

UNOFFICIAL COPY 0020511817

3578/0213 55 001 Page 1 of 23
2002-05-06 13:09:39
Cook County Recorder 127.00



DECLARATION OF PROTECTIVE COVENANTS

PHOENIX LAKE BUSINESS PARK

STREAMWOOD, ILLINOIS

This Declaration of Protective Covenants (hereinafter "Declaration") is made effective this 9th day of April, ~~2001~~ 2002, by PHOENIX II, LLC, a Limited Liability Company ("Owner").

WITNESSETH:

Whereas, PHOENIX II, LLC, Owner (sometimes hereinafter referred to as "Declarant") is the legal title holder of certain real property located in the Village of Streamwood, Illinois, which property is commonly known as PHOENIX LAKE BUSINESS PARK and which property is more particularly described in Exhibit "A" of this Declaration ("Property"); and

WHEREAS, PHOENIX LAKE BUSINESS PARK is being developed as a high quality industrial business park and Owner desires to provide for the preservation of the values and amenities of the PHOENIX LAKE BUSINESS PARK for the benefit of the Property, to create certain easements appurtenant to all or a part of the Property, and to provide for the use, maintenance and repair thereof for any and all subsequent Parcel Owners (hereinafter defined), all of which shall inure to the benefit of and shall run with the ownership of the Property and shall apply to and bind successors in interest and any subsequent owner thereof;

Now, therefore, Declarant hereby declares that any interest in the Property is and shall be held, conveyed, and occupied subject to the covenants, easements, charges, liens and restrictions hereinafter set forth ("Protective Covenants").

I. THE PROPERTY

The Property affected hereby and subject to this Declaration is commonly known as "PHOENIX LAKE BUSINESS PARK," an industrial business park development located within the corporate limits of the Village of Streamwood, Cook County, State of Illinois, and is legally described in Exhibit "A," which exhibit "A" is attached hereto and incorporated herein as if fully stated.

BOX 333-CTI

7978448 LMT D1

23P

CE

UNOFFICIAL COPY

II. DEFINITIONS

The following words when used in this Declaration or any Supplemental or Amended Declaration (unless the context shall specifically provide otherwise) shall have the following meanings, interpretations and effect:

- A. "Association" shall mean a formed or to be formed Illinois not-for-profit corporation to be known as PHOENIX LAKE BUSINESS PARK (or by such other name selected by Owner as may be available at the time of its incorporation) for such purposes as hereinafter may be set forth to effectuate the purposes of this Declaration. For purposes of this Declaration, references to the Association or its Board shall mean the Owner until such time as the association is formed pursuant to Section V.
- B. "Association Costs" shall have the meaning set forth in Section V.F.
- C. "Board" shall have the meaning set forth in Section VI.F.
- D. "Class A Member" shall have the meaning set forth in Section V.E.1.
- E. "Class B Member" shall have the meaning set forth in Section V.E.2.
- F. "Corporate Authorities" shall mean the President and the Board of Trustees of the Village.
- G. "Declaration" shall mean this Declaration of Protective covenants, as same may be amended from time to time.
- H. "Declarant" shall mean Owner and its respective successors and assigns. In the event that at any time after the date hereof the Owner shall cease to be the record title holders of a fee simple interest in any portion of the Property, the rights and obligations of Declarant shall devolve to the Association as provided in Article V.
- I. "Deed" shall mean any deed of the Owner conveying a Parcel to a Parcel Owner.
- J. "Governmental Authority" shall mean and include any of the Village, the State of Illinois, the United States government or any political subdivision thereof or any quasi-governmental agency or department related thereto.
- K. "Governmental Regulations" shall mean and include the Village's zoning or other ordinances, building and other codes and any other laws, ordinances, codes, rules, regulations or other similar requirements imposed on or adopted by a Governmental Authority.

UNOFFICIAL COPY

- L. “Improvement” or “Improvements” shall mean any and all structures or other changes of any kind made to the Property or any Parcel, whether above or below grade, including, but not limited to buildings, equipment, utility installations, sending or receiving antennae, storage, loading and parking facilities, walkways, driveways, landscaping, signs, site lighting, site grading and earth movement and any exterior additions, changes or alterations thereto.
- M. “Lot Landscape Plan” shall mean the landscape plan for an individual lot submitted with the permit application documents at the time a building permit is requested
- N. “Maintenance” shall have the meaning set forth in Section VI.A.
- O. “Member” shall mean either a Class A Member or a Class B Member in the Association.
- P. “Occupant” shall mean any Party legally entitled to occupy and use any part or portion of a Parcel or its Improvements at any time, including but not limited to, lessees.
- Q. “Parcel” or “Lot” shall mean any part or portion of the Property, fee simple title to which is, from time to time, under common ownership, the size and the dimensions of which shall be established by the legal description in the Deed conveying such Parcel or Lot and which may, but need not, correspond to a numbered or lettered lot of record established pursuant to the Plat of Subdivision.
- R. “Parcel Owner” shall mean any record title holder or owner whether one or more parties, of a fee simple interest or title in any Parcel, and shall include the Declarant with respect to Parcels owned or controlled by Declarant.
- S. “Park Landscape Plan” shall mean the landscape plan approved as part of the I-1 PUD zoning documents.
- T. “Party” shall mean any individual, corporation, partnership or other legal entity, public or private.
- U. “Plans” shall have the meaning set forth in Section IV.B.
- V. “Plat of Subdivision” shall mean any plat of subdivision of all or a portion of the Property recorded in the Office of the Recorder of Deeds of Cook County, Illinois as the same may hereinafter be amended, corrected or otherwise modified.

