



Doc#: 0411318065
Eugene "Gene" Moore Fee: \$50.00
Cook County Recorder of Deeds
Date: 04/22/2004 12:00 PM Pg: 1 of 14

This Document Prepared by
and
After Recording Return to:

Scott R. Borstein, Esq.
Wildman, Harrold, Allen
& Dixon LLP
225 West Wacker Drive
Suite 2800
Chicago, IL 60606-1229

Above Space for Recorder's Use Only

ZONING CONTROL AGREEMENT

This ZONING CONTROL AGREEMENT is made as of this 16th day of April, 2004 by and between the DSP Clybourn, L.L.C., a Delaware limited liability company (hereinafter referred to as "DSP") and 1840 North Clybourn L.L.C., an Illinois limited liability company, (hereinafter referred to as "1840");

WITNESSETH:

WHEREAS, 1840 owns certain real property located at 1840 North Clybourn Avenue in Chicago, Illinois, legally described in Exhibit A attached hereto and made a part hereof (said property hereafter referred to as the "1840 Parcel") which is improved with a retail, storage and parking complex;

WHEREAS, 1845 North Clybourn II, L.L.C., (hereinafter referred to as "1845") entered into a contract with and sold to DSP certain real property located at 1845 North Clybourn Avenue in Chicago, Illinois, legally described in Exhibit B attached hereto and made a part hereof (said property hereafter referred to as the "DSP Parcel") which is improved with a retail and parking complex;

WHEREAS, the 1840 Parcel and the DSP Parcel were formerly subject to that certain Manufacturing-Commercial Planned Development No. 757, as Amended and all amendments thereto (hereafter referred to as the "MCPD757"), which governs the uses within and the development potential of the Total Parcel (as defined below);

WHEREAS, because of the division of the 1840 and DSP Parcels, the parties have determined that it is in their best interests to set forth the rights and obligations of the parties with respect to their respective parcels, the further development thereof and any requirements imposed by the City in connection with MCPD757;

TICOR TITLE INSURANCE

285

Box 15

UNOFFICIAL COPY

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained and other valuable consideration, the parties hereto covenant and agree as follows:

AGREEMENTS

1. **Recitals.** The foregoing recitals shall be incorporated herein by reference.
2. **Definitions.** As used herein, the following terms will have the following meanings:

"1840" means 1840 North Clybourn L.L.C., an Illinois limited liability company and its successors and assigns.

"1845" means 1845 North Clybourn II L.L.C., an Illinois limited liability company and its successors and assigns.

"1840 Parcel" means the property legally described on Exhibit A and owned by 1840 and its successors and assigns.

"1840 Parcel Improvements" means any improvements (and any alterations, expansions, modifications or reconstruction thereof) located on the 1840 Parcel now or in the future which are permitted by law and are consistent with the provisions of this Agreement.

"Agreement" means this Zoning Control Agreement.

"City" means the City of Chicago.

"DSP" means the DSP Clybourn, L.L.C., a Delaware limited liability company, and its successors and assigns.

"DSP Approval" means an amendment to MCPD757 which DSP may file amending the zoning regulations for the DSP Parcel. The DSP Approval would seek to permit, but not be limited to, restaurant and liquor store uses and an increase in the Floor Area permitted on the DSP Parcel.

"DSP Parcel" means the property legally described in Exhibit B and owned by DSP, its successors and assigns.

"DSP Parcel Improvements" means any improvements (and any alterations, expansions, modifications or reconstruction thereof) located on the DSP Parcel now or in the future which are permitted by law and are consistent with the provisions of this Agreement.

"MCPD757" means the Manufacturing-Commercial Planned Development No. 757, as Amended, which was adopted by the City of Chicago Council on August

UNOFFICIAL COPY

30, 2000 and which governs the DSP Parcel and the 1840 Parcel and any amendments or modifications thereto including that certain Request for Minor Changes approved by the City on June 6, 2002.

"MCPD757 Approval" means any modification, amendment or administrative or legislative relief to or from MCPD 757.

"Ordinance" means Title 17 of the Municipal Code of the City of Chicago as it may be amended from time to time.

"Owner(s)" means, collectively, DSP and 1840, and the holders, from time to time, of record title to all or any portion of the DSP Parcel or 1840 Parcel. In any case where such Owner is a land trust, "Owner" will also mean the beneficiary of such land trust. For the purposes of any acknowledgment, agreement, consent, authorization, amendment or receipt of notice required hereunder for any Parcel or portion thereof submitted to the Act (as defined below in paragraph 10), the Owner of said Parcel or portion thereof shall be deemed the condominium association and not the individual condominium owners.

