

# UNOFFICIAL COPY

*(Handwritten initials)*

THIS INSTRUMENT WAS  
PREPARED BY AND AFTER  
RECORDING MAIL TO:  
Jeffrey L. Richman, Esq.  
M Development LLC  
412 N. Paulina Street  
Chicago, Illinois 60622



Doc#: 0602733065 Fee: \$56.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 01/27/2006 09:12 AM Pg: 1 of 17

*This space reserved for Recorder's use only.*

## COTENANTS' AGREEMENT

THIS COTENANTS' AGREEMENT is made as of the 12<sup>th</sup> day of January, 2006 (the "Agreement"), by and between Lincoln Park Clybourn 1900 LLC, an Illinois limited liability company ("LP 1900"), 1201 CC LLC ("1201 CC"), VM Halsted LLC, an Illinois limited liability company ("VM Halsted"), GM Halsted LLC, an Illinois limited liability company ("GM Halsted") and MM Halsted LLC, an Illinois limited liability company ("MM Halsted").

*ST 507848*

### RECITALS:

A. LP 1900, 1201 CC, VM Halsted, GM Halsted and MM Halsted are tenants in common with respect to the real property and all improvements located thereon at 1980 N. Clybourn, located in Cook County, Illinois (collectively, the "Property"), which is legally described on Exhibit A attached hereto. Title to the Property is owned by the parties hereto as tenants in common in the following percentages (the "Percentage Interests"):

LP 1900	50.00%
1201 CC	0.50%
VM Halsted	3.78%
GM Halsted	19.08%
MM Halsted	26.64%

*Box 334*

*17*

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The parties hereto are sometimes referred to individually as a “**Cotenant**” and collectively as the “**Cotenants**”.

B. The Property is presently encumbered by that certain mortgage to National City Bank of the Midwest (the “**Mortgage**”), and the Cotenants each acquired their Percentage Interests subject in the Mortgage.

C. The parties desire to memorialize their agreement regarding the operations of the Property so long as title thereto remains vested in them, as Cotenants.

## AGREEMENTS

NOW, THEREFORE, for and in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### 1. Cotenancy

(a) The purposes of this tenancy in common are to engage in the following activities: (i) to manage, lease, redevelop, mortgage and dispose of the Property; and (ii) to take such other actions as the Cotenants deem necessary or advisable to carry out the foregoing.

(b) Each Cotenant acknowledges and confirms that it owns its interest in the Property as a tenant in common with the other Cotenants, and that each Cotenant's interest in the Property is its Percentage Interest. The Cotenants do not intend by this Agreement to create a partnership, joint venture, association or a trust for federal income tax purposes, but merely to set forth the terms and conditions upon which each of them shall hold their respective interests.

Except as expressly provided herein or as otherwise agreed upon by all Cotenants in writing, no Cotenant is authorized to act as agent for, to act on behalf of, or to do any act that will bind, any other Cotenant or to incur any obligations with respect to the Property. Each Cotenant agrees

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and acknowledges that for federal income tax purposes they are tenants-in-common holding a direct ownership interest in the Property. Each Cotenant shall report its interest in the Property in a manner consistent with the foregoing and otherwise not to take any action that would be inconsistent with the foregoing.

(c) Without limitation of the preceding paragraph, none of the Cotenants shall have any fiduciary duty or obligation to any other Cotenant by reason of ownership of such Cotenant's interest in the Property or by reason of this Agreement. Each Cotenant and the partners, officers, directors, members, managers, and shareholders of each Cotenant may engage in whatever activities they choose, whether competitive with the Property or otherwise, without having or incurring any obligation to offer any interest in any such activities to any other Cotenant. Neither this Agreement nor the interest of any Cotenant in the Property nor the relationship among the Cotenants shall prevent any Cotenant, or the partners, officers, directors, members, managers, and shareholders of any Cotenant, from engaging in such activities, or require participation in such activities by any other Cotenant.

(d) Notwithstanding anything in this Agreement to the contrary, no act shall be taken, sum expended, decision made or obligation incurred by any Cotenant with respect to the Property unless such matter has been approved by all of the Cotenants in writing.

(e) Each Cotenant has the right at any time to have the Property partitioned corresponding to its Percentage Interest, provided that if the Property is security for a debt, such transfer does not violate any terms or conditions of the financing documents evidencing or securing such indebtedness (the "**Financing Documents**").

