

## Legal Alert: The "Greening" of Real Estate Development: More Green in Your Pockets

**December 13, 2007**

The color green is more synonymous with money than ever as just about every industry scrambles to meet consumer demand for "Green" eco-friendly and sustainable products. Sustainable design concepts that were once confined to the halls of academia are now commonly accepted principles that are coming to a real estate development near you. The Greening of America is underway and the real estate industry is leading the charge.

Green buildings have been sprouting up in the world's largest cities for over a decade, mainly in the form of high-end residential projects, academic and institutional buildings, and large corporate headquarters campuses. It is commonplace to hear about Green buildings in Portland or Seattle, but what about the Owens Corning headquarters in Toledo or the Melink Corporation headquarters in Cincinnati? The new Keystone Parke development located along I-71 at Dana Avenue in Cincinnati is marketing itself as a Green development, and others are following suit. With the introduction of large scale Green developments such as Keystone Parke, the market for Green buildings has officially arrived in our region. Recognizing this, the City of Cincinnati has recently expanded the scope and duration of its CRA tax abatement program to address and encourage Green projects. The city's new program is discussed below.

Being Green is a statement about being progressive – encouraging a healthy and sustainable environment. There is widespread awareness of and concern about global warming, greenhouse gas emissions, and increased energy consumption, and as companies find ways to implement Green concepts into their products, these issues have become an important boardroom topic. As a result, the demand for Green architecture has become pervasive in the speculative office, retail and industrial markets, and even some large scale residential developments. Real estate end users are increasingly demanding that their corporate campus, their new office tower, their condominium building or their retail center be Green, and like other consumers, this strong demand shows that they will pay a premium for it.

What does it mean to be Green? According to the 11,000 member U.S. Green Building Council ("USGBC"), whose stated mission is to promote environmentally responsible buildings that are profitable and healthy places to live and work, a Green building promotes environment, economic, and community health benefits through environmentally responsible design. Green design elements range from the installation of garden roofs which promote insulation and clean water runoff to the orientation of a building so as to take advantage of natural light and reduce energy consumption. Lighting and material choices, eco-friendly insulation, smart energy systems, and countless other design elements add to the Green character of a building.

The trademarked Leadership in Energy and Environmental Design (LEED®) rating system, which is administered by the USGBC, is nationally recognized as the benchmark for determining the environmental performance of a building. According to the USGBC, "LEED® promotes a whole-building approach to sustainability by recognizing performance in five key areas of human and environmental health: sustainable site development, water savings, energy efficiency, materials selection, and indoor environmental quality." (For more information about the USGBC see [www.usgbc.org](http://www.usgbc.org)). The rating system consists of four categories: certified, silver, gold and platinum. Such ratings are assigned to buildings that meet a strict criteria developed by USGBC and that have earned points for the environmental performance of the building as a whole. (For more information on the LEED® certification criteria and process see [www.usgbc.org](http://www.usgbc.org)).

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Certifying a building may seem like a lot of extra work and expense, however, the City of Cincinnati and other communities around the nation are providing incentives, and in some cases even passing mandates, to promote and encourage developers to "Green up" their real estate. For example, in Baltimore, Maryland, all developers will be required to incorporate Green building standards into their projects by 2010. In Boston, Massachusetts, the city's newly amended zoning code requires that any new building larger than 50,000 square feet adopt Green building standards. The State of Ohio passed legislation in 2004 requiring state agencies, state institutions of higher education, school districts, and community schools to comply with certain energy efficient building standards.

The City of Cincinnati has taken a voluntary and less heavy handed approach. Cincinnati recently adopted Ordinance No. 182-2007, which provides an automatic 100% real property tax exemption for the assessed property value of any newly constructed or rehabilitated commercial or residential properties constructed or rehabilitated to LEED® certified, silver, gold or platinum USGBC standards. The City's new Green ordinance provides LEED® buildings in the City an automatic real property tax exemption for 15 years for newly constructed commercial, industrial, and residential buildings, 12 years for remodeled commercial, industrial, and multi-unit residential buildings, and 10 years for remodeled 1-3 unit residential buildings, which includes residential condominiums. A written exemption agreement approved by City Council is necessary for all buildings except for 1-3 unit multi-family projects and residential condominiums. There is a maximum abatement of \$500,000 per dwelling unit, however, there is no maximum if your building is "Platinum" rated - the highest LEED® rating. The per dwelling unit maximum will increase 3% per year as long as the abatement is in effect. A property owner will still have to pay the Cincinnati Public Schools 25% of the full amount of exempt real property taxes which would have been paid to Hamilton County if the exemption were not in effect, and an annual fee to the City equal to 1% of the annual tax exemption, capped at \$2,500. (If your property is in an Enterprise Zone it is not eligible.) These incentives make a strong statement that the City of Cincinnati is serious about promoting Green development and rehabilitation projects.

Cincinnati has received national attention for its leadership on incentivizing Green development. As a Cincinnati-based law firm, Keating Muething & Klekamp PLL (KMK) is proud to be part of Greater Cincinnati's Green development initiatives, and the only law firm member of the USGBC in Ohio, Kentucky and Indiana. Considering market demand, newly adopted tax incentives, and popular concern about the future of the environment, we believe that Green development is a permanent fixture of the real estate industry. As the leading law firm in the region on Green development issues, the KMK Green Team is ready to work with you to develop and certify your new Green development.

The KMK Green Team is comprised of real estate, environmental, economic development, and tax lawyers who have experience and knowledge about Green development issues. Contact: Kenneth P. Kreider, Brian M. Babb, Jill A. Weller, Gail G. Pryse, David A. Meyer, Sean S. Suder, James A. Singler, or Brenna L. Penrose.

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