

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (this “Agreement”), dated as of MARCH ____, 2008, is by and between Kilbourn Tower, LLC, a Wisconsin limited liability company (the “KT”), and the City of Milwaukee (“City”).

RECITALS

A. The City and KT entered into that certain “Agreement for Sale” dated as of March 21, 2003 (“Development Agreement”), pursuant to which the City sold to KT for \$950,000 (the “Purchase Price”) that certain real property located at 923 East Kilbourn Street, Milwaukee, Wisconsin (the “Property”).

B. Per Development Agreement §1, KT gave City a Purchase Money Note dated May 22, 2003 for \$950,000 (i.e. the amount of the Purchase Price) (the “Note”) that included terms concerning when the Purchase Price was to be paid, and, repayment of the Note was guaranteed by two separate “Personal Guaranty” documents, each also dated May 22, 2003 – with one from Ted Kellner (“Kellner”) and one from Joel Lee (“Lee”), and with each guarantor, respectively, guaranteeing to City 50% of KT’s obligations to make payment to City as required by the Note.

C. Per Development Agreement §3, KT paid to City a Performance Deposit in the amount of \$70,000 (the “Performance Deposit”) to secure KT’s duty to construct what is now known as the Kilbourn Towers Condominium (“KT Condo”) and to secure KT’s duty to cover \$250,000 in landscaping upgrades of the East Kilbourn Avenue Boulevard from N. Prospect Ave. to N. Van Buren Street (the “Blvd. Work”). The \$250,000 for the Blvd. Work was a material component of the Purchase Price.

D. KT has not paid the Note.

E. The City did the Blvd. Work. Common Council Resolution No. 060304.

F. City issued permits to allow development of University Club Tower, a condominium located adjacent to the Property to the immediate south (the “U-Club Tower”).

G. KT has alleged that City is in breach of the Development Agreement for allowing construction of the U-Club Tower, and City has alleged that KT is in breach of the Development Agreement and Note for refinancing a \$41,000,000 loan from M&I Marshall & Ilsley Bank (M&I) to KT and for not paying the Purchase Price and Note.

H. Without admitting or denying any breach by any party, City and KT, mutually desire to settle and compromise their respective claims and differences upon the terms and conditions contained herein.

NOW, THEREFORE, for and in consideration of the mutual promises herein made, and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, KT and City hereby agree as follows:

AGREEMENT

1. **KT Payments.** Notwithstanding the terms of the Note or Development Agreement:

A. KT shall pay to City (by wire-transfer to City, per wire instructions City will provide), in good funds, \$250,000 upon execution of this Agreement; and

B. Also upon execution of this Agreement, KT shall cause M&I to tender to City an original, irrevocable, Letter of Credit per which M&I shall be absolutely, unconditionally, and irrevocably committed to pay to City on Friday, December 28, 2008, \$700,000, in good funds and by wire-transfer to City, per wire instructions City will provide (the "Bank LC"). The Bank LC must be in form and substance meeting City's reasonable approval.

2. **Note Satisfaction.** The timely payment, and City timely receipt, of the amounts set forth in § 1. A. and B. hereof shall constitute full payment and complete satisfaction of the Note, and full payment of the Purchase Price under the Development Agreement.

3. **Note Interest.** So long as KT and M&I timely and properly pay as required hereunder, City waives the right to any interest that would otherwise have accrued on or be due on the Purchase Price under the Note or Development Agreement. If, however, KT or M&I defaults on any payment required hereunder:

A. KT shall be liable to and pay City for any collection cost City incurs (including reasonable attorney fees) and for interest as follows. Interest on any portion of the Purchase Price not timely paid as required hereunder shall continue accruing interest to the time of payment at the non-default rate provided in the Note from the date of the Note until May 3, 2006, and at the default rate provided in the Note from May 4, 2006 until City receipt of payment; and

B. City shall have all rights and remedies hereunder, under the Note, under the Development Agreement, and at law and in equity.

As of JANUARY 25, 2008, per **EXHIBIT A**, accrued interest on the Purchase Price at the non-default rate was **\$282,769.25**, and accrued interest at the non-default rate up until May 4, 2006 and then at the default rate from May 4, 2006 until JANUARY 25, 2008 was **\$316,124.80**.

