

# UNOFFICIAL COPY

## AGREEMENT

THIS AGREEMENT is made and entered into this 15<sup>th</sup> day of July, 2006, by and among John Kneafsey, Christopher Hendriksen, and Kevin Folkerts (collectively shall be referred to herein as the "Tenants" or individually as the "Tenant").



Doc#: 0619331053 Fee: \$36.50  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 07/12/2008 11:37 AM Pg: 1 of 7

**WHEREAS**, the Tenants own a particular parcel of property located at 2632 N. Halsted, Unit #2, Chicago, Illinois legally described on Exhibit A attached hereto (the "Property") as tenants in common and each will benefit and obligate themselves to one third of the ownership in such Property ("Interest");

**WHEREAS**, a mortgage loan is currently encumbering the Property for the total cost of the Property, with other amounts, all of which remainder the Tenants will be equally liable, unless otherwise specifically set forth herein;

**WHEREAS**, the Tenants believe it to be in their best interests to enter into an Agreement as to the administration of the expenditures of the Property in addition, to placing certain restrictions on the sale, assignment, gift, pledge, encumbrance or other disposition of each of their one-third interest in such Property;

**WHEREAS**, the Tenants desire to set forth in this Agreement their agreements and understandings regarding the ownership in the Property;

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

1. Restriction on Transfer. The Tenants shall not, while this Agreement is in force, sell, assign, encumber, pledge, transfer, gift or otherwise dispose of any of their interest in the Property except pursuant to, and in compliance with, the terms of this Agreement or as consented to in writing by the non-transferring Tenants.

2. Expenditures of Property. Except as specifically provided for in this Section 2, each Tenant agrees to be equally liable to pay and shall make payments for the expenditures associated and attributable to the Property which shall include but are not limited to the real estate taxes, utilities, insurance, necessary and reasonable repairs and replacements, and other

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costs and expenses. Such obligations shall be shared equally, that is, each Tenant shall be obligated to pay one-third of such expenditures. If any Tenant shall be unable or unwilling to pay his full share of obligations ("Tenant Debt" as to amounts owed to other Tenant's based on their proportionate share of payments of such unwilling Tenant), such amounts which are paid by the willing Tenants, which shall be paid proportionately by such willing Tenants, shall be reimbursed in accordance Section 5 below and as otherwise set forth herein. Notwithstanding the preceding, only John Kneafsey and Christopher Hendricksen shall be responsible for the payment of the mortgage (principal and interest). Kevin Folkerts shall be responsible for obtaining a new refrigerator, remodeling the guest bathroom and repairing the toilet, which all shall be completed within a reasonable time after the date of this Agreement. The incurrence of any expenditure attributable to the Property which exceeds \$500 in one instance shall require the unanimous approval of all Tenants; otherwise, the incurrence of any other expenditure shall require majority approval of the Tenants.

3. Sale of Interest to Third Party. If, at any time while this Agreement is in force, a Tenant ("Selling Tenant") desires to sell, exchange, encumber or transfer all or any portion of his Interest and the Selling Tenant obtains a bona fide offer from a third party purchaser to purchase such Interest, the Selling Tenant shall first offer such Interest in accordance with the following provisions of this Section 3.

(a) Right of First Refusal by Non-selling Tenant. The Non-selling Tenants shall have the option to purchase all of the Selling Tenant's Interest for a purchase price as determined under Section 6 below. If the Non-selling Tenants desire to exercise their option to purchase the Selling Tenant's Interest, they shall notify the Selling Tenant of the desire to exercise the option. The closing of a purchase and sale of the Interest pursuant to this Section 3(a) shall occur at a reasonable time and place to be determined by mutual agreement of the Tenants, which in no event shall be later than the date which is thirty (30) days after notice of the exercise the option. If more than one Non-selling Tenant desires to purchase the Selling Tenant's Interest, he shall have the right to purchase one-half of the Selling Tenant's Interest.

(b) Failure to Exercise Option. If neither Non-selling Tenant desires to exercise the option to purchase the Selling Tenant's Interest pursuant to this Section 3, the Selling Tenant may sell the Interest to the third party purchaser for the price and in accordance with the terms set forth in such written offer, *however*, such sale shall be conditioned on the third party purchaser agreeing in writing to be bound by all of the terms and conditions of this Agreement, including any amendments made to this Agreement on or prior to the date of such purchase, and to assume and agree to discharge any obligation, debt or liability, in accordance with the terms of such obligation, debt or liability which was that of the Selling Tenants. In addition, all Tenant Debt owed to Non-selling Tenants must be paid prior to the closing on such sale.