"Total Parcel" means the DSP Parcel (or any portion thereof) and the 1840 Parcel (or any portion thereof).

3. **DSP Agreement and Acknowledgment.** DSP agrees and acknowledges that, notwithstanding MCPD757, in no event shall DSP or any other Owner be deemed a partner or joint venturer with 1840. Neither DSP or other Owner shall be deemed to be such a partner or joint venturer by reason of its making of any expenditures on 1840's behalf or allowing the use of the DSP Parcel or any improvements thereon by 1840 as provided herein. Accordingly, 1840 may: (i) construct, re-construct, develop, use, demolish, maintain and operate any improvements upon the 1840 Parcel including the 1840 Parcel Improvements and (ii) petition for and obtain any MCPD757 Approval or other approval, permit, license, certificate or authorization which is necessary or appropriate for the construction, reconstruction, development, use, maintenance or operation of the 1840 Parcel Improvements; provided, however, that any such action under provision (i) or (ii) above shall not (x) violate any other provisions of this Agreement nor cause (y) any limitation, restriction or diminution in the permitted uses, the Floor Area as allocated under MCPD 757, allowable density or other development rights of DSP under the MCPD757 or (z) any change in any law which would result in any portion of the DSP Parcel, or the DSP Parcel Improvements now or in the future thereon to become non-conforming under the terms of the Ordinance. Nothing herein shall be construed or interpreted to mean that 1840 may construct or maintain any improvements over, under or upon the DSP Parcel. DSP hereby consents and agrees not to object to any undertaking by 1840 which complies with the terms and provisions of this Agreement. DSP shall cooperate with 1840 in obtaining such MCPD757 Approval and such other approvals, permits, licenses, certificates or authorizations and shall, within seven (7) business days following a request by 1840, execute such applications, petitions, or other

UNOFFICIAL COPY

instruments as are necessary or appropriate in connection with obtaining any such MCPD757 Approval and such other approvals, permits, licenses, certificates or authorizations.

4. **1840 Agreement and Acknowledgment.** 1840 agrees and acknowledges that, notwithstanding MCPD757, in no event shall 1840 or any other Owner be deemed a partner or joint venturer with DSP. Neither 1840 or other Owner shall be deemed to be such a partner or joint venturer with DSP by reason of its making any expenditures on DSP's behalf or allowing the use of the 1840 Parcel or any improvements thereon by DSP as provided herein. Accordingly, DSP may: (i) construct, re-construct, develop, use, demolish, maintain and operate any improvements upon the DSP Parcel including the DSP Parcel Improvements and (ii) petition for and obtain any MCPD757 Approval or other approval, permit, license, certificate or authorization which is necessary or appropriate for the construction, reconstruction, development, use, maintenance or operation of the DSP Parcel Improvements; provided, however, that any such action under provision (i) or (ii) above shall not (x) violate any other provisions of this Agreement, nor cause (y) any limitation, restriction or diminution in the permitted uses, Floor Area as allocated under MCPD757, allowable density or other development rights of 1840 under the MCPD757, or (z) any change in any law which would result in any portion of the 1840 Parcel or any improvements, now or in the future thereon to become non-conforming under the terms of the Ordinance. Except as provided below, nothing herein shall be construed or interpreted to mean that DSP may construct or maintain any improvements over, under or upon the 1840 Parcel. 1840 hereby consents and agrees not to object to any undertaking by DSP which complies with the terms and provisions of this Agreement. 1840 shall cooperate with DSP in obtaining such MCPD757 Approval and such other approvals, permits, licenses, certificates or authorizations and shall, within seven (7) business days following a request by DSP, execute such applications, petitions, or other instruments as are necessary or appropriate in connection with obtaining any such MCPD757 Approval and such other approvals, permits, licenses, certificates or authorizations. 1840 further acknowledges that DSP may file a DSP Approval, which affects the zoning regulations under MCPD757 for the DSP Parcel. Notwithstanding any other provisions provided herein, 1840 hereby consents to DSP's filing of a DSP Approval and agrees to cooperate with DSP in obtaining such DSP Approval and shall, within seven (7) business days following a request by DSP, execute such applications, petitions, or other instruments as are necessary or appropriate in connection with obtaining any such DSP Approval or other related approvals, permits, licenses, certificates or authorizations, provided, however, that the DSP Approval and any action thereunder shall not violate any of the aforementioned restrictions contained in (x), (y) or (z) above.