20511817

UNOFFICIAL COPY

- W. “Proportionate Share” shall mean each member’s share of the Association Costs determined in accordance with the provisions of Section V.F.
- X. “Purpose” or “Purposes” shall mean the purpose or purposes for which these protective Covenants have been established as set forth in Section III.
- Y. “Storm Water Detention Area” shall have the meaning set forth in Section IV.I.1.
- Z. “Storm Water Facilities” shall mean the storm water system serving the Property, whether or not located upon and serving only a particular Parcel or Lot or groups thereof, but not necessarily exclusively, including any area so designated on the Plat of Subdivision or other recorded instrument, conduits, catch basins, inlets, inlet leads, catch basin leads, detention basins and retention ponds and the immediate adjacent land to such basins and ponds. There shall be excluded from Storm Water Facilities any storm water collecting facilities dedicated to or owned by any Governmental Authority.
- AA. “Village” shall mean the Village of Streamwood, an existing Illinois municipal corporation, and its successors.

III. PURPOSES

The purposes for which these Protective Covenants have been established are to ensure the proper development and use of each Parcel contained within the Property as a part of a high quality industrial business park and to protect the Parcel Owner or Occupant, present or future, of each Parcel against the improper development and use of other parcels in a manner that will depreciate or otherwise adversely affect the value of each such Parcel Owner’s or Occupant’s Parcel. In furtherance of the aforementioned purposes (“Purposes”), Declarant or the Association, as the case may be, shall have the right to reasonably review the design, location and materials to be used in all Improvements in the manner provided in Article IV below. These Protective Covenants are further intended to complement all applicable Governmental Regulations, and where conflicts occur, the most strict or rigid requirements shall be applied. Notwithstanding the foregoing, nothing contained in these Protective Covenants shall be construed in any way so as to restrict or affect the Village’s or any other applicable Governmental Authority’s power and authority to review the plans and specifications for all proposed improvements to insure compliance with all applicable Governmental Regulations regarding the issuance of building permits or any other applicable permits required in connection with such Improvements.

UNOFFICIAL COPY

IV. GENERAL REQUIREMENTS

A. Zoning. The zoning classification of PHOENIX LAKE BUSINESS PARK is I-1 P.U.D. Any application to change the zoning of one or more Lots, or any part thereof, shall require the prior written approval of Declarant or of the Association in the event the rights of Declarant have been transferred or assigned to the Association.

B. Approval of Plans.

1. Submission of Plans. Before any Improvement shall be constructed, erected, placed, altered, maintained or permitted to remain on the Property or any Parcel, plans and specifications, including, but not limited to, the site layout, site grading and engineering, all exterior elevations together with descriptions of the materials and colors to be used in connection therewith, parking spaces with each stall indicated, loading docks, and detailed Lot Landscape Plan, exterior lighting, and signage plans (collectively "Plans") shall be submitted to Declarant or, in the event Declarant has transferred or assigned its rights hereunder to the Association, to the Association for review and approval in writing. All such Plans as submitted shall contain the signature of the Parcel Owner or the Parcel Owner's authorized agent. Plans submitted to Declarant or the Association, as the case may be, may be submitted concurrently with or prior to their submission to the Village in connection with any building permit application.

2. Standards for Review and Approval. Declarant or the Association, as the case may be, shall have the rights to disapprove plans, specifications or details submitted to it in the event the same are not in accordance with this Declaration or if, in Declarant's reasonable judgment, they are contrary, in whole or in part, to the best interest of PHOENIX LAKE BUSINESS PARK or other Parcel Owners. In this connection, Declarant may base its approval or disapproval on, among other things: (a) the conformity and harmony of location and proposed design with neighboring Improvements; (b) the possible effect of the location and use of the proposed Improvements on adjacent Parcels or Lots and the existing or proposed operations and uses thereof; (c) avoidance of monotony; (d) an evaluation of the proposed driveway locations in relationship to other driveways situated across the street or to be situated in adjoining Parcels or Lots or to the location of corners and streets; (e) the adequacy of screening of pavement and utility areas using earth berms and landscaping; (f) the adequacy of screening, of rooftop installations particularly with respect to mechanical, air conditioning, or other

UNOFFICIAL COPY

utility systems; and (g) the conformity of the proposed Plans to the purposes of PHOENIX LAKE BUSINESS PARK.