(c) Selling Tenant's Continuing Liability. Unless otherwise released, the Selling Tenant shall remain liable for all expenditures not directly released in writing by the Non-selling Tenants or other third party, as the case may be.

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4. Death of a Tenant. Upon the death of a Tenant, the personal representative of the deceased Tenant shall sell to the surviving Tenants and the surviving Tenants shall acquire, proportionately, all of the Interest in the Property of the deceased Tenant for the purchase price as set forth in Section 6 below, less any and all Tenant Debt owing to the surviving Tenants pursuant to Section 2. The closing of a purchase and sale of the Interest pursuant to this Section 4 shall occur at a reasonable time and place to be determined by mutual agreement of the surviving Tenants and the representative, which in no event shall be later than the date which is forty five (45) days after the date of death of the Tenant.

5. Failure to Pay Expenses. If any Tenant fails to pay his share of expenditures as set forth in Section 2 above for a period of three (3) consecutive months (for purposes of this Section 5, "withdrawing Tenant"), then the remaining Tenants shall have the option ("Option") to purchase, proportionately, the Interest of the withdrawing Tenant, which right shall be exercised by written notice to the withdrawing Tenant. The Purchase Price under this Section shall be determined as set forth in Section 6.

If within forty-five (45) days of the date of the exercise of the Option, the remaining Tenants are unable to obtain financing or the funds to purchase the withdrawing Tenant's interest, then, and only if the *non-withdrawing* Tenants unanimously agree, which agreement shall be within their sole and absolute discretion, the Property shall be listed with a broker and the parties agree to cooperate in closing on a sale of the Property to a willing and able purchaser. The closing of a purchase and sale of the Interest pursuant to this Section 5 shall occur at a reasonable time and place to be determined by mutual agreement of the Tenants.

The proceeds from the sale of the Property shall be distributed as follows: (i) payment of all expenditures then due and owing at the time of closing; (ii) any Tenant who paid more than his proportionate share of expenditures under Section 2 shall be reimbursed those amounts; and (iii) the remaining proceeds to be divided equally between the Tenants.

6. Purchase Price. The purchase price for any Interest to be sold and purchased hereunder shall be each Tenant's equity in the Property determined as follows:

(a) an independent, third party appraiser shall be mutually agreed upon by the Tenants or representative of the estate of a deceased Tenant, as the case may be (collectively referred to under this Section 6 as "Tenant"), such costs to be divided equally between the parties;

(b) if no appraiser can be mutually agreed upon, then each Tenant shall designate their own independent, third party appraiser at their own cost, the average of the three (or two, as the case may be) appraisals shall be the purchase price;

(c) upon designation of an appraiser under either (a) or (b) above, the fair market value for the property will then be determined (if determined under (b), the average of the appraisals) which amount shall be final and binding upon both of the Tenants.

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7. Remedy for Violation. Upon any completed or attempted sale, transfer, pledge, gift, encumbrance or other disposition of any Shares in violation of the provisions of this Agreement, whether voluntary or involuntary, in addition to any other remedies available at law or in equity, the non-violating Tenant shall have the right and option to purchase the violating Tenant's Interest in accordance with Section 5.

8. Specific Performance. The parties hereto hereby acknowledge and agree that the Interest cannot be readily purchased or sold on the real estate market and for that reason, among others, the parties hereto will be irreparably damaged in the event this Agreement is not specifically enforced. Should any dispute arise concerning the sale, encumbrance or other disposition of the Interests, an injunction may be issued restraining any such sale, encumbrance or other disposition pending the resolution of such controversy.

In the event of any controversy concerning the right or obligation to purchase or sell the Interest, such right or obligation shall be enforced in a court of equity by a decree of specific performance. Such remedy shall, however, be cumulative and not exclusive, and shall be in addition to any other remedies of the parties hereto. If any person or entity shall institute any action or proceeding to enforce the provisions hereof, the person or entity against whom such action or proceeding is brought hereby waives the claim or defense that the person or entity instituting such action has an adequate remedy at law, and shall not urge in any such action or proceeding that a claim or remedy at law exists.