5. **Single Zoning Lot.** The DSP Parcel and the 1840 Parcel are considered by the City as a single zoning lot. Notwithstanding the foregoing, the parties shall be permitted, unless otherwise required by the City or this Agreement, to make all applications for any governmental approval including, without limitation, an application for MCPD757 Approval, for its Parcel only, on its own behalf without requiring the consent or authorization of the other party. Nothing in this Agreement shall be construed to provide that any Parcel may not be individually mortgaged or subject to liens, provided that any lien on a Parcel shall have no effect on the other Parcel.

UNOFFICIAL COPY

6. Authorization.

a. DSP Authorization

DSP hereby states and declares that, for the purpose of the construction, reconstruction, maintenance, development, use and operation of the 1840 Parcel and the 1840 Parcel Improvements, in accordance with this Agreement and for the purpose of obtaining, from time to time, any MCPD757 Approval, permit or other governmental authorization permitted by this Agreement for the 1840 Parcel only, 1840 is authorized to act as the designated representative of DSP to the City and to any other governmental entity. If necessary, DSP will, within seven (7) days following a request by 1840, execute such documents or instruments as are necessary or appropriate to evidence such authority.

b. 1840 Authorization

1. 1840 hereby states and declares that for the purpose of the construction, reconstruction, maintenance, development, use and operation of the DSP Parcel, and the DSP Parcel Improvements in accordance with this Agreement and for the purpose of obtaining, from time to time, any MCPD757 Approval, permit or other governmental authorization permitted by this Agreement for the DSP Parcel only, DSP is authorized to act as the designated representative of 1840 to the City and to any other governmental entity. If necessary, 1840 will, within seven (7) days following a request by DSP, execute such documents or instruments as are necessary or appropriate to evidence such authority.

2. 1840 also authorizes, agrees and grants to DSP a perpetual non-exclusive license to use the name Clybourn Galleria (together with 1840's right to use such name) in any and all of its marketing, promotional and other materials used in connection with the DSP Parcel and the DSP Parcel Improvements. DSP's right to use such name shall be at no cost to DSP. Provided, however, DSP shall be under no obligation to use said name and it may change said name at any time in its sole discretion.

7. **Default.** If any Owner defaults in the performance of any term, covenant or agreement required to be performed by it under this Agreement, and such default is not cured within thirty (30) calendar days after written notice by the non-defaulting Owner to the defaulting Owner, unless such default cannot reasonably be cured within such thirty (30) calendar day period and the defaulting Owner has, after receipt of the notice, promptly commenced and continues to diligently pursue all action reasonably necessary to cure such default, the non-defaulting Owner may enforce the provisions of this Agreement by injunctive relief or by a suit or suits for the specific performance of any covenant or agreement contained herein or exercise such other rights or remedies it may have at law or in equity. All costs and expenses, including attorney's fees and court costs, incurred by the non-defaulting Owner to enforce the terms of this Agreement shall be the responsibility of the defaulting Owner and shall be payable upon receipt of an invoice therefore.

8. **Binding Effect.** This Agreement and the terms and provisions hereof shall be binding upon and shall inure to the benefit of DSP and 1840 and their respective successors

UNOFFICIAL COPY

and assigns. The parties agree and acknowledge that any party may record this Agreement with the Office of the Recorder of Deeds of Cook County, Illinois. The cost of recording shall be borne equally by the Parties. A copy hereof shall also be lodged with the City's Department of Planning and Development. The parties further agree that the provisions of this Agreement are covenants, restrictions and agreements that run with the land.

9. **Amendment.** The terms and provisions of this Agreement may be amended only by an instrument in writing duly executed by the parties hereto and their respective successors and assigns. In the event that this Agreement is recorded, no amendment shall be effective until it is recorded with the Office of the Recorder of Deeds of Cook County, Illinois.

10. **Notices.** All notices and other communications given pursuant to this Agreement shall be in writing and shall be deemed properly served if delivered in person to the party to whom it is addressed or on the third calendar day after deposit in the United States registered or certified mail, return receipt requested, postage prepaid or on the next business day following deposit with an overnight courier service, as follows:

If intended for DSP: Robert Perlmutter
 DSP Clybourn, L.L.C.
 622 Davis Street
 Evanston, IL 60201
 Fax: (847) 425-4014

Copies to: Wildman Harrold Allen & Dixon LLP
 225 West Wacker Drive, Suite 2800
 Chicago, Illinois 60606
 Attn: Thomas P. Duffy
 Fax (312) 201-2555

