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THIS INSTRUMENT WAS
PREPARED BY AND AFTER
RECORDING MAIL TO:
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Much Shelist
191 North Wacker Drive
Suite 1800
Chicago, IL 60606

Doc#: 1002618013 Fee: \$70.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/26/2010 11:25 AM Pg: 1 of 18



Doc#: 1004740045 Fee: \$70.00
Eugene "Gene" Moore
Cook County Recorder of Deeds
Date: 02/16/2010 09:52 AM Pg: 1 of 18

ST 5078486

AMENDED AND RESTATED CO-TENANTS' AGREEMENT

THIS AMENDED AND RESTATED CO-TENANTS' AGREEMENT (the "Agreement") is made as of the ~~12th~~ ^{17th} day of ~~October~~ ^{November}, 2006, by and between Lincoln Park Clybourn 1900 LLC, an Illinois limited liability company ("LP 1900"), 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").

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RECITALS:

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

LP 1900	50.50%
VM Halsted	3.78%
GM Halsted	19.08%
MM Halsted	26.64%

The parties are sometimes referred to individually as a "Co-Tenant" and collectively as the "Co-Tenants".

B. The Co-Tenants (and 1201 CC LLC, an Illinois limited liability company, which subsequently conveyed its prior Ownership Interest in the Property to LP 1900) entered into a Cotenants' Agreement, dated January 12, 2006 (the "Original Agreement"). The Co-Tenants wish to amend and restate the Original Agreement in its entirety, and memorialize their current agreement regarding the ownership, management and operation of the Property. In addition, the Co-Tenants wish to appoint LP 1900 to act as their agent for all matters related to the operation of the Property, in accordance with the terms set forth in Section 5.1 below.

C. The Property is presently encumbered by that certain mortgage (the "Mortgage") to National City Bank of the Midwest (the "First Lender"), and the Co-Tenants each acquired their Percentage Interest in the Mortgage. The Mortgage secures a loan (the "First Loan") made by First Lender to the Co-Tenants.

Box 400-CTCC

This Agreement is being re-recorded to correct the Legal Description.

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D. The Co-Tenants borrowed a mezzanine loan from EREF Mezzanine Fund, LLC, a Delaware limited liability company ("**Mezzanine Lender**"), in the original principal amount of \$3,000,000.00 (the "**Mezzanine Loan**"). The Mezzanine Loan is evidenced by a Promissory Note dated December 27, 2006, made by the Co-Tenants in favor of Mezzanine Lender (the "**Mezzanine Note**"), and is secured by other mezzanine loan documents.

E. The Mezzanine Loan is cross defaulted with other loans made by Mezzanine Lender ("**Other Loans**") to affiliates of certain of the Co-Tenants ("**Other Borrowers**"), and cross collateralized with the Property and other security given to Mezzanine Lender as collateral for the Other Loans.

F. The Mezzanine Loan and the Other Loans are currently in default. LP 1900 attempted to cure the defaults of the Other Loans by applying cash flow generated by the Property (the "**Recent Payments**").

G. Mark Hunt ("**Hunt**"), as owner of LP 1900, has entered into settlement agreements with the Mezzanine Lender (the "**Settlement Agreements**"). The Settlement Agreements provide in part that in consideration of Hunt's agreement to personally assume a portion of the Mezzanine Loan, the Mezzanine Lender released VM Halsted, GM Halsted and MM Halsted and each of their principals from all liability under the Mezzanine Loan.

AGREEMENTS

In consideration of the foregoing Recitals, which are incorporated herein as if set forth in their entirety, and the covenants and agreements set forth below, the receipt and sufficiency of which are acknowledged, the Co-Tenants amend and restate the Original Agreement as follows:

ARTICLE 1

CO-TENANTS' OWNERSHIP OF THE PROPERTY

1.1. **Co-Tenancy Created.** The Co-Tenants shall own the Property as tenants-in-common pursuant to state law and in accordance with the terms and conditions set forth in this Agreement. As used in this Agreement, a Co-Tenant's "**Ownership Interest**" shall mean such Co-Tenant's undivided ownership interest in the Property as set forth in Recital A above.

1.2. **Disclaimer of Entity Status.** Each Co-Tenant expressly disclaims any intention to create a partnership, corporation or other business entity. Nothing in this Agreement shall make any Co-Tenant a partner or agent of another Co-Tenant, except as contemplated by Section 5.1 below. The Co-Tenants shall not conduct business under a common name, execute any agreement identifying any or all of the Co-Tenants as partners, shareholders or members of a business entity or otherwise hold themselves out as partners, shareholders or members of a business entity.

