the Premises, or to fixtures and equipment thereof. Any activities on the Premises must be limited to the use as a public park and for no other purpose. The promotion and operation of a public park does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. Tenant agrees that in utilizing said Premises that it shall not discriminate against any member of the public because of race, creed, color, national origin, immigration status, or sexual orientation. Tenant further covenants that the Premises shall not be used for any religious purposes.

4.4 Alterations and Additions. Tenant shall have the right to make such alterations, additions and improvements on the Premises as it shall deem necessary, provided that any such alterations, additions and improvements shall be in full compliance with the applicable Law and provided that Tenant has obtained the prior written consent of the Commissioner of the Department of General Services.

SECTION 5. ASSIGNMENT, SUBLEASE, AND LIENS

5.1 Assignment and Sublease. Tenant shall not assign this Lease in whole or in part, or sublet the Premises or any part thereof

5.2 Tenant's Covenant Against Liens. Tenant shall not cause or permit any lien or encumbrance, whether created by act of Tenant, operation of law or otherwise, to attach to or be placed upon Landlord's title or interest in the Premises. All liens and encumbrances created by Tenant shall attach to Tenant's interest only. In case of any such lien attaching, Tenant shall immediately pay and remove such lien or furnish security or indemnify Landlord in a manner satisfactory to Landlord in its sole discretion to protect Landlord against any defense or expense arising from such lien. Except during any period in which Tenant appeals any judgment or obtains a rehearing of any such lien, or in the event judgment is stayed, Tenant shall immediately pay any judgment rendered against Tenant, with all proper costs and charges, and shall have the lien released and any judgment satisfied. If Tenant fails to pay and remove any lien or contest such lien in accordance herewith, Landlord, at its election, may pay and satisfy same, and all sums so paid by Landlord, with interest from the date of payment at the rate set at 12% per annum.

SECTION 6. INSURANCE AND INDEMNIFICATION

6.1 Insurance. The Tenant shall procure and maintain at all times, at Tenant's own expense, during the term of this Lease, the insurance coverages and requirements specified below, insuring all operations related to the lease with insurance companies authorized to do business in the state of Illinois.

The kinds and amounts of insurance required are as follows:

a) Workers Compensation and Employers Liability Insurance. Workers Compensation and Employers Liability Insurance and Occupational Disease Insurance, as prescribed by applicable law, covering all Landlord's employees and Employer's Liability coverage with limits of not less than \$500,000 each accident or illness.

b) Commercial Liability Insurance. (Primary and Umbrella). Commercial Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence, for bodily injury, personal injury, and property damage liability. Coverage extensions shall include the following: All premises and operations, products/completed operations, defense, separation of insureds, and contractual liability (with no limitation endorsement). The City of Chicago, its employees, elected officials, agents, and representatives are to be named as additional insureds on a primary, non contributory basis for any liability arising directly or indirectly from the Lease.

c) Automobile Liability Insurance. (Primary and Umbrella). When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Tenant shall provide Comprehensive Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence, for bodily injury and property damage.

d) All Risk Property Insurance. All risk property insurance coverage shall be maintained by the Tenant for full replacement value to protect against loss, damage to or destruction of property. The policy shall list the City of Chicago as loss payee.

Tenant shall be responsible for all loss or damage to personal property (including but not limited to materials, equipment, tools and supplies), owned or rented, by the Tenant.

e) All Risk Builders Risk Insurance. When Tenant undertakes any construction, including improvements, betterments, and/or repairs, the Tenant shall provide All Risk Builders Risk Insurance, at replacement cost, for materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility. Coverage shall include but not limited to the following: right to partial occupancy, earth movement, flood including surface water backup and sewer backup and seepage. The City of Chicago shall be named as loss payee.

