



BUREAU OF ASSET MANAGEMENT

**ELAINE LOCKWOOD BEAN**

BUREAU CHIEF

69 W. WASHINGTON, SUITE 3000 • CHICAGO, ILLINOIS 60602 • (312) 603-0303

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17th District

DATE: May 3, 2016

TO: John Daley, Commissioner

FROM: Elaine Lockwood Bean, Bureau of Asset Management, Chief

RE: Real Estate Development Agreement

**Question 1 – The redevelopment of the old Cook County Hospital Building requires substantial funding by a private development group over a period of many years. If, at some point, the project stalls or financing becomes a negative issue for the development team, how can we ensure that direct taxpayer funds will not be necessary to complete the project?**

The RDA puts no obligation on the County to provide financing, funding or subsidy to the Developer in connection with the Project, and further contains provisions that do not permit any part of the Project to proceed without appropriate financing being in place. The Redevelopment Agreement provides for the Project to be undertaken in various Phases. Each Phase is to be developed under a Ground Lease for the particular Phase. Before each Ground Lease is executed with the Developer, certain Ground Lease Execution Conditions must be satisfied by the Developer (See Section 5.1 of the RDA) – among these conditions are requirements that the Developer have its equity and financing in place (and the financing must close concurrently with delivery of the Ground Lease).

Accordingly, no development of a Phase will commence without financing for such Phase being in place. Relative to the financing of each Phase, the Developer is solely responsible for obtaining the financing – in fact, the RDA, at Section 3.4 expressly provides for the following: *“It is expressly acknowledged and agreed by Developer that Owner {Cook County} is not providing any financing with respect to any Phase hereunder.”* Should the Developer be unable to satisfy all conditions to Ground Lease execution in a timely manner, the RDA contains provisions that allow the County to terminate the Developers rights to develop further Phases. In such event, the County would be in a position to find a replacement developer for those future Phases, but nothing in the RDA requires the County to provide any financing to the Developer for any Phase.



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**Question 2 – Environmental clean-up costs, such as the removal of asbestos and remediation of ground contamination, are a considerable concern when dealing with such an aged structure like the old Cook County Hospital and its surrounding land. What would occur if the costs associated with environmental clean –up exceed the limit budgeted for the project?**

The RDA provides that any and all environmental remediation costs associated with materials comprising or within the actual historic Cook County Hospital structure are the sole responsibility of the Developer with no obligation on the County, and the circumstances under which Cook County has an obligation to contribute to the cost of any environmental clean-up related to any Phase of the Project are limited. The circumstances under which the County would have an obligation to contribute to the cost of environmental remediation are set forth in Section 27.2 of the RDA and are limited to the circumstance where (1) hazardous materials are discovered after the Developer's due diligence investigation of the Phase in question (2) the hazardous materials so discovered were not identified in the environmental inspections conducted by Developer during its due diligence investigation and (3) the hazardous materials are found in the subsurface of the Phase in question.

Should the above 3 requirements be satisfied, the Developer would be responsible for the first \$750,000 in clean-up costs, then Cook County would be responsible to the next \$1,500,000 (above \$750,000) for each Phase. The County's total responsibility shall not exceed \$5,000,000 in the aggregate for all Phases. The County has no responsibility to pay any Clean-Up costs in \$5,000,000 cap for all Phases amount, although the RDA provides that if Clean-Up costs exceed those amounts, the County and Developer will discuss the next steps to be taken.

Other than for material that meets the 3 requirements described above, Cook County has no obligation to expend any amount for environmental clean-up. However, if the Developer discovers material environmental contamination in its Due Diligence investigation (described in Article 4 of the RDA) , the Developer has the ability to terminate the RDA unless the County agrees to cure the contamination or contribute to the cost of clean-up – however, the County has no obligation to contribute any funds or to cure any environmental contamination.