ARTICLE 2

USE OF THE PROPERTY

2.1. **Use of Property.** The Co-Tenants shall lease, own, operate, maintain and manage the Property. No Co-Tenant may exclude any other Co-Tenant from all or any portion of the Property.

2.2. **Loan Responsibilities.** During the term of this Agreement, the Co-Tenants shall cause the Property to be maintained and shall otherwise conduct themselves in relation to the Property in accordance with any loan secured by the Property.

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2.3. **Records; Returns.** Each Co-Tenant is separately responsible to determine its income, gain, loss, deduction and credit, if any, with respect to its undivided interest in the Property. No partnership, corporate or other entity-like records or returns shall be maintained or filed by or on behalf of the Co-Tenants.

2.4. **Financing.** Except as set forth in Section 5.1 below, no Co-Tenant has a right to obtain any loan for which any other Co-Tenant would be liable, nor may any Co-Tenant finance or refinance the Property secured by any lien or any pledge of the Property as a whole, without the unanimous written consent of all of the Co-Tenants. Except as set forth in Section 5.1 and Article 6 hereof, the Co-Tenants may not, without the unanimous consent of the other Co-Tenants, sell, finance, or otherwise create a lien upon their Ownership Interest in the Property. The Co-Tenants shall not create any lien upon their individual Ownership Interest if by operation of law such lien shall by law extend to the Ownership Interest of any other Co-Tenant. Co-Tenants acknowledge and agree that pursuant to the Settlement Agreements, Hunt has continued to pledge his membership interest in LP 1900 to Mezzanine Lender as security for his obligations under the Settlement Agreements.

ARTICLE 3 INCOME AND PROCEEDS FROM THE PROPERTY

3.1. **Income from Property Operations.** Subject to Section 4.4 and other applicable provisions of Article 4 below, all revenue and other cash flow derived from the operation of the Property (the "Cash Flow") shall be disbursed to the Co-Tenants in accordance with the provisions of Section 3.4 below. Shares of net income shall be pro-rated for any partial calendar year during which time each Co-Owner owned its Ownership Interest.

3.2. **Disbursement of Proceeds on Disposition of the Property.** Subject to Article 4 below, net proceeds derived from the sale, exchange or other joint disposition of, or from the financing or refinancing of all or any part of the Property, after satisfaction of any debts or expenses of the Property (including but not limited to loans made to the Property by any Co-Tenant), shall be disbursed to the Co-Tenants in accordance with the provisions of Section 3.4 below.

3.3. **Disbursement of Proceeds on Disposition of Separate Ownership Interest.** A Co-Tenant shall be entitled to receive all of the net proceeds that it derives from the sale, exchange or other disposition of all or any part of its Ownership Interest. The successor owner of a Co-Tenant's Ownership Interest shall be bound by this Agreement as a Co-Tenant.

3.4. **Allocation of Property Distributions.** All distributions of net Cash Flow (after deductions for debt service and other expenses related to the Property including, but not limited to, reserves as reasonably determined by LP 1900) to the Co-Tenants shall be made on a monthly basis as follows:

(a) First, to the Co-Tenants (as hereinafter defined) who have made Co-Tenant Disapproval Loans (as hereinafter defined) in an amount equal to the Disapproval Interest (as hereinafter defined), if applicable, to be distributed pro rata based on the amount of each such Co-Tenant Disapproval Loan(s);

(b) Second, to the Co-Tenants who have made Co-Tenant Disapproval Loan(s) in an amount equal to the Co-Tenant Disapproval Loan(s), and if there is more than one Co-Tenant Disapproval Loan, to be distributed based on the earliest of any such Co-Tenant Disapproval Loans, to be distributed pro rata until the amount of the Co-Tenant Disapproval Loan(s) has been reduced to zero, if applicable;

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- (c) Third, the balance to each Co-Tenant pro-rata based on their Ownership Interest.

ARTICLE 4

PAYMENT OF PROPERTY EXPENSES

4.1. **Obligation to Pay.** Except as otherwise expressly provided for in this Agreement, the Co-Tenants shall apportion all debts and expenses incurred by LP 1900 on behalf of the Co-Tenants in connection with the operation and ownership of the Property ("**Property Expenses**") in proportion to their respective Ownership Interests. Property Expenses shall include all operating expenses with respect to the Property, including but not limited to, all costs associated with: maintenance, repairs, utilities, supplies, labor, advertising and promotional expenses, salaries and wages of rental and third party management personnel hired to perform services, management fees, leasing commissions to third parties, insurance premium, debt service for debt which is a blanket lien on the Property, real estate taxes, installments of special assessments, structural repairs and replacements, capital improvements, periodic inspection of the Property, legal fees, accounting fees, and any other costs required for the operation of the Property.