3. Time Period for Review and Approval. Declarant or the Association, as the case may be, shall not arbitrarily or unreasonably withhold its approval of any Plans and shall approve or disapprove completed submittal not more than 30 days after receipt thereof, unless during the 30-day period it is determined by Declarant or the Association that, as a result of the nature of the submittal or issues raised thereby, additional information is reasonably required in order to complete the review and approval, in which event Declarant or the Association shall notify the affected Parcel Owner or the Party submitting the same within said 30-day period of the nature of the additional information required, in which case, the period for review shall expire 30 days after receipt of the requested information.
 4. Subsequent Changes to Plans. In the event substantial, material changes are made to any approved Plans with respect to matters affecting external appearance or the configuration, location, character or size of the Improvements, particularly where such change involves the external appearance of such Improvements, the changes shall be submitted to Declarant or the Association, as the case may be, for review within the same time periods provided in paragraph 3 above.
- C. Improvement Guidelines. No Improvement shall be constructed, erected, placed, altered, maintained or permitted to remain on any Parcel unless approved by the Declarant (or the Association, if applicable) in the manner provided in Section IV.B. and otherwise in conformity with the following requirements.
1. Exterior Construction. Building exteriors facing Phoenix Lake Avenue, Buttitta Drive or Ramblewood Drive shall be constructed primarily of architectural grade precast concrete, glass, face brick or pre-finished architectural metal. Other exterior walls may be constructed of split-face masonry units. No metal walls installed with exposed fasteners will be permitted. Precast concrete and/or split face concrete masonry units shall be colored with penetrating stain, either shop or field applied. Windows and entry doors shall be of pre-finished aluminum. Roof copings, gutters and downspouts shall be pre-finished metal or copper. Visible sloped roofs shall be pre-finished metal with no visible fasteners. Overhead and service doors shall be insulated steel. Only down-light illumination will be permitted for exterior lighting, except that feature lighting for special effects

UNOFFICIAL COPY

shall be permitted subject to approval. The renderings on Drawing G104 of Exhibit B2 are intended to serve as prototypes of the type of buildings to be constructed.

2. Underground Utilities. All plans and specifications shall provide for the underground installation of all utilities from the lot lines of any Parcel to any Improvements located on such Parcel and shall provide for appropriate safety measures or other controls, whether of a temporary or permanent nature, as may be prudent under the circumstances and as required pursuant to any Government Regulations. Any connection to an underground utility requiring the crossing of a public street shall be accomplished only by auguring and casing the carrier pipe. Wherever feasible, utility connections made above ground level shall be located within buildings. If utility connections are above ground and cannot feasibly be located within a building all such exterior connections, including (but not limited to) exposed utility boxes, shall, to the maximum extent possible, be screened using landscaping or other suitable designs and materials.
3. Lot Landscape Plan. For each Parcel, a Lot Landscape Plan shall be submitted for approval that fully depicts the landscape work to be performed as part of the Lot Improvements. Such plan shall depict existing trees and features installed as part of the park development and shall include installation of any trees and features shown on the Park Landscape Plan not yet installed. The Lot Landscape Plan shall present a design that is harmonious with neighboring lots and that avoids monotony.
4. Loading Docks. Depressed loading docks shall be located so the loading berth does not encroach on the yard and does not impair traffic to other parking or loading spaces, and shall be located a sufficient distance from the street with a sufficiently wide curb cut to allow expedient maneuvering of trucks from the street into the loading berth, and where possible, shall be located across the street from existing curb cuts.
5. Construction Period. Any and all construction shall be commenced and diligently pursued and shall not remain in a partly finished condition for any period of time longer than is reasonably necessary for the completion thereof. The Parcel Owner or Occupant of any portion of any Parcel upon which Improvements are being constructed shall, at all times, keep all public or private streets being

UNOFFICIAL COPY

utilized by such Parcel Owner or Occupant in connection with said construction, as well as the Parcel, free from any dirt, mud, garbage, trash or other debris which might be occasioned by such construction.

- D. Proper Maintenance. Each Parcel Owner shall fully and properly maintain and repair the exterior of any Improvements located on its Parcel in such a manner so as to enhance the overall appearance of the PHOENIX LAKE BUSINESS PARK, including removal of trash and debris from whatever source, and otherwise in accordance with the approved Lot Landscape Plan and all applicable ordinances of the Village.
- E. Signs. No signs, billboards or advertising shall be erected, placed or maintained on any other Parcel or any Improvements on said Parcel prior to the specific approval thereof by the Declarant or, in the event Declarant has transferred or assigned its rights hereunder to the Association, by the Association. Declarant or the Association, as the case may be, is hereby empowered to reject a proposed plan for any sign if, in its opinion, such sign does not conform to the general character of PHOENIX LAKE BUSINESS PARK or otherwise detracts from the appearance, values and amenities thereof. In the event the Declarant or, in the event the Declarant has transferred or assigned its rights hereunder to the Association, the Association determines that a Parcel Owner has erected a sign without obtaining the necessary approvals therefore, the Declarant or the Association, as the case may be, shall have the right to enter on and remove such signs at the Parcel Owner's expense, without in any way being liable for trespass or any other damage to the Parcel or Parcel Owner. All actual out-of-pocket expenses (including reasonable attorneys fees) incurred by reason thereof, plus twenty percent (20%) as a charge for overhead and supervision, shall be due from the Parcel Owner and payable upon demand, the unpaid portion of which shall accrue interest at a rate per annum equal to the prime rate of interest charged by the Bank One plus two (2%) percent (compounded annually) and shall be a lien upon the Parcel enforceable in accordance with the provisions hereof.
- F. Shipping and Receiving by Truck. Trucks shall be directed to use Ramblewood Drive to travel to and from Barrington Road, and shipments to and from Lots 1 through 4 shall use Frances Avenue, and shipments to and from Lots 5 through 7 shall use Phoenix Lake Avenue.
- G. Outside Storage. Outside storage of waste will be allowed only in approved dumpster enclosures with 100% screening using an approved fence. Other outside storage is not permitted except on Lot 1. Other outside storage may

UNOFFICIAL COPY

be permitted on Lot 1 only with special authorization by the Village and the Declarant, and 100% paving and screening will be required.

