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2001-02-07 14:15:07  
Cook County Recorder 35.00



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This document was prepared by, and after recording, return to:

Daniel C. Cole, Esq.  
Katten Muchin Zavis  
525 West Monroe Street  
Suite 1600  
Chicago, Illinois 60661-3693

(The Above Space for Recorder's Use Only)

**DECLARATION OF RESTRICTIVE COVENANT**

THIS DECLARATION OF RESTRICTIVE COVENANT (this "Declaration") is made as of the 23<sup>rd</sup> day of October, 2000, by Trizec-Hahn Clybourn Technology Center LLC, a Delaware limited liability company (the "Declarant"), for the benefit of A. Finkl & Sons Co. ("Finkl") and any party having or acquiring any right, title or interest in any part of the Finkl Property (as hereinafter defined) (Finkl and any such parties are collectively referred to herein as the "Finkl Party").

**RECITALS**

A. Declarant is the owner of that certain parcel of real property commonly known as 1835-1840 North Clybourn, Chicago, Illinois and legally described on Exhibit A attached hereto (the "Property").

B. The Property is currently zoned Manufacturing - Commercial Planned Development as governed by that certain Reclassification Ordinance (Application Number 12969) passed August 30, 2000 by the City of Chicago (said zoning ordinance as the same may be amended, modified or supplemented from time to time by any Zoning Change [as hereinafter defined] not attributable to a violation by Declarant of the provisions of Section 2 below is herein called the "Then Current Zoning").

C. Finkl is the owner of that certain parcel of real property commonly known as 2011 North Southport Avenue, Chicago, Illinois and legally described on Exhibit B attached hereto (the "Finkl Property").

D. The parties hereto wish to restrict the rights of the owners of the Property to petition for changes to the Then Current Zoning.

E. Declarant is making and recording this Declaration to impose the covenant described above as an encumbrance upon the Property and to memorialize the parties' agreement as to the use of the Property by Declarant.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Declarant hereby agrees as follows:

1. **Recitals.** The Recitals as set forth above and Exhibits A, B and C are agreed to be true and correct and are incorporated herein by this reference.

Sofa

7868035, 6574 Ad

**BOX 333-CT1**

**2. Restrictions on Zoning Change.**

a. Declarant hereby declares that, for so long as the Finkl Party is operating a manufacturing plant on the Finkl Property (said period of time, the "Finkl Operation Period"), neither Declarant nor any party having or acquiring any right, title or interest in any part of the Property (Declarant and any such parties are collectively referred to herein as, "Owner"), Owner's affiliates, nor Owner's members, partners, shareholders, directors, trustees, officers, employees, agents, consultants, advisors, or other representatives (collectively, the "Owner Parties") shall file or join in the filing of an application or petition seeking a Zoning Change without the prior written consent of the Finkl Party. As used herein, a "Zoning Change" means any change, modification, exception, variance, adoption of any type or description of special use or amendment to the Then Current Zoning (including administrative modifications).

b. Declarant hereby declares that, during the Finkl Operation Period, Owner shall develop, use, maintain and operate the Property solely in a manner consistent with the Then Current Zoning.

c. The Property is and shall be transferred, held, sold, conveyed and accepted subject to the covenants contained in Section 2(a) and (b) above, and said covenants shall, only during the Finkl Operation Period: (i) exist amongst each Owner; (ii) be binding upon and inure to the benefit of each Owner; and (iii) run with the Property, to be held, sold and conveyed subject thereto.

d. Upon the expiration of the Finkl Operation Period, this Declaration shall terminate and be null and void and of no further force and effect and shall be released of record without further action of the Finkl Party, or the Owner of the Property. The Finkl Party shall promptly deliver written notice to the Owner of the Property of said expiration of the Finkl Operation Period, however, the automatic termination of this Declaration as set forth in the preceding sentence shall not be contingent upon the Finkl Party delivering such notice.

e. Nothing contained herein shall (i) prohibit Owner from enjoying the benefit of any Zoning Change which is not initiated or joined in by any of the Owner Parties or (ii) be deemed to prohibit the Owner Parties from challenging any application or petition for a Zoning Change which, if successful, would prohibit the use of the Property for any of the uses or activities described on Exhibit C attached hereto.

**3. Waiver.** Declarant hereby grants to the Finkl Party the right to waive any of the restrictions, conditions, covenants, agreements or provisions described in this Declaration.

**4. Invalidation.** Invalidation of any of the covenants or restrictions set forth in this Declaration by judgment or court order shall in no way affect any other provision of this Declaration, which shall remain in full force and effect.