4.2. **Property Expenses Shortfall.** To the extent LP 1900, from time to time, determines that additional funds are needed for Property Expenses (a "**Property Expense Shortfall**"), it shall notify the other Co-Tenants (a "**Property Expense Shortfall Notice**"). The Co-Tenants are not required to agree to fund any Property Expense Shortfall pursuant to a Property Expense Shortfall Notice. Within five (5) business days after receipt of a Property Expense Shortfall Notice, each Co-Tenant shall notify LP 1900 if it agrees to fund its share (in accordance with its Ownership Interest) of such Property Expense Shortfall. If a Co-Tenant fails to so notify LP 1900 within such five (5) business day period, it shall be deemed to have elected not to fund its share of such Property Expense Shortfall. In the event the Co-Tenants unanimously agree to fund the Property Expense Shortfall, each Co-Tenant shall pay its proportionate share of any such Property Expense Shortfall in accordance with its Ownership Interest within five (5) days after receipt of written notice from LP 1900 that all Co-Tenants approved such Property Expense Shortfall (each such payment shall hereinafter be referred to as a "**Subsequent Property Investment**").

4.3. **Co-Tenant Disapproval Loans.** Notwithstanding anything herein to the contrary, in the event Subsequent Property Investments requested by LP 1900 pursuant to Section 4.2 above are not made by all of the Co-Tenants (any Co-Tenant not making such Subsequent Property Investment shall hereinafter be referred to as a "**Disapproving Co-Tenant**"), LP 1900 may, at its election, request in writing that the Co-Tenants so making their respective Subsequent Property Investments (each an "**Approving Co-Tenant**") pay all or any part of the Disapproving Co-Tenant's proportionate share of such Subsequent Property Investment and such amount shall be treated as a loan by the Approving Co-Tenant(s) to the Disapproving Co-Tenant (a "**Co-Tenant Disapproval Loan**"). Any Approving Co-Tenant desiring to make a Co-Tenant Disapproval Loan must notify LP 1900 thereof within five (5) days after LP 1900's request therefore or else shall be deemed to have declined to make such Co-Tenant Disapproval Loan. In the event that more than one Approving Co-Tenant elects to make a Co-Tenant Disapproval Loan, the Approving Co-Tenants so electing to make such Co-Tenant Disapproval Loan shall agree amongst themselves as to the amount of each of their respective Co-Tenant Disapproval Loan and in the absence of such agreement, such Co-Tenant Disapproval Loans shall be made in proportion to each such Approving Co-Tenant's Ownership Interest in the Property as compared to the Ownership Interests of all Approving Co-Tenant's so electing to make such Co-Tenant Disapproval Loan. All Co-Tenant Disapproval Loans shall accrue interest at the rate of twenty five percent (25%) per annum ("**Disapproval Loan Interest**"), and shall be repaid in accordance with Section 3.4 hereof. In the event any Co-Tenant or any principal of any Co-Tenant is required to make any payment pursuant to a guaranty

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of indebtedness on the Property, such payment shall constitute a Co-Tenant Disapproval Loan by such Co-Tenant to the Company pursuant to this Section 4.3.

4.4. **Use of Cash Flow For Recent Payments**. Notwithstanding anything to the contrary contained herein, the payment of the Recent Payments by LP 1900 is hereby ratified and approved in its entirety by the Co-Tenants. The Co-Tenants fully, finally and completely release and forever discharge LP 1900 and its members, managers, attorneys, successors and assigns (collectively, "**Released Parties**"), of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, debts, liens, actions, and causes of action of any and every nature whatsoever, known or unknown, whether at law, by statute or in equity, in contract or in tort, under state and federal jurisdiction, and whether or not the economic effect of such alleged matters arise or are discovered in the future, which as of the date of this Agreement, they may have or claim to have against the Released Parties as a result of the Recent Payments.

4.5. **Operating Account**. Each of the Co-Tenants acknowledges and agrees that as of the date of this Agreement, the aggregate balance in all of the Property's operating bank and checking accounts is zero, and the Property has no other cash on hand.

ARTICLE 5 MANAGEMENT

5.1. **Management**. Notwithstanding anything in this Agreement to the contrary, the sole and absolute authority for all matters and affairs concerning the Property and any and all actions with respect to the ownership and management of the Property shall be irrevocably vested in LP 1900, as agent for the Co-Tenants, including but not limited to, matters of leasing, financing, the sale of the Property (subject to Section 6.3 hereof), determination of Property Expense Shortfalls and requests for Subsequent Property Investments. Each Co-Tenant irrevocably authorizes and directs LP 1900 to execute all documents on behalf of such Co-Tenant that LP 1900 deems necessary or appropriate, in its sole discretion, to implement the agency created by this Section 5.1.