- H. Special Operations or Uses. Approval of any operations or uses by Occupants which require a variance from the Village and are neither specifically prohibited nor specifically authorized by this Declaration may be considered in a specific case only upon the submission of complete, written operational plans and specifications to Declarant (or the Association, in the event Declarant has transferred or assigned its rights hereunder to the Association), together with copies of all relevant technical or legal information needed to make an informed judgment as to the merits of the requested action. Such operations or uses shall be approved or disapproved at the sole discretion of Declarant (or the Association, in the event Declarant has transferred or assigned its rights hereunder to the Association), but in all cases the provisions of this Declaration shall remain applicable to such operations or uses. Declarant or the Association, as the case may be, shall not arbitrarily or unreasonably withhold its approval and a failure to give notice of disapproval of the proposed variance within thirty (30) days after a request for approval shall be deemed an approval. Notwithstanding the foregoing, nothing contained herein shall be deemed to obviate the need to obtain all necessary approvals from the Village or any other Governmental Authority.
- I. Abandonment. Declarant (or the Association, in the event Declarant has transferred or assigned its rights hereunder to the Association) may, in its sole discretion, enter any Parcel or Improvement that appears to have been abandoned for the purpose of performing such maintenance as may reasonably be necessary to prevent the exterior of any buildings, any signs or any portion of any grounds from deteriorating, becoming unsafe or unsightly or otherwise detracting from the appearance, values, amenities and general character of PHOENIX LAKE BUSINESS PARK, without in any way being liable for trespass or any other damage to the Parcel or the Parcel Owner. All actual out-of-pocket expenses (including reasonable attorneys fees) incurred by reason thereof, plus twenty percent (20%) as a charge for overhead and supervision, shall be due and payable upon demand, the unpaid portion of which shall accrue interest at a rate per annum equal to the prime rate of interest charged by the Bank One plus two (2%) percent (compounded annually) and shall be a lien upon the Parcel enforceable in accordance with the provisions hereof.
- J. Wetland and Wetland Buffer Zones
1. Wetland Easements. Easements for the retention, detention and drainage of water for the benefit of the Property and the individual Parcels are hereby declared over, under and upon those portions of the Property dedicated to the Village as wetlands as well as existing

UNOFFICIAL COPY

adjacent connected waterways and storm sewers, all as designated for such purpose on any recorded Plat of Subdivision.

2. Damage to Wetlands and Wetland Buffer Zones. No Parcel Owner or Occupant of all or any part of the Property, by either act or omission, shall do or refrain from doing any act the effect of which will damage or impair the function or aesthetic appearance of the wetlands and wetland buffer zones (as same are designated for such purpose on any recorded Plat of Subdivision) or any appurtenances utilized in connection therewith. Where an extraordinary expense is incurred with regard to the repair or maintenance of the wetlands and wetland buffer zones, as a result of the act or omission of Parcel Owner or Occupant, their agents, licensees, invitees, contractors, sub-contractors or employees, such expense shall be due and payable by the Party so charged upon demand, the unpaid portion of which shall accrue interest at a rate per annum equal to the prime rate of interest charged by the Bank One plus two (2%) percent (compounded annually) and shall be a lien upon the Parcel enforceable in accordance with the provisions hereof.

- K. Unpermitted Uses. No operation or use shall be permitted which contravenes the Purposes of this Declaration or any Governmental Regulations, including the ordinances of the Village, Cook County, the State of Illinois, or the United States government.

Notwithstanding the foregoing, a Parcel Owner shall not permit the use or use a Parcel for (a) any adult use, including but not limited to pornographic theaters or the rental, sale, publication or display of pornographic or obscene video, movies, printed or electronic material; massage parlors or health spas; exotic or erotic dancing, modeling, photography or similar entertainment; or the sale or rental of sexual aids or paraphernalia; and (b) the sale or distribution of drug supplies or paraphernalia.

- L. Parcel Owner's Responsibility for Conformity with Governmental Regulations. Each prospective Parcel Owner shall be responsible for conducting such reviews of the Village's zoning ordinance, building code and any other applicable Village ordinances as such Parcel Owner shall deem necessary or advisable, copies of which can be obtained at the Village Hall of the Village. Nothing contained in these Protective Covenants, particularly, but not limited to, the provisions of this Section IV, shall be construed in any way so as to, are not intended to, and do not in any way (a) modify, or otherwise supersede the Governmental Regulations of the Village or any other Governmental Regulations, all of which Governmental Regulations

20511817

UNOFFICIAL COPY

constitute the minimum standard for development, and shall be fully adhered to in the development of the Property or the construction of any Improvements on any Parcel, Lot or other portion of the Property, or (b) make or hold Declarant or the Association liable for damages to any Parcel Owner, Occupant or any other Party by reason of a failure of any Improvements to comply with the Village's zoning ordinance, building code, any other applicable Governmental Regulations, regardless of whether Declarant or the Association, as the case may be, has reviewed or approved any Plans for any Improvement, has been requested to opine or has in fact opined as to the applicability, enforceability or interpretation of any of the foregoing or whether such damages have occurred by reason of mistaken judgment, negligence, or nonfeasance of Declarant, including the acts or omissions of its agents or employees, arising out of or in connection with approval or disapproval of any Plans.