(f) The Cotenants hereby agree that the joint ownership of the Property as tenants in common shall be excluded from Subchapter K of the Internal Revenue Code of 1986,

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as amended from time to time (the “Code”), and the Cotenants will report on their federal and state income tax returns all items of income, deduction, credits and expense consistent therewith which result from their Interests as provided in Treasury Regulation Section 1.761-2(b). No Cotenant shall notify the Commissioner of Internal Revenue that such Cotenant desires that Subchapter K of the Code apply to the Cotenants and each Cotenant hereby agrees to indemnify, protect, defend and hold the other Cotenants free and harmless from all costs, liabilities, tax consequences and expenses, including, without limitation, attorneys’ fees, which may result from any Cotenant so notifying the Commissioner in violation of this Agreement or otherwise taking a contrary position on any tax return

## 2. Finance

(a) Except as otherwise provided herein, each Cotenant shall be entitled to such Cotenant’s Percentage Interest of all revenues and receipts derived from the Property and the business of the Cotenants (including loan proceeds), and shall bear such Cotenant’s Percentage Interest of all expenses and expenditures pertaining to the Property and the business of the Cotenants, provided that none of the Cotenants shall have any personal liability or obligation to any other Cotenant or any other person or entity with respect to any such expense or expenditure except as provided by separate agreement with the obligee with respect to such expense or expenditure. In no event shall the Cotenants have joint and several liability with respect to any obligation or liability pertaining to the Property or the business of the Cotenants, unless they expressly agree to undertake the same in an agreement separate from this Agreement.

(b) Notwithstanding Paragraph 2(a) above, all revenues and receipts of the Cotenants derived from the Property or the business of the Cotenants (including loan proceeds) shall be first applied to payment of or provision for all expenses and expenditures pertaining to

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the Property and the business of the Cotenants, as determined by the Cotenants. All receipts shall be deposited in a bank account or accounts established by or at the direction of the Cotenants, and all disbursements for such expenses and expenditures shall be withdrawn therefrom.

(c) Notwithstanding Paragraph 2(a) above, if any Cotenant (the “Contributing Cotenant”) pays more than such Cotenant’s Percentage Interest of any expense, expenditure or obligation of or pertaining to the Property or the business of the Cotenant, whether or not such contributing Cotenant has or had personal liability for payment thereof, the other Cotenants shall be liable to the Contributing Cotenant, upon notice by the Contributing Cotenant, for such other Cotenants’ Percentage Interests of such expense, expenditure or obligation. If the other Cotenants fail to make such payment upon such notice, interest shall accrue thereon at the rate of 18% per annum, and the Contributing Cotenant shall have all rights and remedies available under applicable law for collection thereof.

### 3. Management

All management decisions affecting the Property shall be made solely upon the unanimous approval of the Cotenants.

### 4. Transfers; Successor

Except as specifically provided in this Agreement, and subject to compliance with applicable securities laws and with the Financing Documents, each Cotenant may sell, transfer, convey, pledge, encumber or hypothecate its interest or any part thereof. Any successor to any portion of the interest of any Cotenant in the Property, other than a single grantee or assignee of the interests of the Cotenants, shall be deemed to accept the interest so conveyed upon and subject to the terms and provisions of this Agreement and to have assumed all obligations of the

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grantor or assignor accruing from and after such conveyance, subject to the limitations on personal liability contained herein, which limitations shall be deemed applicable to the grantee to the extent that they were applicable to the grantor. Notwithstanding anything herein to the contrary, in no event shall the manager of 1201 CC, VM Halsted, GM Halsted or MM Halsted (or the successor to any of such entities in the event any of such entities conveys its interest in the Property) be anyone other than John Terzakis (who shall have the power to make all decisions on behalf of such entity) without the prior written consent of LP 1900.

Notwithstanding anything herein to the contrary, in no event shall the manager of LP 1900 (or the successor to LP 1900 in the event LP 1900 conveys its interest in the Property) be anyone other than Mark Hunt (who shall have the power to make all decisions on behalf of such entity) without the prior written consent of 1201 CC.

## 5. Books and Records

The Cotenants shall jointly maintain, or cause to be maintained, accurate and complete books and records pertaining to the Property, and shall furnish, or cause to be furnished, to each Cotenant, such information as such Cotenant may reasonably require pertaining to the Property for inclusion on such Cotenant's federal and state income tax returns.