5.2. **Compensation and Reimbursement**. LP 1900, as agent under this Agreement, shall not be entitled to compensation for services rendered with respect to the Property, unless such compensation is approved in writing by all Co-Tenants. Notwithstanding the foregoing, at LP 1900's request, the Co-Tenants shall enter into a property management agreement and an asset management agreement for all or portions of the Property with an affiliate of LP 1900 or its members, provided, however, that such property management agreement shall be for a fee which does not exceed the fee payable by the tenants under their leases of the Property, and that such asset management agreement shall be for a fee which does not exceed two percent (2%) of base rent of the Property per annum. In addition, the Co-Tenants shall each be responsible for their pro-rata share (in proportion to their Ownership Interests) of the reasonable legal fees of the in-house counsel of M Development LLC (an affiliate of LP 1900), for services related to the Property from time to time, at the rate of \$375 per hour. Furthermore, the Co-Tenants shall reimburse LP 1900 for all costs and expenses incurred in conducting the business related to the Property based on their Ownership Interests.

ARTICLE 6 TRANSFER

6.1. **Rights of Co-Tenants**. Each Co-Tenant shall have the right to transfer and encumber such Co-Tenant's Ownership Interest in the Property, subject to the further provisions of this Article 6 and subject to the following provisions:

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(a) No transfer shall be permitted if the number of Co-Tenants would exceed 35 persons; for this purpose, "person" is defined as in Internal Revenue Code Section 7701(a)(1), except that a husband and wife are treated as a single person and all persons who acquire interests from a Co-Tenant by inheritance are treated as a single person.

(b) No right to transfer or encumber shall subsist to the extent the same is prohibited by or would constitute a default under the terms of any loan secured by the Property.

(c) No transfer or encumbrance of a Co-Tenant's Ownership Interest will be permitted without the prior written consent of LP 1900, which consent may be granted or withheld in LP 1900's sole discretion.

The limitations contained in subparagraphs (a), (b) and (c) above shall apply notwithstanding any other provision contained in this Article 6 specifically or this Agreement generally.

6.2. **Transfers Not Subject to Right of First Offer.** A Co-Tenant may sell, assign or transfer all or any part of its Ownership Interest to (a) his or her parents, siblings, spouse, descendants and/or spouse of his descendants, (b) a trust established for the benefit of such Co-Tenant or any one or more of the individuals described in clause (a) above, (c) any entity wholly-owned and controlled by one or more of such Co-Tenant and/or any individuals or trusts described in clauses (a) and (b) above, or (d) any individual or entity who is already a Co-Tenant. None of the foregoing transfers shall be subject to the provisions of Section 6.3, below.

6.3. **Transfers of Ownership Interests Subject to Right of First Offer.**

(a) If a Co-Tenant ("Selling Co-Tenant") desires to sell, assign or transfer all or any part of its Ownership Interest in the Property (the "Offered Interest") to a person not described in Section 6.2 above, and provided the proposed sale, assignment or transfer complies with Section 6.1 above, the Selling Co-Tenant shall give written notice (the "Offer Notice") to the other Co-Tenants (the "non-selling Co-Tenants") of its desire to complete such sale and the price and other terms upon which it desires to sell the Offered Interest.

(b) For a period of ten (10) days after the receipt of the Offer Notice (the "Offer Period"), any non-selling Co-Tenants at their option, may advise the Selling Co-Tenant, in writing, with a copy to all non-selling Co-Tenants, if it would be willing to purchase all, but not less than all, of the Offered Interest in accordance with the terms set forth in the Offer Notice. If more than one non-selling Co-Tenant wishes to purchase such Offered Interest, then such non-selling Co-Tenants shall divide the right to purchase the Offered Interest in proportion to their respective Ownership Interests or as they might otherwise agree.

(c) If a non-selling Co-Tenant elects to purchase the Offered Interest, then the Selling Co-Tenant and such non-selling Co-Tenant(s) (collectively, the "Purchasing Co-Tenant") shall close the sale of the Offered Interest pursuant to subparagraph (e) below. If no non-selling Co-Tenant elects to purchase the Offered Interest, then the Selling Co-Tenant shall be entitled to sell the Offered Interest to a third party in an all-cash transaction for a purchase price which is greater than the price set forth in the Offer Notice, which transaction shall be completed, if at all, within (90) days after the end of the Offer Period.

(d) The closing of a sale and purchase of the Offered Interest pursuant to this Section 6.3 shall take place at a time, place and date mutually agreeable to the selling and purchasing parties, but not more than ninety (90) days after the end of the Offer Period.