- M. Exceptions. Notwithstanding anything to the contrary herein contained, it is understood that the Declarant or the Association, as the case may be, shall have the right to vary, subject to approval from the Village, any of the requirements or guidelines set forth in this Declaration with respect to any proposed Improvements in order to provide relief from any such requirement or guideline, provided however, that in no event shall any such variation result in any Improvement being constructed contrary to the applicable ordinances of the Village.

V. PHOENIX LAKE BUSINESS PARK ASSOCIATION

- A. Incorporation. At any time after the recording of this Declaration, but in no event later than the closing of sale of ninety (90%) percent of the area contained in the Property to Parcel Owners, Declarant shall incorporate an Illinois not-for-profit corporation to be known as "PHOENIX LAKE BUSINESS PARK ASSOCIATION" (or by such other name selected by Declarant as may be available at the time of its incorporation.)
- B. Purpose. The purpose of the Association shall be to carry out the purposes of this Declaration, to provide for the continuing administration of PHOENIX LAKE BUSINESS PARK as a high quality industrial park. The Association shall be the governing organization for the levying and collection of assessments to provide funds as they may be required from time to time for such purposes and shall have and possess all such powers as shall be necessary or appropriate for the accomplishment of such duties and functions. If necessary, the Association shall have the power to accept and retain legal title to any Parcels in order to effectively carry out such purposes.

UNOFFICIAL COPY

C. Funds. All funds collected by the Association shall be held and expended for the purposes designated herein and in the Association's Articles of Incorporation and its By-Laws. All such funds shall be deemed to be held for the benefit, use and account of each of the Members in the ratio that the number of square feet contained in such Member's owned Parcel bears to the total number of square feet contained in the Property and shall not be commingled with the funds of Declarant or any other Party.

D. Membership.

1 Commencement. Upon the formation of the Association, each Party who is a Parcel Owner as of the date of the Association's incorporation shall be a Member of the Association and each purchaser of a Parcel or Parcels shall, by acceptance of the deed therefore, become a Member of the Association regardless of whether it shall be so provided in any such deed or other conveyance.

Notwithstanding the foregoing, no Party who is a holder of any such interest merely as security for the performance of an obligation shall be a Member, the beneficiary of any land trust holding title to a Parcel shall exercise all rights as a Member, rather than the trustee, and any Parcel Owner may assign its rights but not its obligations hereunder to an Occupant.

2 Termination. Membership in the Association shall automatically terminate upon the sale, transfer or other disposition of a Member's interest in the Property as a Parcel Owner at which time said Parcel Owner's successor in title shall automatically become a Member. No Member shall have any right or power to disclaim, terminate or withdraw from its membership in the Association or from any of its obligations as a Member, except as specifically provided herein.

E. Voting Rights The Association shall have two (2) classes of voting Members:

1 Class A. "Class A Members" shall be all those who own Lots within PHOENIX LAKE BUSINESS PARK other than Declarant. Each Class A Member shall be entitled to a single vote for each Parcel owned by said Class A Member. Provided, however, until the termination of Class B Membership, there shall be no Class A voting rights.

2 Class B. The "Class B Member" shall be Declarant. The Class B Member shall be entitled to a single vote. Subject to the consent of the Mortgagee, so long as its mortgage is in effect, the Declarant shall be entitled to assign its Class B vote. Notwithstanding the

UNOFFICIAL COPY

foregoing, the Class B Membership shall terminate and shall be converted to a Class A Membership on the first to occur of any of the following events:

- a. Ten (10) years from date hereof; or
- b. Whenever Declarant shall so elect, which election shall be evidenced by the recording of a document to such effect; or
- c. Upon the sale by the Declarant of the last Parcel owned by it or its successor to its Class B voting rights.

F. Member's Proportionate Share of Costs. All Members of the Association agree to participate in their pro rata share of the costs and expenses incurred by the Association described in Section V.B., including, but not limited to, the Costs of Maintenance (collectively "Association Costs"), all in accordance with the following formula.

$$\frac{\text{Gross Square Footage Owned} \times 100}{\text{Square feet, in total.}} = \text{Member's Proportionate share of costs expressed as a percent}$$

G. By-Laws. At the time of the incorporation of the Association, Declarant shall establish appropriate By-Laws for the association by and through which the Association shall be empowered to carry out the Purposes of this Declaration.

H. Amendments. The Association shall have and it is hereby granted, the power to amend, modify and otherwise alter this Declaration and each and all of the terms and provisions hereof, and each and all of the rules, covenants, easements, agreements and restrictions herein contained at any time and from time to time, by action recommended by the Board of Directors and approved by the affirmative vote of that portion of its Members stipulated in Section VIII.D of this Declaration, or if not so stipulated, by the By-Laws of the Association, subject to the limitation that such action shall not cause the Property, or any part thereof, to be in non-compliance with any Governmental Regulation, including but not limited to the Village zoning ordinances or building code. Anything herein to the contrary notwithstanding, the Village shall have the right to approve all changes or amendments to this Declaration that would adversely affect any rights of the Village.

