Legislation Details (With Text)

File #:	O2014-7194		
Type:	Ordinance	**Status:**	Passed
File created:	9/10/2014	**In control:**	City Council
		Final action:	10/8/2014
Title:	First amendment to redevelopment agreement with Blommer Chocolate Company for sale and redevelopment of property in vicinity of W Kinzie St and N Desplaines St		
Sponsors:	Emanuel, Rahm		
Indexes:	Redevelopment		
Attachments:	1. O2014-7194.pdf		

Date	Ver.	Action By	Action	Result
10/8/2014	1	City Council	Passed	Pass
10/6/2014	1	Committee on Finance	Recommended to Pass	Pass
9/10/2014	1	City Council	Referred	

OFFICE OF THE MAYOR

CITY OF CHICAGO

September 10, 2014

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

Ladies and Gentlemen:

At the request of the Commissioner of Planning and Development, I transmit herewith an ordinance amending a 2006 redevelopment agreement with the Blommer Chocolate Company.

Your favorable consideration of this ordinance will be appreciated.

Mayor

Very truly yours,

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ORDINANCE

WHEREAS, the City of Chicago (the "City") is a home rule municipality as described in Section 6 (a), Article VII of the 1970 Constitution of the State of Illinois, and as such may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the City, through its Department of Planning and Development ("DPD") and Blommer Chocolate Company, a Delaware corporation ("Developer") as of June 7, 2006 entered into that certain Blommer Chocolate Company Redevelopment Agreement (the "Redevelopment Agreement ") pertaining to property located in the River West Redevelopment Project Area in the vicinity of West Kinzie Street and North Des Plaines Street in Chicago; and

WHEREAS the parties desire to enter into a first amendment ("First Amendment") to the Redevelopment Agreement to increase the amount of City Funds available under the Redevelopment Agreement, now therefore,

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

Section 1. Recitals. The above recitals are incorporated by reference as if fully set forth herein.

Section 2. Authority. Subject to the approval of the Corporation Counsel, the Commissioner of DPD (the "Commissioner") or a designee of the Commissioner are each hereby authorized to execute and deliver First Amendment to Blommer Chocolate Company Redevelopment Agreement (the "First Amendment") in substantially the form attached hereto as Exhibit A^ with such changes, deletions and insertions thereto as the Commissioner or the Commissioner's designee shall approve (execution of the Agreement by the Commissioner or the Commissioner's designee constituting conclusive evidence of such approval), and to enter into and execute all such other agreements and instruments, and to perform any and all acts as shall be necessary or advisable in connection with implementation ofthe First Amendment.

Section 3. Invalidity of Any Section. If any provision of this ordinance shall be held to be invalid or unenforceable for any reason, then the invalidity or unenforceability of such provision will not affect any of the remaining provisions of this ordinance.

Section 4. Supersedes All ordinances, resolutions, motions or orders in conflict will this ordinance are hereby repealed to the extent of such conflict.

Section 5. Effective Date. This ordinance shall be in full force and effect immediately upon its passage and approval.

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

This space reserved for Recorder's use only

**FIRST AMENDMENT TO
BLOMMER CHOCOLATE COMPANY
REDEVELOPMENT AGREEMENT**

This First Amendment to the Blommer Chocolate Company Redevelopment Agreement (the "First Amendment") is made and entered into as of this day of , **2014 (the "Effective Date") by and between the City of Chicago, an Illinois municipal corporation (the "City"), through its Department of Planning and Development ("DPD"), and Bloomer Chocolate Company, a Delaware corporation ("Developer").**

RECITALS:

A. As of June 7, 2006 (the "Original Agreement Closing Date") the City and Developer entered into that certain Blommer Chocolate Company Redevelopment Agreement, which was recorded on June 8,2006 in the Office of the Recorder of Deeds of Cook County, Illinois as Document No. 0615933206, as authorized by ordinance approved by the City Council of the City on February 8, 2006, (the "Redevelopment Agreement") pertaining to property located in the River West Redevelopment Project Area in the vicinity of West Kinzie Street and North Des Plaines Street in Chicago and legally described in Exhibit A to this First Amendment.

B. As of June 7, 2006, the City and Developer also entered into that certain Agreement for the Sale and Development of Land, which was recorded on June 8, 2006 in the office of the Recorder as Document No. 0615933207 (the "Agreement for the Sale and Development of Land"). Under the Agreement for the Sale and

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Development of Land, the City agreed to acquire, through negotiated settlement and use of its eminent domain powers, certain parcels of land identified therein and to convey those parcels to Developer so that

Developer could construct the Project thereon. Developer agreed to acquire such parcels on the terms and subject to the conditions contained in the Agreement for the Sale and Development of Land.