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(e) If any proposed transfer of the Offered Interest is not consummated within the time period set forth herein through no fault of the Purchasing Co-Tenant, the terms and conditions of this Section 6.3 shall again apply, and the Purchasing Co-Tenant may file suit against the Selling Co-Tenant seeking specific performance of the sale of the Offered Interest to the Purchasing Co-Tenant in accordance with the terms set forth in the Offer Notice. If the proposed transfer of the Offered Interest is not consummated within the time period set forth herein as a result of the fault of the Purchasing Co-Tenant, the Selling Co-Tenant shall be entitled to sell the Offered Interest to a third party in an all-cash transaction for a purchase price acceptable to the Selling Co-Tenant, which transaction shall be completed at any time within one hundred fifty (150) days after the end of the Offer Period.

(f) For purposes of this Section 6.3, a transfer of membership interests (other than to a party set forth in Section 6.2 above) within any Co-Tenant which results in a change in control of such Co-Tenant shall be deemed a transfer of Ownership Interests in the Property.

6.4. Option to Purchase Ownership Interest of LP 1900.

(a) If LP 1900 desires to sell the Property, LP 1900 shall give written notice (the "Option Notice") to the other Co-Tenants (the "Other Co-Tenants") of its desire to sell the Property and the price at which it desires to sell the Property (the "Proposed Property Price") and the net proceeds from such sale to LP 1900 (the "LP Interest Price") after deductions for payment of all costs and expenses relating to such sale, including but not limited to the First Loan, all closing costs, commissions and reasonable attorneys fees.

(b) For a period of ten (10) days after the receipt of the Option Notice (the "Option Offer Period"), any of the Other Co-Tenants at their option, may advise LP 1900, in writing, with a copy to all Other Co-Tenants, if it would be willing to purchase all, but not less than all, of LP 1900's Ownership Interest for the LP Interest Price and in accordance with all other terms set forth in the Option Notice. If more than one Other Co-Tenant wishes to purchase LP 1900's Ownership Interest, then such Other Co-Tenants shall divide the right to purchase LP 1900's Ownership Interest in proportion to their respective Ownership Interests or as they might otherwise agree.

(c) If an Other Co-Tenant elects to purchase LP 1900's Ownership Interest, then LP 1900 and such Other Co-Tenant(s) (collectively, the "Option Purchasing Co-Tenant") shall have 10 days to enter into a purchase and sale agreement setting forth the terms of such transaction (the "Purchase Agreement"). The Purchase Agreement shall require the Option Purchasing Co-Tenant to immediately make an earnest money deposit equal to 10% of the LP Interest Price (which shall be non-refundable except in the event of a default by LP 1900 under the purchase agreement) and shall specify a closing date which shall be no later than 30 days after the purchase agreement is executed. The Purchase Agreement shall also provide that as a condition to their purchase of LP 1900's Ownership Interest, the Option Purchasing Co-Tenants must obtain a full and complete release of Hunt from all liability under the First Loan.

(d) If (i) no Other Co-Tenant elects to purchase LP 1900's Ownership Interest within the Option Offer Period, (ii) LP 1900 and the Option Purchasing Co-Tenant are unable to agree upon a Purchase Agreement within the 10 day period specified in Section 6.4(c) above, or (iii) the option Purchasing Co-Tenant defaults under the Purchase Agreement (in which case LP 1900 shall also have any other remedies set forth in the Purchase Agreement), then LP 1900 shall be

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entitled to sell the Property to a third party for a purchase price which is no less than 95% of the Proposed Price. If LP 1900 desires to sell the Property for a price that is less than 95% of the Proposed Price, LP 1900 shall again send an Option Notice to the Other Co-Tenants specifying the new Proposed Price and the new LP Interest Price, and the Other Co-Tenants shall have a right to purchase LP 1900's Ownership Interest for the new LP Interest Price in accordance with the terms of this Section 6.4.

6.5. **Transferees as Co-Tenants.** Any person who acquires an Ownership Interest from a Co-Tenant or LP 1900 shall satisfy each of the following conditions:

(a) The transferee shall execute a written agreement whereby such transferee agrees to be bound by all of the terms, conditions, restrictions and limitations set forth in this Agreement; and

(b) The transferee shall reimburse the other Co-Tenant(s) for all reasonable legal and accounting fees and other costs which the other Co-Tenant(s) incurs as a result of the transaction.