4. **After KT and M&I Make Required Payments.** Upon payment of the amounts set forth in § 1.A. and B. hereof, and if applicable § 3 hereof, the following shall occur:

A. The Commissioner of the City's Department of City Development ("DCD") shall issue a Certificate of Completion ("Certificate") for the KT Condo construction, which shall be a conclusive determination of satisfaction and termination of the covenants in the Development Agreement and Limited Warranty Deed with respect to the obligations of KT and its successors and assigns to construct and the dates for the beginning and completion thereof, and present the Certificate for recording to the Register of Deeds at City's expense.

B. The City shall waive its right to sue KT (and Kellner and Lee as guarantors) for amounts due hereunder or for the Purchase Price and any interest thereon under the Note or Development Agreement.

C. The City shall return the \$70,000 Performance Deposit.

D. The City shall return the remaining balance, \$32,440.62, that KT paid, or that was paid on KT's behalf, to the City under that certain Out-of-Program Agreement (Common Council Resolution File No. 020423) concerning, among other things, conduit relocation, manhole construction, cable installation, inspections, design-engineering, lighting and signal work (the "Utility Deposit"). KT shall indemnify City against any claims made by any person or entity that actually made the Utility Deposit.

5. **Continuing Guaranty.** Kellner and Lee must join in signing this Agreement to continue guarantying KT's and M&I's duty to pay City as required hereunder, and this Agreement shall not be deemed effective without Kellner and Lee signing as required.

6. **Contingent Mutual Release.** Intending, in good faith, for this Agreement to settle the mutual disputes and grievances between City and KT, so long as each party timely performs its obligations as required hereunder (each party acknowledging those duties):

A. City will not sue KT (or any current or former officer, agent, or employee of KT) or Kellner or Lee on any matter regarding the Development Agreement or the Note, and City shall release KT, Kellner, and Lee regarding any claim or damage regarding the Development Agreement and Note, and likewise,

B. Neither KT, nor any person or entity claiming by, through, or under KT, nor Kellner nor Lee, will sue City or the Redevelopment Authority of the City of Milwaukee ("RACM") or any current or former officer, agent, or employee of City or RACM regarding the Development Agreement, the Note, the Property, the Blvd. Work, the Utility Deposit, the Performance Deposit, or the existence or construction of U-Club Tower or any other improvement on the Property or on the lands south of the Property (including any garage or fence thereat), and KT, Kellner, and Lee shall release City and RACM regarding any claim or damage relating thereto, and

C. City will not specially assess the Property or its owners (including the condominium-unit owners of the KT Condo) for the expense associated with City's constructing the Blvd. Work - those expenses and special assessments to be satisfied in full by the City applying the \$250,000 payment hereunder regardless of the actual costs of the Blvd. Work.

7. **Subterranean Agreement and Air Right Lease Unaffected.**

Notwithstanding anything to the contrary contained herein, nothing contained herein affects or amends the Subterranean Space Lease between KT and City dated May 22, 2003 (as amended from time to time) (Common Council Resolution File No. 020798), or the Airspace Lease between KT and City dated May 22, 2003 (as amended from time to time) (Common Council Resolution File No. 021294), or the duties of the parties under those documents, including, but not limited to, KT's duty to pay City the amounts required thereunder, or any KT duty under any other separate legal or contractual obligation to City (e.g. duty regarding special privilege for planters, Council Resolution File No. 050122, etc.).

8. **M&I Refinancing.** City understands that KT, in December, 2007, again restructured its loan with M&I affecting the Property. City's conditional covenant not to sue and City's conditional release in ¶6.A. extends to and covers City claims or actions against KT regarding KT's December, 2007 M&I-loan restructuring. KT shall promptly provide a copy of this Agreement to KT's loan-contact person at M&I and copy Asst. City Attorney Hagopian on the cover letter effectuating that transmittal.

9. **Binding.** This Agreement binds and inures to the benefit of the parties hereto, their heirs, successors, assignees and beneficiaries in interest.

10. **Interpretation.** This Agreement shall be governed by and construed in accordance with Wisconsin law, and without reference to any rules of construction regarding the party responsible for the drafting hereof.

11. **Notices.** Any and all notices, demands, and communications provided for herein or made hereunder shall be given in writing and shall be deemed given to a party at the earlier of (i) when actually delivered to such party, (ii) when sent by facsimile or e-mail at the respective facsimile number or e-mail address provided below, providing no error, or inability to send, or unsuccessful response message is generated by any such facsimile or e-mail, and so long as any such facsimile or e-mail is sent on business days between the hours of 8:30 A.M. and 4:30 P.M. on days that the City's City Hall is open for business, or (iii) when mailed to such party by regular U.S. Mail or sent by overnight courier, confirmed by receipt, and addressed to such party at the address designated below for such party. Respective notice address and facsimile number information may from time to time be changed by notice provided per this section.