VI. DECLARANT'S OBLIGATIONS

A. Declarant's Maintenance Obligations. Until Declarant shall have assigned its rights and obligations with respect to applicable portions of the Property

UNOFFICIAL COPY

to the Association, it shall maintain, repair, replace and renew or cause to be maintained, repaired, replaced or renewed, those portions of the Property which are to be maintained, repaired, replaced or renewed by the Association, and not yet sold to a Class A Member or dedicated to the Village, in a clean, sightly, safe and first-class condition (hereinafter called "Maintenance"). Such Maintenance, to the extent not performed by the Village or other Governmental Authority or required pursuant to this Declaration to be performed by a Parcel Owner, shall include:

1. Landscaping. The mowing, watering fertilizing, weeding, replanting and replacing of landscaping.
- B. Easements for Maintenance. Perpetual non-exclusive easements for ingress and egress over, under, across, in and upon the Parcels (excluding buildings) are hereby declared, created and reserved by the Declarant for the benefit and use of itself, the Association or the Village as the case may be, their respective successors or assigns, agents and employees, to provide reasonable access to and to enter upon the Parcels for the sole purpose of performing Maintenance, provided however, that any party so entering on any Parcel shall be responsible for the restoration thereof.
- C. Parcel Owner's Participation in Cost of Maintenance Prior to Incorporation of Association. Until such time as the Association has been formed, each Parcel Owner shall pay to Declarant the total Cost of Maintenance determined in accordance with the formula as set forth in Section V.F. and the Declarant shall assess the Parcel Owners in the manner provided in Article VII below.
- D. Association's Common Area Maintenance Obligations. Once formed, the Association shall perform such Maintenance as shall have been assigned to it by the Declarant and shall exercise the powers and rights of the Declarant with respect thereto. The Association shall perform all Maintenance from and after the assignment or termination of Declarant's obligations to perform Maintenance pursuant to the provisions of Section VI.A. and with respect to such performance, the Association shall have all the powers and rights of the Declarant as set forth herein.
- E. Right of Village to Maintain Wetlands and Wetland Buffer Zones. If any Parcel Owner or the Association shall not have exercised diligence in the care and maintenance of any wetland or wetland buffer zones located on its Lot or Parcel, the Village may, but shall not be obligated to, at its sole discretion, upon thirty (30) days notice, except in cases of emergency, enter upon said Parcel Owner's Lot or Parcel for the purpose of providing such care and maintenance as may be required to maintain such area. In the event the Village shall provide care and maintenance as provided herein, it

UNOFFICIAL COPY

shall have the option and discretion to assess and collect its costs from the Parcel Owner of the Lot or Parcel with respect to which the Village provided such care and maintenance. If such Parcel Owner fails to pay the Village as herein provided, the Village shall have the same rights and powers of lien and enforcement contained in this Declaration or in the PHOENIX LAKE BUSINESS PARK ASSOCIATION pursuant to its By-Laws, if such By-Laws are in existence.

F. Additional Powers. The Association shall perform such other duties and obligations of the Declarant under this Declaration as shall have been assigned to it by the Declarant and, to the extent the Board of Directors of the Association ("Board") deems appropriate for Association Purposes, shall have the power to own real and personal property, to open bank accounts, to enforce this Declaration as herein provided, to obtain a policy or policies of insurance insuring the Association and its members against such risks of loss or liability as the Board shall deem necessary or advisable, to contract for legal and accounting services, to borrow funds, to employ employees directly, and otherwise to do that which it believes necessary to protect or defend the Association and the Property from loss or damage by suit or otherwise pay the costs of the foregoing from assessments.

VII. ASSOCIATION ASSESSMENTS

- A. Liability for Payment. All assessments shall be used for the Cost of Maintenance or for such other uses consistent with the purposes for which the Association is formed as the Board shall direct, and shall be the obligation of each Parcel Owner, including the Declarant. In the event that record title to a Parcel is held in trust, then the beneficiary or beneficiaries shall also be liable for payment of the assessments.
- B. Property Lien. All unpaid assessments and charges imposed on a Parcel Owner pursuant to this Declaration, together with interest thereon as provided in Section VII.D. and the costs of collection, if any (including reasonable attorneys fees), shall be charged as a continuing lien upon the Lot of said Parcel Owner until paid.
- C. Amount of Assessment. The initial annual assessment payable to the Association shall be fixed by the Declarant in its reasonable discretion, giving due consideration to the actual Cost of Maintenance and other costs of operation for the prior twelve (12) month period or, if no records exist for such a period, the reasonably estimated Cost of Maintenance for the next succeeding twelve (12) month period. If required, such initial annual assessment shall be prorated for the period commencing with the date the Association becomes obligated to perform Maintenance to the end of its then current fiscal year. Commencing with the next fiscal year and for each year thereafter, the Board shall estimate in writing its Cost of Maintenance

UNOFFICIAL COPY

and costs of operation for the coming year and same shall be assessed against each Member in accordance with each such Member's Proportionate Share and paid in advance by each Parcel Owner not more frequently than quarterly unless the Board shall otherwise direct. Such estimate shall take into consideration the cost of or reserves for any contemplated repair, replacement or renewal. If the assessment paid and collected proves inadequate for any reason (including non-payment of any Parcel Owner's assessment) or provides to exceed funds reasonably estimated to be required for the next succeeding twelve (12) month period, then the Association may increase or decrease the total assessments payable hereunder by giving written notice thereof (together with a revised estimate) to each Member not less than ten (10) days prior to the effective date of the revised assessment. At least once each year the Association shall deliver to each Member a statement of actual costs for the prior year along with a reconciliation of estimated assessments with actual costs and reserves. The Board shall have the power to levy additional assessments as provided in the By-Laws of the Association. Each Member's Proportional Share of the assessment shall be computed in accordance with the formula set forth in Section V.F. Any Member shall have the right to examine the Association's records relative to any assessment during normal business hours upon reasonable prior notice, provided that said Member bears all costs of said examination. All assessments shall be prorated as of the date title transfers to a new Parcel Owner.