ARTICLE 7 INDEMNIFICATION

7.1 Each Co-Tenant, as indemnitor, shall indemnify, defend and hold harmless the other Co-Tenants from and against any and all liabilities of every kind, arising in any manner out of the indemnitor's failure to perform or observe any of the terms or provisions of this Agreement to be performed or observed by the indemnitor. Notwithstanding the foregoing, LP 1900 shall not be liable to any Co-Tenant by reason of its actions or omissions in connection with the Property pursuant to Section 5.1 hereof, except for acts or omissions or alleged acts or omissions that were performed or omitted fraudulently or in bad faith. The Co-Tenants shall and hereby do indemnify and hold harmless LP 1900, its affiliates and respective agents, employees, designees, nominees, managers, members, officers and directors (to the extent of the Co-Tenant's interest in the Property), for any loss, liability, costs and expenses including reasonable attorneys' fees and other costs and expenses arising out of or incurred as a result of any act, omission or alleged act or omission except those due to the fraud or bad faith of LP 1900, its affiliates and respective agents, employees, designees, nominees, managers, members, officers and directors.

7.2 Each Co-Tenant agrees that it does not desire for any Co-Tenant to be liable for more than its pro rata portion of any obligations incurred by the Co-Tenants under this Agreement, including but not limited to under any documents relating to the financing or refinancing of the Property (the "**Obligations**"), except for liabilities resulting from the gross negligence or willful misconduct of a Co-Tenant. Notwithstanding anything contained in the documents relating to the Obligations to the contrary, including any provisions requiring the Co-Tenants to be jointly and severally liable thereunder, the Co-Tenants agree, as between themselves, that each Co-Tenant should be liable only up to the amount of their respective Ownership Interests. Therefore, each Co-Tenant (as "**Indemnitor**"), severally, does hereby agree to indemnify every other Co-Tenant (as "**Indemnitee**"), and hold every such Indemnitee harmless, from and against all liabilities of any kind arising from the Obligations which are in excess of such Indemnitee's pro rata portion of such Indemnitee's Ownership Interest (the "**Excess**") that such Indemnitee shall or may incur, sustain or become liable for, or which may at any time be asserted against such Indemnitee, provided that any acts that are caused by the gross negligence or willful misconduct by Indemnitee are excluded hereunder. In addition, each Indemnitor agrees to indemnify, defend and hold harmless each Indemnitee for any liabilities incurred by an Indemnitee under the Obligations as a result

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of the gross negligence or willful misconduct of the Indemnitor (any such amount owed by an Indemnitor to an Indemnitee under this sentence shall also constitute "Excess").

7.3 If there is more than one Indemnitor, each Indemnitor shall be responsible for paying its pro rata portion of the Excess. All distributions of cash and/or property made to the Co-Tenants pursuant to Section 3.4 may be offset and applied toward the payment of amounts owed to any Indemnitees pursuant to this Article 7.

7.4 If any Indemnitor fails to reimburse an Indemnitee for its portion of the Excess within ten (10) days of written demand, then the amount due from such Indemnitor shall bear interest at an annual rate equal to the prime rate as announced from time to time plus five percent (5%) per annum, from the date upon which the Excess is paid by Indemnitee to the relevant party until the date of reimbursement of the Excess to Indemnitee.

7.5 Each and all of the Indemnitee's rights and remedies with respect to any of the subject matter hereof, whether by this Article 7 or afforded by law or equity, shall be cumulative, and may be exercised and enforced from time-to-time concurrently or consecutively, separately or together, or in any other manner, and Indemnitee's exercise or enforcement, or failure to exercise or enforce, any of its rights or remedies, shall not affect any of its other rights or remedies. Indemnitor(s) agree to pay all costs and expenses (including reasonable attorney fees and court costs) paid or incurred by Indemnitee, its legal representatives, successors or assigns, in successfully enforcing the provisions of this Article 7.

7.6 The obligations of each Indemnitor hereunder shall be continuing, absolute and unconditional. Successive recoveries may be had hereunder. In order to proceed against an Indemnitor hereunder, Indemnitee shall not be required at any time to resort to any other security, collateral, indebtedness, guarantors or obligors, or to any other rights or remedies whatsoever. The obligations of an Indemnitor hereunder shall in no way be affected or impaired by any modification, extension, waiver, surrender, settlement, release, discharge, transfer, indulgence, change, substitution or other disposition of any kind which may be made at any time with respect to the Obligations

7.7 The terms contained in this Article 7 shall survive the termination of this Agreement.

ARTICLE 8

TERM

8.1. **Term.** The term of this Agreement shall commence upon the date hereof and shall terminate upon the occurrence of any of the following events:

- (a) The Co-Tenants mutually agree in writing to terminate this Agreement.
- (b) The Co-Tenants jointly sell, exchange or otherwise dispose of the entire Property to a third party.
- (c) One Co-Tenant acquires fee simple title to the entire Property.