C. **Developer's redevelopment work as contemplated in the Redevelopment Agreement and the Agreement for the Sale and Development of Land was divided into a "Phase I / Minimum Project" as defined in Redevelopment Agreement Section 3.01 and expanded redevelopment phases which are also described in Redevelopment Agreement Section 3.01. Together, all redevelopment phases undertaken by Developer are defined as the: "Project".**

D. In the Redevelopment Agreement at Section 4.03(b), the City agreed to provide City Funds as follows: the lesser of $6.5 million or 20% of the actual costs of the Project or if the lesser amount was the total certified TIF-eligible costs for acquisition and site preparation hard construction costs, then that lesser amount.

E. The parties also agreed to an optional additional amount of City Funds in support of the Phase I / Minimum Project. In Redevelopment Agreement Section 4.03(b), the City at its sole and absolute discretion could increase the amount of City Funds by $1,500,000 to a total City Funds Amount of $8,000,000.

F. Because of current business conditions and circumstances, the parties have agreed to amend the Redevelopment Agreement to increase the amount of City Funds subject to the City's discretion by $1,000,000 to a total possible City Funds amount of $9,000,000. Additionally, the parties have agreed to update budget exhibits and budget references in the Redevelopment Agreement.

G. The amendment hereby proposed is within the scope of Redevelopment Agreement Section 18.01 as a "material" amendment and as such requires authorization by an ordinance duly adopted by the City Council.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements contained in this First Amendment, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Developer and the City hereby agree as follows:

AGREEMENT:

ARTICLE ONE: INCORPORATION OF RECITALS AND EXHIBITS

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

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ARTICLE TWO: CAPITALIZED TERMS

Capitalized terms used in this First Amendment shall have the meanings set forth herein. Capitalized terms used in this First Amendment not defined herein shall have the meanings given in the Redevelopment Agreement.

ARTICLE THREE: BUDGET REFERENCES

The following budget and cost references are hereby amended as follows:

a. Project Budget stated at Section 3.03 is increased from $37,109,580 to $59,800,000. Also, existing Exhibit D-1-Project Budget is deleted in its entirety and replaced with Amended Exhibit D-1-Amended Project Budget which is Exhibit B to this First Amendment.

Also, the definition section of Schedule A for "Project Budget" is changed as follows:

"Project Budget" means the budget stated in Exhibit D-1 (and any amended Project Budget agreed to by the parties), showing the total costs of the Project by line item, as furnished by Developer to DPD, in accordance with Section 3.03.

b. The number $37,109,580 appearing in Section 4.01 is, in each instance, deleted, and replaced by the number $59,800,000.

c. **Exhibit E to the Redevelopment Agreement captioned: "TIF Funded Improvements" is replaced with Exhibit C to this First Amendment, and is re-captioned "Amended Exhibit E," and the related text in the definition section of Schedule A for "TIF Funded Improvements" is changed in pertinent part to read "Amended Exhibit E".**

ARTICLE FOUR: CITY FUNDS

That relevant part of Redevelopment Agreement Section 4.03(b)(i) captioned "Amount" is hereby amended as follows:

* * *

Notwithstanding the foregoing, the City may, but need not, elect its sole and absolute discretion without regard to the Project status or any other facts and circumstances, to increase the amount of City Funds by $2,500,000 to a total of $9,000,000. In making its election, the City may consider such facts and circumstances as it deems necessary or appropriate or desirable in the circumstances, including the availability of funds in the Redevelopment Area, the costs of each parcel acquired by Developer, and other matters, and

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or "course of dealing" or "usage of trade" or "standard of precedent". Developer expressly acknowledges that there has been no representations or warranties or guarantees or assurances, express or implied, by the City that all or any part of the additional $2,500,000 in City Funds will be made available to Developer at any time. Developer agrees to make no verbal or written representations to anyone to the contrary. Developer has not made its plans for the Project; secured Lender Financing, if any; entered into this Agreement, or otherwise changed its position in reliance on the possibility that $2,500,000 in additional City Funds will be made available to it.

Notwithstanding anything to the contrary contained in this Agreement or in the Land Acquisition Agreement, in no event shall the Developer be required to purchase any Acquisition Parcel if such purchase would, alone or in the aggregate, exceed the amount of City Funds payable to Developer under this Agreement.