- D. Non-Payment of Assessment. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after due date, the assessment or charge shall bear interest from the due date at a rate per annum equal to Bank One plus two (2%) percent (compounded annually), and the Association may, at its option, bring an action at law against the Member personally obligated to pay the assessment, may foreclose the lien against the Parcel owned by such Member or by such Member's land trustee (in the event the Member is a beneficiary of a land trust) or may exercise any other rights or remedies the Association may have at law or in equity, and the interest, together with all actual out-of-pocket costs and expenses (including reasonable attorneys fees) incurred by the Association in connection with any such action, shall be added to the amount of such assessment and to any judgment or decree therefore. The lien provided for under Section VII.B. shall secure the payment of the assessment or charge, interest thereon and the aforesaid costs, expenses and reasonable attorneys fees. No Parcel Owner or Member may waive or otherwise avoid liability for an assessment or charges as provided for herein by non-use or abandonment of its Parcel.
- E. Subordination of Lien to Mortgage The lien for any assessment or charge provided in this Declaration shall be subordinated to the lien of any bona fide security device including a mortgage or trust deed recorder as security

UNOFFICIAL COPY

for any loan obtained by the Parcel Owner for the purposes of the improvement or acquisition thereof; provided, however, that such subordination shall apply only to the assessment and charges which have become due and payable prior to the date of a sale or transfer of such Parcel pursuant to or in lieu of foreclosure by the holder of such security interest. Such sale or transfer shall not relieve the Parcel from the lien for any assessments or charges thereafter becoming due nor from the lien of any subsequent assessments or charges.

F. Property Not Subject to Assessment. The following parts of the Property and Improvements shall be exempt from the assessments, charges and liens created under this Declaration: All portions of the Property and Improvements dedicated to and accepted by the Village or other Governmental Authority.

VIII. MISCELLANEOUS PROVISIONS

- A. Vacant Parcel Maintenance. In the event the Owner does not commence construction of Improvements within twelve (12) months of the date of the delivery of the Parcel Deed to the Parcel Owner, the Parcel Owner shall pay an amount as reasonably determined by Declarant or the Association to equal the estimated property taxes that would have been assessed had the Parcel been improved with an industrial building so as to result in a value allocated to such Parcel in Declarant's projections attached to the Redevelopment Agreement existing between Developer and Village. Each Parcel Owner shall maintain the Parcel and its ground cover in a clean, neat and safe condition keeping same mowed at a height not to exceed six (6) inches until the commencement of construction of Improvements.
- B. Recapture and Village Charges Nothing contained in this Declaration shall in any manner limit the right of the Declarant and/or the Village to enter into and enforce Recapture Agreements by and between the Village or any other Governmental Authority having jurisdiction over the subject matter of any such agreements or the right of Declarant to any payments made pursuant to any such agreements.
- C. Term. This Declaration shall run for a term of twenty-five (25) years from the date this Declaration is recorded, after which time it shall automatically extend for successive periods of five (5) years unless an instrument executed as provided in Section VIII.D. has been recorded, pursuant to which this Declaration is amended in whole or in part.
- D. Amendments. Each of the conditions, covenants, restrictions, reservations and standards set forth herein, shall continue and be binding upon the Parcel

20511817

UNOFFICIAL COPY

Owners, lessees and sub lessees of Parcels in PHOENIX LAKE BUSINESS PARK and upon their respective successors and assigns and all Parties and all persons claiming under them. Notwithstanding the foregoing, upon the written approval of the Village, which approval shall not be unreasonably withheld or delayed:

1. Twenty-Five Years or Thereafter. Effective as of the end of the first twenty-five (25) year period from the date hereof or as of the end of any successive five (5) year period thereafter, seventy-five (75%) percent of the Parcel Owners, determined on the basis of the number of square feet of the Property owned by such Parcel Owners as compared to the total number of square feet contained in the Property may amend, rescind or otherwise modify in whole or in part this Declaration by written instrument recorded in the Office of the Recorder of Deeds of Cook County, Illinois, at least five (5) years prior to the expiration of the first twenty-five (25) year period or one (1) year prior to any successive five (5) year period thereafter.
 2. Within Five Years. At any time within five (5) years after the date hereof, ninety (90%) percent of the Parcel Owners, determined on the basis of the number of square feet of the Property owned by such Parcel Owners as compared to the total number of square feet contained in the Property and the Class B member, may amend, rescind or otherwise modify this Declaration in whole or in part by written instrument recorded in the Office of the Recorder of Deeds of Cook County, Illinois.
- E. Severability. If any clause, phrase, sentence, condition or other portion of this Declaration shall be or become invalid, null or void for any reason or shall be held by any Court of competent jurisdiction to be so, the remaining portion of the Declaration shall not be affected thereby and such remaining portions shall remain in full force and effect.
- F. Parties Entitled to Enforcement. The conditions, covenants, restrictions, reservations and standards herein set forth shall operate as covenants running with the land regardless of whom may be the record title holder or holders of the Property, or any part thereof, and shall be enforceable by any Parcel Owner in the PHOENIX LAKE BUSINESS PARK, Declarant or by the Village, by proper proceeding, either in equity or at law, and the persons entitled thereto shall have the right to sue for and obtain an injunction prohibitive or mandatory, to prevent the breach of the enforcement or observance of the conditions, covenants, restrictions, reservations and standards herein set forth and the failure of the Declarant to enforce any of the restrictions herein set forth at any time shall in no event be deemed to be a waiver of the right of enforcement thereafter at any time. The violation of these conditions, covenants, restrictions, reservations and standards shall not