## 6. Notices

All notices, consents and other communications permitted or required hereunder shall be in writing and shall be mailed by certified mail, return receipt requested, or by commercial overnight courier, or personally delivered, as follows:

To LP 1900:	Lincoln Park Clybourn 1900 LLC 412 North Paulina Street Chicago, Illinois 60622
To 1201 CC:	1201 CC LLC 7450 Quincy

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Willowbrook, IL 60527

To VM Halsted:

VM Halsted LLC  
7450 Quincy  
Willowbrook, IL 60527

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To GM Halsted:                   GM Halsted LLC  
7450 Quincy  
Willowbrook, IL 60527

To MM Halsted:                   MM Halsted LLC  
7450 Quincy  
Willowbrook, IL 60527

Mailed communications sent by United States certified or registered mail, postage prepaid, shall be deemed to have been given upon posting in the United States mails.

7.     Governing Law

This Agreement shall be governed and construed in all respects by and in accordance with the internal laws of the State of Illinois.

8.     Complete Agreement; Headings

(a)     This instrument constitutes the entire written agreement and understanding of the parties pertaining to the Property, and there are no prior or contemporaneous written or oral agreements, undertakings, promises, covenants or warranties not contained herein. No modification or amendment of this Agreement shall be binding upon any of the parties hereto, unless in writing executed by the Cotenants.

(b)     Paragraph and section headings are for convenience of reference only, and are not part of this Agreement, and shall not be deemed to be an accurate or complete description of the matters described therein.

9.     Severability

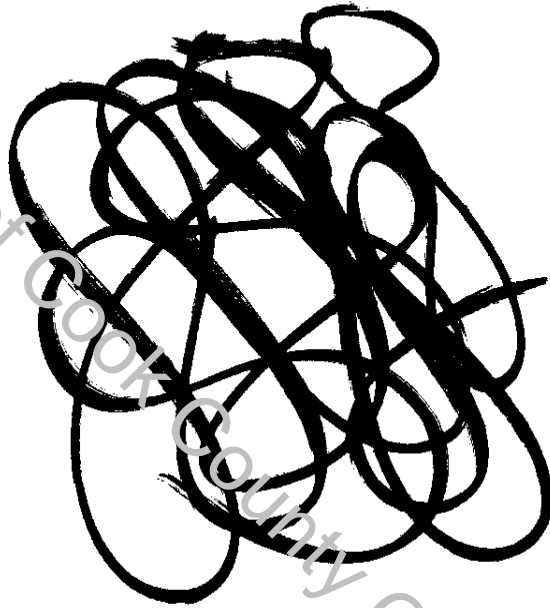
In the event that any provision of this Agreement shall be unenforceable, in whole or in part, such provision shall be limited to the extent necessary to render the same valid and enforceable or shall be excised from this Agreement, as circumstances may require, and this



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Agreement shall be construed as if such provision had been incorporated herein as so limited, or as if said provision had not been included herein, as the case may be.

[Signature Page Follows]

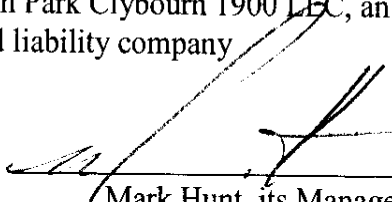


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IN WITNESS WHEREOF, LP 1900, 1201 CC, VM Halsted, GM Halsted and MM Halsted have executed this Cotenants' Agreement as of the date first written above.

Lincoln Park Clybourn 1900 LLC, an Illinois limited liability company

By:   
Mark Hunt, its Manager

1201 CC LLC, an Illinois limited liability company

By: \_\_\_\_\_  
John D. Terzakis, its Manager

VM HALSTED LLC, an Illinois limited liability company

By: \_\_\_\_\_  
John D. Terzakis, its Manager

GM HALSTED LLC, an Illinois limited liability company

By: \_\_\_\_\_  
John D. Terzakis, its Manager

MM HALSTED LLC, an Illinois limited liability company

By: \_\_\_\_\_  
John D. Terzakis, its Manager

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IN WITNESS WHEREOF, LP 1900, 1201 CC, VM Halsted, GM Halsted and MM

Halsted have executed this Cotenants' Agreement as of the date first written above.