ARTICLE FIVE: ADDITIONAL PROVISIONS

1 Authority of Developer. Developer represents, warrants, and covenants, as of the Effective Date of this First Amendment, that:

a) Developer has the right, power and authority to enter into, execute and deliver this First Amendment, and to perform the Redevelopment Agreement, as amended by this First Amendment;

b) the execution and delivery of this First Amendment, and the performance of the Redevelopment Agreement, as amended by this First Amendment, have been duly authorized by all necessary corporate company action, and does not and will not violate its Certificate of Organization as amended and supplemented, its by-laws, any applicable provision of law, or constitute a breach of, default under or require any consent under any agreement, instrument or document to which Developer is now a party or by which Developer or any of is assets is now or may become bound.

2 Authority of City. This First Amendment by the City is authorized by an ordinance adopted by the City Council on , 2014. The City represents it has authority to execute and deliver this First Amendment and to perform its obligations under the Redevelopment Agreement, as amended by this First Amendment.

3 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 by reference, as if fully set forth herein.

4 Miscellaneous. In the event of any inconsistency between the terms of this First Amendment and the Redevelopment Agreement, this First Amendment shall govern and control in all instances.

5.05 Counterparts. This First Amendment may be executed in counterparts, each of which shall be

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deemed an original and all of which, taken together, shall constitute one and the same agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be signed on or as of

the Effective Date first above written.

BLOMMER CHOCOLATE COMPANY

By:

Printed Name:

Title:

CITY OF CHICAGO

By:
Commissioner
Department of Planning and Development

STATE OF ILINOIS)
)SS
COUNTY OF COOK)

I, , a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that , personally known to me to be the of Blommer Chocolate Company ("Developer"), a Delaware corporation, and personally know 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 he/she signed, sealed and delivered said instrument, pursuant to the authority given to him/her by the Developer as his/her free and voluntary act and as the free and voluntary as ofthe Developer, for the uses and purposed therein set forth.

GIVEN under my hand and official seal this day of , 2014.

Notary Public

My Commission Expires

(SEAL)

STATE OF ILLINOIS)
)SS
COUNTY OF COOK)

I, William A. Nyberg, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that , personally known to me to be the Commissioner of the Department of Planning and Development of the City of Chicago (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 he/she signed, sealed, and delivered said instrument, pursuant to the authority given to him/her by the City, as his/her free and voluntary act and as the free and voluntary act of the City, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this day of , 2014.

Notary Public

My Commission Expires

(SEAL)

LEGAL DESCRIPTION OF THE EXISTING BLOMMER SITE

PARCEL 1:

LOTS 5 TO 8, BOTH INCLUSIVE, IN BLOCK 60 IN RUSSELL, MATHER AND ROBERT'S ADDITION TO CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPTING THEREFROM THAT PART THEREOF LYING SOUTH OF A STRAIGHT LINE EXTENDING FROM A POINT ON THE WEST LINE OF SAID LOT 8, A DISTANCE OF 16.40 FEET NORTH OF THE SOUTH LINE THEREOF, SOUTHEASTERLY TO A POINT ON THE SOUTH LINE OF SAID LOT 8, A DISTANCE OF 45.89 FEET EAST OF THE SOUTHWEST CORNER OF SAID LOT 8), IN COOK COUNTY, ILLINOIS

PARCEL 2:

THAT PART (EXCEPT THE NORTH 10.00 FEET OF THE EAST 55.00 FEET THEREOF) OF BLOCK 59 IN RUSSELL, MATHER AND ROBERT'S ADDITION TO CHICAGO IN THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF THE NORTH LINE OF THE SOUTH 32.00 FEET OF LOT 4 IN SAID BLOCK 59 AND SOUTH OF THE WESTERLY EXTENSION OF SAID NORTH LINE, IN COOK COUNTY, ILLINOIS.

PINs: 17-09-107-007 17-09-107-008 17-09-107-009 17-09-107-010 17-09-111-008 17-09-111-009 17-09-111-015 17-09-111-016

AMENDMENT EXHIBIT B

AMENDED EXHIBIT D-1 AMENDED PROJECT BUDGET

Estimated Site Costs / Prep / Acquisition	$ 9,000,000(,)
Construction	$ 600,000(1)
Equipment	$50,000,000(1)
Soft Costs	$ 200.000(1)
TOTAL BUDGET	$59,800,000{1)

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(1)Final numbers are subject to adjustment bases on the scope ofthe contemplated Project as set forth in Section 3.01.

AMENDMENT EXHIBIT C

AMENDED EXHIBIT E TIF FUNDED IMPROVEMENTS

Estimated Site Costs / Prep / Acquisition $9.000.000

TOTAL BUDGET $9,000,000(,)

(1)Final numbers are subject to adjustment bases on the scope of the contemplated Project as set forth in Section 3.01.

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