**5. Limitation of Term.** If, and to the extent that any covenant or restriction herein contained would otherwise be unlawful or void for violation of (i) the Rule against Perpetuities, (ii) the Rule against Restraints on Alienation, or (iii) any other statute or common law rule analogous thereto and otherwise imposing limitations upon the time for which such covenant or restriction may be valid, then the provision concerned shall continue and endure only until the expiration of a period of twenty-one (21) years after the death of the last to survive of the class of persons consisting of all of the lawful descendants of Joseph E. Curci, living at the date of this Declaration.

**6. Miscellaneous.**

a. This Declaration may be executed in multiple counterparts, all of which shall constitute one and the same instrument. Additionally, this Declaration may contain more than one counterpart of the signature page and this Declaration may be executed by affixing counterpart signature page(s) containing the signatures of the parties hereto. All of such counterpart signature pages shall be read as though one and they shall have the same force and effect as though all of the signers had signed a single signature page.

b. The terms and provisions of this Declaration may be amended or modified only by an instrument in writing duly executed by all of the Owners of all or any part of the Property and the Finkl Property.

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c. Any notice or other communication required or permitted to be given shall be in writing addressed to the respective party as set forth below and may be personally served, or sent by overnight courier or U.S. Mail and shall be deemed given: (a) if served in person, when served or receipt is refused; (b) if by any other method, upon actual receipt or refusal of receipt.

Notices to Declarant:

c/o TrizecHahn Office Properties Inc.  
233 South Wacker Drive, Suite 4600  
Chicago, Illinois 60606  
Attn: Casey R. Wold  
and Brian K. Lipson  
Telephone No.: (312) 466-3000

with a copy to:

Katten Muchin Zavis  
525 West Monroe Street, Suite 1600  
Chicago, Illinois 60661  
Attn: Keith D. Pascus, Esq.  
Telephone: (312) 902-5538

Notices to Finkl:

A. Finkl & Sons Co.  
2011 N. Southport Avenue  
Chicago, Illinois 60614  
Attn: Joseph E. Curci  
Telephone No.: (773) 975-2558

with a copy to:

Daley & George  
20 South Clark Street, Suite 400  
Chicago, Illinois 60603  
Attn: Dennis J. Aukstik, Esq.  
Telephone No.: (312) 726-8797

d. This Declaration is for the benefit of the Finkl Party, and no other person or entity will be entitled to rely on this Declaration, receive any benefit from it or enforce any provisions of it against Owner or its successors or assigns.

e. This Declaration shall be deemed to be a contract made under the laws of the State of Illinois and for all purposes shall be governed by and interpreted in accordance with the laws of the State of Illinois.

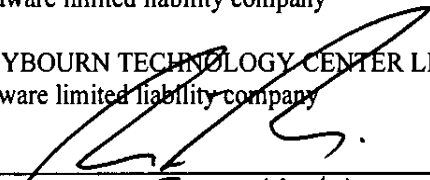
[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed and delivered this Declaration as of the day and year first above written.

DECLARANT:

TRIZEHAHN CLYBOURN TECHNOLOGY CENTER  
LLC, a Delaware limited liability company

By: TH CLYBOURN TECHNOLOGY CENTER LLC,  
a Delaware limited liability company

By:   
Name: Brian K. Lipson  
Its: vice president

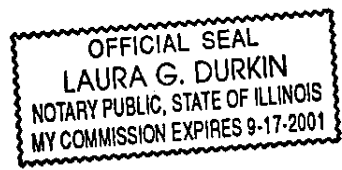
Property of Cook County Clerk's Office

STATE OF ILLINOIS )  
 ) ss:  
COUNTY OF COOK )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Brian K. Lipson, the Vice President of TH Clybourn Technology Center, LLC, the Manager of TrizecHahn Clybourn Technology Center LLC, 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 Vice President he/she signed and delivered said instrument as their free and voluntary act and deed and as the free and voluntary act and deed of said limited liability company.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 23<sup>rd</sup> day of October, 2000.  
Laura G. Durkin  
Notary Public

My Commission Expires: 9-17-2001



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EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

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 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.

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EXHIBIT B

LEGAL DESCRIPTION OF FINKL PROPERTY

[TO BE ADDED]

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## EXHIBIT C

### PROTECTED USES/ACTIVITIES

The development and use of the Property of up to a six (6) story building containing approximately 220,000 square feet of telecommunication/carrier hotel/data center space, approximately 90,000 square feet of office space and 24,000 square feet of ground floor retail space.

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