UNOFFICIAL COPY

defeat nor render invalid the lien of any mortgage or deed of trust made in good faith and for value. Declarant, the Association, and/or the Village shall have the further right, upon thirty (30) days prior written notice, except in cases of emergency, to enter upon the Property and cure any such default at the cost and expense of the Parcel Owner or Owners responsible therefore, including the right to lien such Parcel Owner or Owner's portion of the Property for the repayment of such costs and expenses including attorney's fees.

- C. Proceedings for Enforcement. Enforcement of these covenants and restrictions may be by any proceeding at law or in equity against any appropriate Party by means of: (a) an action to restrain said violation; (b) an action to recover damages against any Party personally liable pursuant to the provisions hereof; (c) the filing of notice of and action to foreclose any lien against the fee title interest of any Parcel Owner to which the Declarant of Association may be entitled under these Protective Covenants; (d) any other remedy available at law or equity. The failure by the Declarant, the Association, the Village or any Parcel Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The remedies given by the provisions hereof or by the By-Laws of the Association may be exercised cumulatively or independently.
- H. Certifications. Within fifteen (15) days following the request from any parcel Owner, Occupant, or holder of any encumbrances on the Property, Declarant or the Association, as the case may be, shall certify in writing whether any amounts are then due and owing pursuant to this Declaration with respect to the Parcel or any such Parcel Owner.
- I. Notices. Any notice required or desired to be given under this Declaration shall be in writing and shall be deemed to have been properly served when personally delivered or upon deposit in the United States Mail, certified, return receipt requested, postage prepaid and properly addressed, if to a Parcel Owner, at its last mailing address registered with Association and if to the Association, at the address to which assessments are mailed. Prior to creation of the Association, notices to Parcel Owners or Declarant shall be deemed to have been properly served when personally delivered or upon deposit in the United States Mail, certified, return receipt requested, postage prepaid and properly addressed to any one of them, c/o Phoenix II, LLC, c/o MAC Development Corporation, 1320 Tower Road, Schaumburg, Illinois 60173. Notices shall be sent to any holders of any encumbrances on the Property requesting same which have notified Declarant and/or the Association of their respective addresses.
- J. Miscellaneous.

20511817

UNOFFICIAL COPY

- 3 Governing Law. This Declaration shall be interpreted, applied and enforced in accordance with the laws of the State of Illinois.
- 4 Captions. The captions contained in this Declaration are for convenience of reference only and in no way define, describe or limit the scope or intent of this Declaration or any of the provisions thereof.
- 5 Grammatical Changes Wherever appropriate in this Declaration, the singular shall include the plural and the plural the singular.

Property of Cook County Clerk's Office

20511817

UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned have executed this Declaration as of the date first above written.

OWNER:

PHOENIX II, LLC, a Limited Liability Company

By: MAC DEVELOPMENT CORPORATION, its manager

BY: Richard McCaffrey
Its: Resident

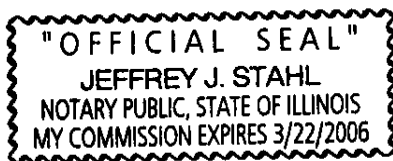
ACKNOWLEDGMENT

STATE OF ILLINOIS

COUNTY OF Cook

I, Jeffrey J. Stahl, a Notary Public in and for said County in the State aforesaid do hereby certify that Richard McCaffrey, respectively the Manager of PHOENIX II, 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 he signed, sealed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 30 day of April, 2001.



Jeffrey J. Stahl
Notary Public, State of Illinois

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

LOTS 1-7 IN PHOENIX LAKE BUSINESS PARK, BEING A RESUBDIVISION OF OUTLOTS "A", "B" AND "C" IN THE STREAMWOOD BUSINESS CENTRE SUBDIVISION PHASE 2 BEING A SUBDIVISION IN PART OF THE NORTHEAST 1/4 OF SECTION 25, TOWNSHIP 41 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS AS SHOWN ON PLAT OF SUBDIVISION RECORDED WITH THE COOK COUNTY RECORDER ON DECEMBER 19, 2001 AS DOCUMENT NO. 0011204741.

PIN: 06-25-203-010
06-25-205-012
06-25-209-001

F:\Clients\MCCAFFREY, RICHARD\23565-012 MARIO JURCIK - SALE FROM PHOENIX TO MARIO\EXHIBIT A LEGAL DESCRIPTION 2.wpd

MAIL TO:

Prepared by

20511817

UNOFFICIAL COPY

THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:

Jeffrey J. Stahl
STAHL BRASHLER LLC.
20 East Jackson Blvd.
Suite 16000
Chicago, IL 60604

Property of Cook County Clerk's Office

20511817