(a) If to the City: Executive Director
RACM
809 North Broadway
Post Office Box 324
Milwaukee, Wisconsin 53201
Facsimile: (414) 286-0395
E-Mail: rmarco@milwaukee.gov

With a copy to: Gregg C. Hagopian
Milwaukee City Attorney's Office
200 East Wells Street
Suite 800
Milwaukee, Wisconsin 53202-3515
Facsimile: (414) 286-8550
E-Mail: ghagop@milwaukee.gov

(b) If to the KT: William R. Arpe
Kilbourn Tower LLC
c/o Fiduciary Real Estate Development, Inc.
789 North Water Street
Suite 200
Milwaukee, WI 53202
Facsimile: (414) 226-4523
E-Mail: wra@fred-inc.com

With a copy to: Bret A. Roge
Michael Best & Friedrich LLP

100 East Wisconsin Avenue
Suite 3300
Milwaukee, WI 53202-4108
Facsimile: (414) 277-0656
E-Mail: baroge@michaelbest.com

12. **Amendment.** This Agreement may not be modified, amended or supplemented except by mutual written agreement of all the parties hereto.

13. **Counterparts; Facsimile.** This Agreement may be executed in one or more counterparts, and facsimile signatures shall be acceptable as originals.

IN WITNESS WHEREOF, KT and City executed this Agreement as of the date first written above.

CITY OF MILWAUKEE

Rocky Marcoux
Commissioner, City of Milwaukee, Dept. of City Development
CC Resolution: _____

KILBOURN TOWER, LLC

By: Fiduciary Real Estate Development, Inc.,
its Managing Member

By: _____
William R. Arpe, President

1050-2006-252:123835

GUARANTY

The undersigned (Kellner and Lee) acknowledge and consent to the above. Each of the undersigned, personally, and severally, guaranties to City payment of 50% of all sums due hereunder so that both guarantors together guaranty 100% of all sums due hereunder.

Kellner: _____
Ted Kellner

Lee: _____
Joel Lee

EXHIBIT A

INTEREST CALCULATED AT NON-DEFAULT RATE

**Kilbourn
Towers
Total Note**

(Draft 1/28/08)

\$950,000

Principal balance (Total note = \$950,000 dated 5/22/03.)

5/22/03

to

1/25/2008

Commence interest accrual

Interest calculation to 1/25/08

| <u>Date of Interest Rate Adjustment</u> | <u>Libor rate monthly rate</u> | <u># of days in month</u> | <u>Interest Rate (add 2.5%)</u> | <u>Accrued Interest</u> | |
|---|--------------------------------|---------------------------|---------------------------------|-------------------------|------------------|
| 5/22/2003 | 0.022500 | 559 | 0.047500 | \$70,069.10 | (Minimum rate) |
| 12/1/2004 | 0.023063 | 31 | 0.048063 | \$3,931.78 | (Adjust monthly) |
| 1/1/2005 | 0.024000 | 31 | 0.049000 | \$4,008.47 | |
| 2/1/2005 | 0.025900 | 28 | 0.050900 | \$3,760.94 | |
| 3/1/2005 | 0.027200 | 31 | 0.052200 | \$4,270.25 | |
| 4/1/2005 | 0.028700 | 30 | 0.053700 | \$4,251.25 | |
| 5/1/2005 | 0.030900 | 31 | 0.055900 | \$4,572.93 | |
| 6/1/2005 | 0.031400 | 30 | 0.056400 | \$4,465.00 | |
| 7/1/2005 | 0.033400 | 31 | 0.058400 | \$4,777.44 | |
| 8/1/2005 | 0.035337 | 31 | 0.060337 | \$4,935.90 | |
| 9/1/2005 | 0.037162 | 30 | 0.062162 | \$4,776.68 | |
| 10/1/2005 | 0.038800 | 31 | 0.063800 | \$5,219.19 | |
| 11/1/2005 | 0.040900 | 30 | 0.065900 | \$5,217.08 | |
| 12/1/2005 | 0.043112 | 31 | 0.068112 | \$5,571.94 | |
| 1/1/2006 | 0.043975 | 31 | 0.068750 | \$5,624.13 | |
| 2/1/2006 | 0.045707 | 31 | 0.070707 | \$5,784.23 | |
| 3/1/2006 | 0.046400 | 31 | 0.071400 | \$5,840.92 | |
| 4/1/2006 | 0.048300 | 30 | 0.073300 | \$5,802.92 | |
| 5/1/2006 | 0.050519 | 31 | 0.075519 | \$6,177.87 | |
| 6/1/2006 | 0.051294 | 30 | 0.076294 | \$6,039.93 | |
| 7/1/2006 | 0.053338 | 31 | 0.078338 | \$6,408.48 | |
| 8/1/2006 | 0.053900 | 31 | 0.078900 | \$6,454.46 | |
| 9/1/2006 | 0.053300 | 30 | 0.078300 | \$6,198.75 | |
| 10/1/2006 | 0.053225 | 31 | 0.078225 | \$6,399.24 | |
| 11/1/2006 | 0.053200 | 30 | 0.078200 | \$6,190.83 | |
| 12/1/2006 | 0.053500 | 31 | 0.078500 | \$6,421.74 | |
| 1/1/2007 | 0.053219 | 31 | 0.078219 | \$6,398.75 | |
| 2/1/2007 | 0.053200 | 28 | 0.078200 | \$5,778.11 | |
| 3/1/2007 | 0.053200 | 31 | 0.078200 | \$6,397.19 | |
| 4/1/2007 | 0.053200 | 30 | 0.078200 | \$6,190.83 | |
| 5/1/2007 | 0.053200 | 31 | 0.078200 | \$6,397.19 | |