6.2 Other Terms of Insurance. The Tenant will furnish the City of Chicago, Department of General Services, Office of Real Estate Management, 30 North LaSalle Street, Suite 300, Chicago, Illinois 60602, original Certificates of Insurance evidencing the required coverage to be in force on the date of this Lease, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Lease. The Tenant shall submit evidence on insurance prior to Lease award. The receipt of any certificates does not constitute agreement by the City that the insurance requirements in the Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with all Lease requirements. The failure of the City to obtain certificates or other insurance evidence from Tenant shall not be deemed to be a waiver by the City. The Tenant shall advise all insurers of the Lease provisions regarding insurance. Non-conforming insurance shall not relieve Tenant of its obligation to provide Insurance as specified herein. Nonfulfillment of

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the insurance conditions may constitute a violation of the Lease, and the City retains the right to terminate the Lease until proper evidence of insurance is provided.

The insurance shall provide for 60 days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

Any and all deductibles or self insured retentions on referenced insurance coverages shall be borne by Tenant.

The Tenant agrees that insurers shall waive their rights of subrogation against the City of Chicago its employees, elected officials, agents or representatives.

The Tenant expressly understands and agrees that any coverages and limits furnished by Tenant shall in no way limit the Tenant's liabilities and responsibilities specified within the Lease documents or by law.

The Tenant expressly understands and agrees that any insurance or self insurance programs maintained by the City of Chicago shall apply in excess of and not contribute with insurance provided by the Tenant under the lease.

The required insurance shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.

The City of Chicago, Department of Finance, Office of Risk Management, maintains the right to modify, delete, alter or change these requirements.

6.3 Additional Insured. Tenant shall name Landlord as an additional insured. Said coverage shall be evidenced on the Certificate of Insurance covering the subject premises.

6.4 Tenant's Indemnification. Tenant shall indemnify, defend, and hold Landlord harmless against all liabilities, judgments, amounts paid in settlement, arbitration or mediation awards, costs, damages, and expenses (including reasonable attorney's fees, expenses, and court costs), whether such claim is related to or arises from personal injury or property damage which may be expended by or accrue against, be charged to, or be recovered from Landlord or Tenant by reason of Tenant's performance of or failure to perform any of Tenant's obligations under this Lease, or Tenant's negligent acts or failure to act, or resulting from the acts or failure to act of Tenant's contractors, respective officers, directors, agents, or employees.

SECTION 7. DAMAGE OR DESTRUCTION

7.1 Damage or Destruction. If the Premises are damaged or destroyed to such extent that Tenant cannot continue, occupy or conduct its normal business therein, or if, in Tenant's opinion, the Premises are rendered untenable, either Landlord or Tenant shall have the option to declare this Lease terminated as of the date of such damage or destruction by giving Landlord written notice to such effect.

SECTION 8. CONFLICT OF INTEREST AND GOVERNMENTAL ETHICS

8.1 Conflict of Interest. No official or employee of the City of Chicago, nor any member of any board, commission or agency of the City of Chicago, shall have any financial interest (as defined in Chapter 2-156 of the Municipal Code), either direct or indirect, in the Premises; nor shall any such official, employee, or member participate in making or in any way attempt to use his or her position to influence any City governmental decision or action with respect to this Lease.

8.2 Duty of Comply with Governmental Ethics Ordinance. Landlord and Tenant Shall comply with Chapter 2-156 of the Municipal Code of Chicago, "Governmental Ethics," including but not limited to section 2-156-120, which states that no payment, gratuity, or offer of employment shall be made in connection with any City of Chicago contract as an inducement for the award of that contract or order. Any contract negotiated, entered into, or performed in violation of any of the provisions of Chapter 2-156 shall be voidable as to the City of Chicago.

SECTION 9. HOLDING OVER

9.1 Holding Over. Any holding over by Tenant shall be construed to be a tenancy from month to month only beginning on January 1, 2018.

SECTION 10. MISCELLANEOUS

10.1 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 Tenant to Landlord 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 Landlord as follows:

City of Chicago
Department of General Services
Office of Real Estate Management
30 North LaSalle Street, Suite 300
Chicago, Illinois 60602

or at such other place as Landlord may from time to time designate by written notice to Tenant. All notices, demands, and requests by Landlord to Tenant 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 Tenant as follows:

Village of Niles
Village Manager
1000 Civic Center Drive
Niles, Illinois 60714

or at such other place as Tenant may from time to time designate by written notice to Landlord. Any notice, demand or request which shall be served upon Tenant by Landlord, or upon Landlord by Tenant, 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.

10.2 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.