8.2. **Accounting on Termination.** In the event of any termination of this Agreement, there shall be a prompt accounting by LP 1900 with respect to the Property. A termination shall not relieve any Co-Tenant, or its owner, if applicable, of any obligations owing to any other Co-Tenant existing at the time of such termination.

ARTICLE 9

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REPRESENTATIONS AND WARRANTIES

9.1. **Representations and Warranties.** Each Co-Tenant hereby makes the following representations and warranties as to itself only, and not as to any other Co-Tenant:

(a) Such Co-Tenant has full power to enter into and accept this Agreement and to perform all of its obligations hereunder;

(b) There is no claim, litigation, proceeding, or governmental investigation pending, or, so far as is known to such Co-Tenant, threatened, against or relating to such Co-Tenant or its property or business, or the transactions contemplated by this Agreement, nor is there any basis known to such Co-Tenant for any of the foregoing;

(c) There are no pending or final judgments against such Co-Tenant and there are no notices of lien, levy or assessment filed of record with respect to all or any part of the property of such Co-Tenant;

(d) There are no pending voluntary petitions in bankruptcy or for arrangement, reorganization or other relief under any chapter of the Federal Bankruptcy Code or any similar law, state or federal with respect to such Co-Tenant; such Co-Tenant has not filed an answer or other pleading in any proceedings admitting insolvency, bankruptcy or inability to pay its debts as they mature; and there has been no order issued appointing a receiver, trustee or liquidator for such Co-Tenant or for any part of such Co-Tenant's property or assets that has not been vacated within thirty (30) days following entry thereof;

(e) Such Co-Tenant has not made an assignment for the benefit of creditors; such Co-Tenant has not admitted in writing its inability to pay its debts generally as they become due and such Co-Tenant has not consented to the appointment of a receiver or trustee or liquidator of all or the major part of its property or assets; and

(f) Neither the consummation of the transactions hereby contemplated to be performed, nor the fulfillment of the terms hereof, will conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any agreement or instrument to which such Co-Tenant is a party or any applicable laws, regulations, rules, ordinances, codes, orders or other requirements of any governmental body.

ARTICLE 10

MISCELLANEOUS PROVISIONS

10.1. **Notice.** All notices, requests, demands and other communications required to or permitted to be given under this Agreement, shall be in writing and shall be conclusively deemed to have been duly given (a) when hand delivered; or (b) three (3) business days after the same have been deposited in a United States post office via certified mail/return receipt requested; or (c) the next business day after same have been deposited with a national overnight delivery service (e.g., Federal Express), in each case addressed to the parties at the following addresses:

To LP 1900:	Lincoln Park Clybourn 1900 LLC 412 North Paulina Street Chicago, Illinois 60622
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To 1201 CC:	1201 CC LLC
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7450 Quincy
Willowbrook, IL 60527

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

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

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

A party may change or supplement the addresses given above, or designate additional addresses, for purposes of this Section 10.1 by giving the other parties written notice of the new address in the manner set forth above.

10.2. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the Co-Tenants and their respective heirs, executors, administrators, members, managers, successors and assigns, subject to Article 6 hereof.

10.3. **Entire Agreement; Modification; Waiver.** This Agreement and any agreement, document or instrument referred to herein constitute the entire agreement between the Co-Tenants pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations and understandings of the Co-Tenants. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all of the Co-Tenants. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit a Co-Tenant to provide a waiver in the future except to the extent specifically set forth in writing. No waiver shall be binding unless executed in writing by the Co-Tenants making the waiver.

10.4. **Severability.** If any term or provision of this Agreement is determined to be illegal, unenforceable or invalid, in whole or in part for any reason, such illegal, unenforceable or invalid provision or part thereof shall be stricken from this Agreement and such provision shall not affect the legality, enforceability or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this Section 10.4, then such stricken provision shall be replaced, to the extent possible, with a legal, enforceable and valid provision that is as similar in tenor to the stricken provision as is legally possible.

10.5. **Further Assurances.** Each Co-Tenant agrees to execute, with acknowledgment and affidavit if required, any and all documents and take all actions that may be reasonably required in furtherance of the provisions of this Agreement.

10.6. **Attorneys' Fees.** If any party to this Agreement shall take any action to enforce this Agreement or bring any action for any relief against any other party, declaratory or otherwise, arising out of this Agreement, the non-prevailing party shall pay to the prevailing party a reasonable sum for attorneys' fees incurred in bringing such suit and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not

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such action is prosecuted to judgment. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such judgment. For purposes of this Section 10.6, attorneys' fees shall include, without limitation, fees incurred in the following: (a) post-judgment motions and collection actions; (b) contempt proceedings; (c) garnishment, levy, and debtor and third party examinations; (d) discovery; and (e) bankruptcy litigation.