| | | | | |
|-----------|----------|----|----------|------------|
| 6/1/2007 | 0.053200 | 30 | 0.078200 | \$6,190.83 |
| 7/1/2007 | 0.053200 | 31 | 0.078200 | \$6,397.19 |
| 8/1/2007 | 0.053275 | 31 | 0.078275 | \$6,403.33 |
| 9/1/2007 | 0.057200 | 30 | 0.082200 | \$6,507.50 |
| 10/1/2007 | 0.051206 | 31 | 0.076206 | \$6,234.07 |
| 11/1/2007 | 0.046875 | 30 | 0.071875 | \$5,690.10 |
| 12/1/2007 | 0.052362 | 31 | 0.077362 | \$6,328.64 |
| 1/1/2008 | 0.046000 | 25 | 0.071000 | \$4,684.03 |

\$282,769.25 **Due 1/25/08**

Source of LIBOR interest rates: www.bba.org.uk

(British Bankers Association is also the source that Reuters uses to obtain rate info.)

(Knight Ridder is just a reporting agency, so the BBA website should provide the correct data.)

Interest rate definition: 30 day LIBOR Rate + 2.5%

Rounded up to the nearest 1/16 of 1% (only if interest is infinite #)

Adjusted on the first business day of each month (or the preceding business day if the first business day of any calendar month is not a regular business day.)

Minimum rate is 4.75%

Assume interest basis is actual # of days / 360

**INTEREST CALCULATED AT NON-DEFAULT RATE UNTIL MAY 4, 2006
AND THEN AT DEFAULT RATE FROM MAY 4, 2006 UNTIL JANUARY 25,
2008**

**Kilbourn
Towers
Total Note**

(Draft 1/28/08)

\$950,000

Principal balance (Total note = \$950,000 dated 5/22/03.)

5/22/03
to
1/25/2008

Commence interest accrual \ **Default interest 5/4/2006 increases +
2%**
Interest calculation to 1/25/08