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

10.4 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.

10.5 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.

10.6 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.

10.7 Time is of the Essence. Time is of the essence of this Lease and of each and every provision hereof

10.8 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.

10.9 Authorization to Execute Lease. The parties executing this Lease hereby represent and warrant that they are 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.

10.10 Termination of Lease. Landlord shall have the right to terminate this Lease by providing Tenant with thirty (30) days prior written notice at any time after execution of this Lease.

10.11 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.

10.12 Prior Lease. Landlord and Tenant acknowledge and agree that the Tenant has leased and occupied the Premise under the most recent Lease agreement dated February 8, 2007. Landlord and Tenant each acknowledge and agree that the other party has performed all obligations under such prior Lease and that neither party has any claims against the other with respect to such prior Lease.

10.13 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.

SECTION 11. ADDITIONAL RESPONSIBILITIES OF TENANT

11.1 Maintenance. Tenant shall provide, at Tenant's expense, any and all engineering service for maintenance of the Premises.

11.2 Custodial Services. Tenant shall provide and pay for custodial services which shall be construed as landscaping and keeping the Premises clean and free of debris.

11.3 Scavenger Services. Tenant shall provide its own scavenger service if necessary.

11.4 Condition upon Termination. Upon the termination of this Lease, Tenant shall surrender the Premises to the Landlord in the same comparable condition to the condition of the Premises at the beginning of Tenant's occupancy of the subject Premises, with normal wear and tear taken into consideration. Tenant shall remove all equipment and/or materials placed on the Premises by Tenant or anyone acting by or under Tenant. Said removal shall be without cost to Landlord.

11.5 Illegal Activity. Tenant, or any of its agents or employees, shall not perform or permit any practice that may be injurious to the Premises, is illegal, or increases the rate of insurance on the Premises.

11.6 Hazardous Materials. Tenant shall keep out of the Premises any materials which cause a fire hazard or safety hazard and shall comply with reasonable requirements of Landlord's

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fire insurance carrier; not destroy, deface, damage, impair, nor remove any part of the Premises or facilities, equipment or appurtenances thereto.

11.7 Security. Tenant shall provide and pay for security where necessary.

11.8 Alcohol and Drugs. Tenant agrees that no alcoholic beverages of any kind or nature or illegal drugs shall be sold, given away or consumed on the Premises.

11.9 Required Permitting. 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. The Department of General Services must be notified of any such license or permit. Failure to obtain a required license or permit shall constitute a breach of the terms of this Lease.

11.10 Repairs for Tenant Negligence, Vandalism, or Misuse. Tenant shall assume all responsibility for any repairs to any portion of the Premises necessitated by the negligence, vandalism, misuse, or other acts on any portion of the Premises.

11.11 Tenant Inspection. Tenant agrees that Tenant has inspected the Premises and all related areas and grounds and that Tenant is satisfied with the physical condition thereof.

11.12 No Other Rights. This Agreement does not give Tenant any other right with respect to the Premises. Any rights not specifically granted to Tenant by and through this document are reserved exclusively to Landlord. Execution of this agreement does not obligate Landlord in any manner and Landlord shall not undertake any additional duties or services.

11.13 Snow Removal. Tenant shall provide and pay for any and all snow removal for the Premises on an as needed basis. Tenant assumes full liability and hereby indemnifies Landlord for snow removal and for failure to perform snow removal.

11.14 Full Liability. Tenant assumes full legal and financial responsibility and liability for any and all use of the Premises by Tenant, Tenant's staff, Tenant's agents, Tenant's invitees, and any other person, persons, or entities entering the Premises.

11.15 No Fee. Tenant shall not charge a fee for access to the Premises.

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IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

LANDLORD:

BY: **THE CITY OF CHICAGO**, an Illinois Municipal Corporation
THE DEPARTMENT OF GENERAL SERVICES

By: _____
Commissioner

APPROVED AS TO FORM AND LEGALITY:

BY: **DEPARTMENT OF LAW**

By: _____
Deputy Corporation Counsel
Real Estate Division

TENANT:

BY: **THE VILLAGE OF NILES**, an Illinois Municipal Corporation

By: _____
Village Manager