10.7. **Governing Law**. This Agreement, and the Co-Tenants' respective rights and obligations hereunder, shall be governed by and construed in accordance with the laws of the State of Illinois.

10.8. **Exchange**. All Co-Tenants reserve the right to escrow proceeds from a sale of their Ownership Interests in the Property to obtain tax deferral by the purchase of replacement property.

10.9. **Counterparts; Facsimiles**. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original (including copies sent to a party by facsimile transmission) as against the party signing such counterpart, but which together shall constitute one and the same instrument. Signatures transmitted via facsimile shall be considered authentic and binding.

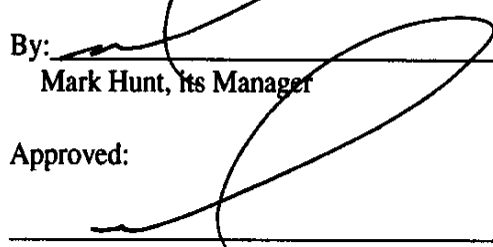
[SEE FOLLOWING PAGE FOR SIGNATURES]

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IN WITNESS WHEREOF, the undersigned Co-Tenants have executed this Co-Ownership Agreement as of the date first written above.

Lincoln Park Clybourn 1900 LLC, an Illinois limited liability company

By: 
Mark Hunt, its Manager

Approved:

Mark Hunt, its sole member

VM HALSTED LLC, an Illinois limited liability company

By: _____
John D. Terzakis, its Manager

Approved:

Val Manaves, its sole member

GM HALSTED LLC, an Illinois limited liability company

By: _____
John D. Terzakis, its Manager

Approved:

George Manaves, its sole member

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned Co-Tenants have executed this Co-Ownership Agreement as of the date first written above.

Lincoln Park Clybourn 1900 LLC, an Illinois limited liability company

By: _____
Mark Hunt, its Manager

Approved:

Mark Hunt, its sole member

VM HALSTED LLC, an Illinois limited liability company

By: _____
John D. Terzakis, its Manager

Approved:

Val Manaves, its sole member

GM HALSTED LLC, an Illinois limited liability company

By: _____
John D. Terzakis, its Manager

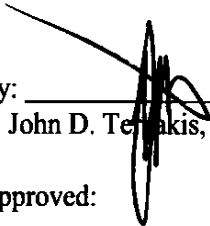
Approved:

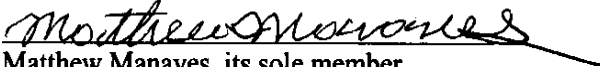
George Manaves, its sole member

Property of Cook County Clerk's Office

UNOFFICIAL COPY

MM HALSTED LLC, an Illinois limited liability company

By:  _____
John D. Terakakis, its Manager

Approved:

Matthew Manaves, its sole member

Property of Cook County Clerk's Office

**COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____**

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Joyce Lance, 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 and sole member 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 12th day of ~~October~~ NOVEMBER, 2009.

Joyce Lance
Notary Public

My Commission expires:
OFFICIAL SEAL
JOYCE LANCE
Notary Public - State of Illinois
My Commission Expires Jul 14, 2013

I, Anne Storer, 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 Val Manaves, personally known to me to be the sole member of VM Halsted LLC, an Illinois limited liability company, and 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 as such manager and member of such limited liability company, they signed and delivered the said instrument pursuant to proper authority duly given by said limited liability company, as their 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 11th day of ~~October~~ November, 2009.

Anne Storer
Notary Public

OFFICIAL SEAL
ANNE STORER
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 9-27-2011
My Commission expires:

9-27-2011

UNOFFICIAL COPY

I, Anne Storer, 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 George Manaves, personally known to me to be the sole member of GM Halsted LLC, an Illinois limited liability company, and 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 as such manager and member of such limited liability company, they signed and delivered the said instrument pursuant to proper authority duly given by said limited liability company, as their 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 11th day of November, 2009.



Anne Storer
Notary Public

My Commission expires:

9-27-2011

I, Anne Storer, 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 Matthew Manaves, personally known to me to be the sole member of MM Halsted LLC, an Illinois limited liability company, and 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 as such manager and member of such limited liability company, they signed and delivered the said instrument pursuant to proper authority duly given by said limited liability company, as their 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 11th day of November, 2009.



Anne Storer
Notary Public

My Commission expires:

9-27-2011

UNOFFICIAL COPY

"CORRECTED"
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: 14-32-235-001-0000

PROPERTY ADDRESS: 1201 W. CORTLAND, CHICAGO, IL/1980 N. CLYBOURN, CHICAGO, IL

Property of Cook County Clerk's Office