| <u>Date of Interest Rate Adjustment</u> | <u>Libor rate monthly rate</u> | <u># of days in month</u> | <u>Interest Rate (add 2.5 +2%)</u> | <u>Accrued Interest</u> | |
|---|--------------------------------|---------------------------|------------------------------------|-------------------------|------------------|
| 5/22/2003 | 0.022500 | 559 | 0.047500 | \$70,069.10 | (Minimum rate) |
| 12/1/2004 | 0.023063 | 31 | 0.048063 | \$3,931.78 | (Adjust monthly) |
| 1/1/2005 | 0.024000 | 31 | 0.049000 | \$4,008.47 | |
| 2/1/2005 | 0.025900 | 28 | 0.050900 | \$3,760.94 | |
| 3/1/2005 | 0.027200 | 31 | 0.052200 | \$4,270.25 | |
| 4/1/2005 | 0.028700 | 30 | 0.053700 | \$4,251.25 | |
| 5/1/2005 | 0.030900 | 31 | 0.055900 | \$4,572.93 | |
| 6/1/2005 | 0.031400 | 30 | 0.056400 | \$4,465.00 | |
| 7/1/2005 | 0.033400 | 31 | 0.058400 | \$4,777.44 | |
| 8/1/2005 | 0.035337 | 31 | 0.060337 | \$4,935.90 | |
| 9/1/2005 | 0.037162 | 30 | 0.062162 | \$4,776.68 | |
| 10/1/2005 | 0.038800 | 31 | 0.063800 | \$5,219.19 | |
| 11/1/2005 | 0.040900 | 30 | 0.065900 | \$5,217.08 | |
| 12/1/2005 | 0.043112 | 31 | 0.068112 | \$5,571.94 | |
| 1/1/2006 | 0.043975 | 31 | 0.068750 | \$5,624.13 | |
| 2/1/2006 | 0.045707 | 31 | 0.070707 | \$5,784.23 | |
| 3/1/2006 | 0.046400 | 31 | 0.071400 | \$5,840.92 | |
| 4/1/2006 | 0.048300 | 30 | 0.073300 | \$5,802.92 | |
| 5/1/2006 ** | 0.050519 | 31 | 0.075519 | \$7,655.65 | |
| 6/1/2006 | 0.051294 | 30 | 0.096294 | \$7,623.26 | |
| 7/1/2006 | 0.053338 | 31 | 0.098338 | \$8,044.59 | |
| 8/1/2006 | 0.053900 | 31 | 0.098900 | \$8,090.57 | |
| 9/1/2006 | 0.053300 | 30 | 0.098300 | \$7,782.08 | |
| 10/1/2006 | 0.053225 | 31 | 0.098225 | \$8,035.35 | |
| 11/1/2006 | 0.053200 | 30 | 0.098200 | \$7,774.17 | |
| 12/1/2006 | 0.053500 | 31 | 0.098500 | \$8,057.85 | |
| 1/1/2007 | 0.053219 | 31 | 0.098219 | \$8,034.86 | |
| 2/1/2007 | 0.053200 | 28 | 0.098200 | \$7,255.89 | |
| 3/1/2007 | 0.053200 | 31 | 0.098200 | \$8,033.31 | |
| 4/1/2007 | 0.053200 | 30 | 0.098200 | \$7,774.17 | |
| 5/1/2007 | 0.053200 | 31 | 0.098200 | \$8,033.31 | |

| | | | | |
|-----------|----------|----|----------|------------|
| 6/1/2007 | 0.053200 | 30 | 0.098200 | \$7,774.17 |
| 7/1/2007 | 0.053200 | 31 | 0.098200 | \$8,033.31 |
| 8/1/2007 | 0.053275 | 31 | 0.098275 | \$8,039.44 |
| 9/1/2007 | 0.057200 | 30 | 0.102200 | \$8,090.83 |
| 10/1/2007 | 0.051206 | 31 | 0.096206 | \$7,870.19 |
| 11/1/2007 | 0.046875 | 30 | 0.091875 | \$7,273.44 |
| 12/1/2007 | 0.052362 | 31 | 0.097362 | \$7,964.75 |
| 1/1/2008 | 0.046000 | 25 | 0.091000 | \$6,003.47 |

Total \$316,124.80 **Due1/25/08**

Source of LIBOR interest rates: www.bba.org.uk

(British Bankers Association is also the source that Reuters uses to obtain rate info.)

(Knight Ridder is just a reporting agency, so the BBA website should provide the correct data.)

Interest rate definition: 30 day LIBOR Rate + 2.5%

Rounded up to the nearest 1/16 of 1% (only if interest is infinite #)

Adjusted on the first business day of each month (or the preceding business day if the first business day of any calendar month is not a regular business day.)

Minimum rate is 4.75%

Assume interest basis is actual # of days / 360

Default interest rate is 2% above regular interest rate

** Default interest calculation for May 2006:

| | |
|---------------------|-----------------|
| | \$ |
| 3 days at 7.55519 = | 597.86 |
| | <u>\$</u> |
| 28 days at 9.5519 = | <u>7,057.79</u> |
| | \$ |
| | 7,655.65 |