If intended for 1840, to: Max Plzak
 First American Properties, L.L.C.
 3436 N. Kennicott Avenue
 Arlington Heights, IL 60004
 Fax: (847) 259-1663

Copies to: Kovitz Shifrin Nesbit
 750 Lake Cook Road, #350
 Buffalo Grove, IL 60089
 Attn: Gerald J. Smoller
 Fax: (847) 537-0550

In the event title to a Parcel is conveyed to a third party, upon the vesting of ownership of any Parcel in a condominium association or upon the submission of all or a portion of any Parcel to the Illinois Condominium Property Act (the "Act"), the Owner thereof shall, within thirty (30) days thereof, provide a written notice to the other Owners of the notice information required herein and so amend this Section in accordance with Section 10 hereof. If any Parcel is

UNOFFICIAL COPY

submitted to the Act, the notice requirements hereunder shall be deemed satisfied by providing notice to the condominium association only and not to the individual condominium owners.

11. **Headings.** The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.

12. **Counterparts.** This Agreement may be executed in several counterparts, each of which will be deemed an original and all of which will constitute one and the same agreement.

13. **Severability.** If any provision in this Agreement, or any paragraph, sentence, clause, phrase, word or the application thereof, in any circumstance, is held invalid, this Agreement will be construed as if such invalid part were never included herein and the remainder of this Agreement will be and remain valid and enforceable to the fullest extent permitted by law.

14. **Governing Law.** This Agreement will be governed by and construed in accordance with the law of the State of Illinois.

IN WITNESS WHEREOF, the parties hereto have executed and affixed their respective seals to this ZONING CONTROL AGREEMENT as of the day and year first above written

DSP Clybourn, L.L.C.

a Delaware limited liability company

By: DSP Clybourn SPE, L.L.C.

By: 

Robert Perinutter

Its: Manager

1840 North Clybourn L.L.C., an Illinois limited liability company

By: 1840 North Clybourn II L.L.C.

By: 
Wayne Moretti, Manager

UNOFFICIAL COPY

STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, Gerald J. Smoller, a Notary Public in and for said County, in the state aforesaid, do hereby certify that Wayne Moretti, the Manager of 1840 North Clybourn II, L.L.C., who personally is 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 they signed and delivered said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 16th day of April, 2004.



Notary Public
My Commission Expires: _____

OFFICIAL SEAL
GERALD J SMOLLER
NOTARY PUBLIC, STATE OF ILLINOIS
My Commission Expires 3-1-10

UNOFFICIAL COPY

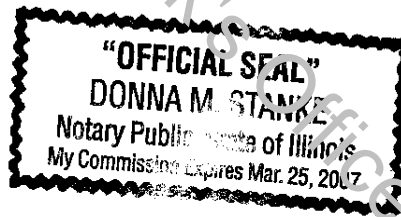
STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, Donna M Stanke, a Notary Public in and for said County, in the state aforesaid, do hereby certify that Rbt Penlow, the MANAGER of DSP Clybourn, L.L.C., who personally is 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 they signed and delivered said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth. the sole member of DSP Clybourn LLC

GIVEN under my hand and Notarial Seal this 16th day of April, 2004.

Donna M Stanke
Notary Public

My Commission Expires: _____



(Zoning Control Agreement)

UNOFFICIAL COPY

STATE OF ~~ILLINOIS~~ ^{New York})
COUNTY OF ~~COOK~~ ^{New York})

I, Elsa J Castaldo, a Notary Public in and for said County, in the state aforesaid, do hereby certify that Elisa De Palma, the ~~agent~~ ^{authorized} of Citigroup Global Markets Realty Corp, whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 25th day of March, 2004.

Elsa J Castaldo
Notary Public

My Commission Expires: June 14, 2007

ELSA CASTALDO
Notary Public, State of New York
No. 01CA6026466
Qualified in Queens County
Commission Expires June 14, 2007

(Zoning Control Agreement)

UNOFFICIAL COPY

EXHIBIT A

1840 PARCEL LEGAL DESCRIPTION

Legally Described as:

PARCEL 1:

LOTS 7 TO 20, BOTH INCLUSIVE, IN BLOCK 6 IN THE SUBDIVISION OF LOTS 1 AND 2 IN BLOCK 8 IN SHEFFIELDS ADDITION TO CHICAGO IN THE SOUTH EAST 1/4 OF SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THEREFROM THAT PORTION THEREOF CONVEYED TO THE CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY BY DEED DATED MAY 7, 1909 AND RECORDED JUNE 2, 1909 AS DOCUMENT 4385296) IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THAT PART OF THE SOUTHWESTERLY 15 FEET OF LOTS 12 AND 13 IN BLOCK 6 IN THE SUBDIVISION OF LOTS 1 AND 2 IN BLOCK 8 IN SHEFFIELD'S ADDITION TO CHICAGO IN THE SOUTH EAST 1/4 OF SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF LOT 13 WHICH POINT IS 15.0 FEET NORTHEASTERLY OF THE NORTHWESTERLY CORNER OF SAID LOT 13, AND RUNNING THENCE SOUTHEASTWARDLY ALONG A LINE 15.0 FEET NORTHEASTERLY OF AND PARALLEL WITH THE SOUTHWESTERLY LINE OF SAID LOTS 12 AND 13, A DISTANCE OF 91.12 FEET; THENCE NORTHWESTWARDLY ALONG THE ARC OF A CIRCLE, CONVEX NORTHEASTERLY, HAVING A RADIUS OF 694.42 FEET, A DISTANCE OF 66.40 FEET, TO A POINT 8.73 FEET NORTHEASTERLY OF SAID SOUTHWESTERLY LINE OF LOT 13; THENCE NORTHWESTWARDLY ALONG A STRAIGHT LINE, TANGENT TO THE LAST DESCRIBED ARC OF A CIRCLE, A DISTANCE OF 25-30 FEET TO ITS INTERSECTION WITH THE NORTHWESTERLY LINE OF LOT 13 AFORESAID, AT A POINT 5.14 FEET NORTHEASTERLY OF SAID NORTHWESTERLY CORNER OF LOT 13; THENCE NORTHEASTWARDLY ALONG SAID NORTHWESTERLY LINE, A DISTANCE OF 9.86 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

THE SOUTHWESTERLY 15 FEET OF LOTS 7, 8, 9, 10, 11, 12 AND 13 IN BLOCK 6 IN THE SUBDIVISION OF LOTS 1 AND 2 IN BLOCK 8 IN SHEFFIELD'S ADDITION TO CHICAGO IN THE SOUTH EAST 1/4 OF SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPTING THEREFROM THAT PART OF SAID LOTS 12 AND 13, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF LOT 13 WHICH POINT IS 15.0 FEET NORTHEASTERLY OF THE NORTHWESTERLY CORNER OF SAID LOT 13, AND RUNNING THENCE SOUTHEASTWARDLY ALONG A LINE 15.0 FEET NORTHEASTERLY OF AND PARALLEL WITH THE SOUTHWESTERLY LINE OF SAID

UNOFFICIAL COPY

LOTS 12 AND 13, A DISTANCE OF 91.12 FEET; THENCE NORTHWESTWARDLY ALONG THE ARC OF A CIRCLE, CONVEX NORTHEASTERLY, HAVING A RADIUS OF 694.42 FEET, A DISTANCE OF 66.40 FEET, TO A POINT 8.73 FEET NORTHEASTERLY OF SAID SOUTHWESTERLY LINE OF LOT 13; THENCE NORTHWESTWARDLY ALONG A STRAIGHT LINE, TANGENT TO LAST DESCRIBED ARC OF A CIRCLE, A DISTANCE OF 25.30 FEET TO ITS INTERSECTION WITH THE NORTHWESTERLY LINE OF LOT 13 AFORESAID, AT A POINT 5.14 FEET NORTHEASTERLY OF SAID NORTHWESTERLY CORNER OF SAID LOT 13; THENCE NORTHEASTWARDLY ALONG SAID NORTHWESTERLY LINE, A DISTANCE OF 9.86 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PIN Nos: 14-32-418-001-0000, 14-32-418-003-0000, 14-32-418-015-0000

Commonly known as: 1840 North Clybourn Avenue, Chicago, Illinois

UNOFFICIAL COPY

EXHIBIT B

DSP PARCEL LEGAL DESCRIPTION

Legally described as:

Lots 11 through 23 all in Clark and Thomas' Subdivision of Lot 4 in Block 9 in Sheffields addition to Chicago, in Cook County, Illinois situated in the South East ¼ of Section 32, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N. Nos.: 14-32-416-011-0000
14-32-416-012-0000
14-32-416-013-0000
14-32-416-014-0000
14-32-416-015-0000
14-32-416-016-0000
14-32-416-017-0000
14-32-416-018-0000
14-32-416-019-0000
14-32-416-020-0000
14-32-416-021-0000
14-32-416-022-0000
14-32-416-023-0000

Commonly known as: 1835-1857 North Clybourn Avenue, Chicago, Illinois