Lincoln Park Clybourn 1900 LLC, an Illinois limited liability company

By: \_\_\_\_\_  
Mark Hunt, its Manager

1201 CC LLC, an Illinois limited liability company

By: \_\_\_\_\_  
John D. Terzakis, its Manager

VM HALSTED LLC, an Illinois limited liability company

By: \_\_\_\_\_  
John D. Terzakis, its Manager

GM HALSTED LLC, an Illinois limited liability company

By: \_\_\_\_\_  
John D. Terzakis, its Manager

MM HALSTED LLC, an Illinois limited liability company

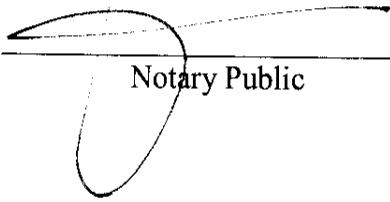
By: \_\_\_\_\_  
John D. Terzakis, its Manager

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STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

I, MICHAEL LAPORTA, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Mark Hunt, personally known to me to be the manager of Lincoln Park Clybourn 1900 LLC, an Illinois limited liability company, 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 as such manager of such limited liability company, he signed and delivered the said instrument pursuant to proper authority duly given by said limited liability company, as his free and voluntary act and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.  
GIVEN under my hand and notarial seal this 12 day of JAN, 2006.

  
\_\_\_\_\_  
Notary Public

My Commission expires:



Property of Cook County Clerk's Office

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STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

I, BARBARA LAURINAITIS, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT John D. Terzakis, personally known to me to be the manager of 1201 CC LLC, an Illinois limited liability company, 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 as such manager of such limited liability company, he signed and delivered the said instrument pursuant to proper authority duly given by said limited liability company, as his free and voluntary act and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 12<sup>th</sup> day of January, 2006.

Barbara Laurinaitis  
Notary Public

My Commission expires:

9/12/06



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I, BARBARA LAURINAITIS, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT John D. Terzakis, personally known to me to be the manager of VM Halsted LLC, an Illinois limited liability company, 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 as such manager of such limited liability company, he signed and delivered the said instrument pursuant to proper authority duly given by said limited liability company, as his free and voluntary act and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

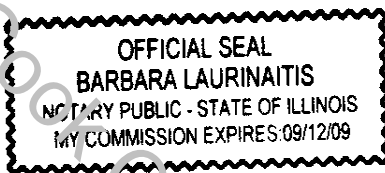
GIVEN under my hand and notarial seal this 12<sup>th</sup> day of January, 2006.

*Barbara Laurinaitis*

Notary Public

My Commission expires:

9/12/09



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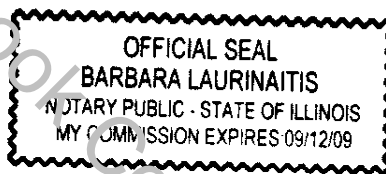
I, BARBARA LAURINAITIS, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT John D. Terzakis, personally known to me to be the manager of GM Halsted LLC, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such manager of such limited liability company, he signed and delivered the said instrument pursuant to proper authority duly given by said limited liability company, as his free and voluntary act and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 12<sup>th</sup> day of January, 2006.

Barbara Laurinaitis  
Notary Public

My Commission expires.

9/12/09



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I, BARBARA LAURINAITIS, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT John D. Terzakis, personally known to me to be the manager of MM Halsted LLC, an Illinois limited liability company, 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 as such manager of such limited liability company, he signed and delivered the said instrument pursuant to proper authority duly given by said limited liability company, as his free and voluntary act and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 12<sup>th</sup> day of January, 2006.

Barbara Laurinaitis  
Notary Public

My Commission expires.

9/12/09





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## EXHIBIT "A"

### LEGAL DESCRIPTION

LOTS 1, 2, 3, 4 AND 5 IN RESUBDIVISION OF BLOCK 3 IN SUBDIVISION OF LOTS 1 AND 2 IN BLOCK 8 IN SHEFFIELDS ADDITION TO CHICAGO, IN SECTION 32, TOWNSHIP 40 , RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 14-32-305-001-0000

Commonly known as 1201 West Cortland, Chicago, Illinois

A large, bold, black handwritten signature, possibly reading 'SS', is written over the page. The signature is stylized and overlaps the diagonal watermark text.