9. Termination of Agreement. This Agreement shall commence as of the date hereof and shall continue in full force and effect until the earlier to occur of (i) the unanimous consent of the Tenants to terminate this Agreement or (ii) three (3) years from the date hereof. In no event shall this provision discourage the Tenants from entering another Agreement. Upon termination of this Agreement, if a new Agreement has not been unanimously entered into, the Property shall be immediately listed with a broker and the parties agree to cooperate in closing on a sale of the Property to a willing and able purchaser. The closing of a purchase and sale of the Property pursuant to this Section 9 shall occur at a reasonable time and place to be determined by mutual agreement of the Tenants. The proceeds of such sale shall be distributed as set forth in Section 5 above.

10. Agreed Allocation of Use of Property.

(a) During the first year of this Agreement, Christopher Hendricksen, if he so desires, shall occupy the large room at the Property and John Kneafsey, if he so desires, shall have sole access to the parking space;

(b) During the second year of this Agreement, John Kneafsey, if he so desires, shall occupy the large room at the Property and Kevin Folkerts, if he so desires, shall have sole access to the parking space; and

(c) During the third year of this Agreement, Kevin Folkerts, if he so desires, shall occupy the large room at the Property and Christopher Hendricksen, if he so desires, shall have sole access to the parking space.

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11. Unanimous Approval of Tenants. Except as specifically provided below in this Section 11 or in any other Section of this Agreement, any action or inaction shall require only majority approval by the Tenants. Notwithstanding the previous sentence, the subsequent rental of the Property to another party(ies) or the acceptance of a roommate shall require unanimous approval of the Tenants.

12. Benefit. This Agreement shall be binding upon, and inure to the benefit of, the Tenants. No party hereto may assign their rights or obligations hereunder without the prior written consent of the other party.

13. Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not, to the extent possible, affect the other provisions hereof, and this Agreement shall, to the extent possible, be construed and enforced in all respects as if such invalid or unenforceable provision had not been contained herein.

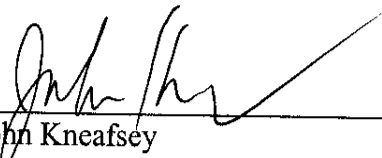
14. Modification. No change or modification of this Agreement shall be valid unless in writing and signed by all the parties hereto.

15. Waiver. No waiver of any breach of any term or condition of this Agreement shall be deemed to be a waiver of any subsequent breach of any term or condition of a like or different nature.


16. Recording. This Agreement shall be recorded with the Recorder of Deeds of Cook County. The conditions and restrictions contained herein shall be deemed to run with the land until such time as it is determined that the terms hereof have been satisfied or upon the recording of a release deed signed by the parties or their respective heirs, legal representatives, successors or assigns.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date first above written.

TENANTS:

  
\_\_\_\_\_  
John Kneafsey

  
\_\_\_\_\_  
Christopher Hendriksen

  
\_\_\_\_\_  
Kevin Folkerts

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State of Illinois        )  
                                  ) SS  
County of Cook        )

I, the undersigned, a Notary Public in and for said County, in said State aforesaid, DO HEREBY CERTIFY that **John Kneafsey, Christopher Hendriksen and Kevin Folkerts**, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this 10<sup>th</sup> day of July, 2006.

*Peggy D. Moffitt*  
\_\_\_\_\_  
Notary Public



**THIS AGREEMENT PREPARED BY AND RECORDER RETURN TO:**

Bradley S. McCann  
Nisen & Elliott, LLC  
200 West Adams, Suite 2500  
Chicago, IL 60606  
312-346-7800

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## EXHIBIT A

### LEGAL DESCRIPTION

UNIT NUMBER 2 IN 2632 NORTH HALSTEAD CONDOMINIUM, AS DELINEATED A SURVEY OF THE FOLLOWING DESCRIBED TRACT OF LAND:

LOT 13 IN REYNOLD'S SUBDIVISION OF THE EAST 5 ACRES OF BLOCK 14 IN CANAL TRUSKEE'S SUBDIVISION OF THE EAST 1/2 OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

WHICH SURVEY IS ATTACHED AS EXHIBIT "D" TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT NUMBER 97021788; TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS IN COOK COUNTY, ILLINOIS.