

UNOFFICIAL COPY

**This Document Prepared by
and after Recording Return to:**

Peter M. Friedman, Esq.
Holland & Knight LLP
131 South Dearborn Street
30th Floor
Chicago, Illinois 60603



Doc#: 1614145038 Fee: \$54.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 05/20/2016 12:57 PM Pg: 1 of 9

Above Space for Recorder's Use Only

PROCEED AT OWN RISK DECLARATION

BY

FOUR PEAKS, LLC

750-800 E. Northwest Highway

PIN NOS. 09-18-215-004-0000
09-17-100-038-0000
09-17-100-039-0000

DES PLAINES, ILLINOIS

UNOFFICIAL COPY

PROCEED AT OWN RISK DECLARATION

THIS PROCEED AT OWN RISK DECLARATION ("Declaration") is made this 13 day of May, 2016, by **Four Peaks, LLC ("Owner")**, the record title owner of a certain parcel of real estate located in the City of Des Plaines, Cook County, Illinois, commonly known as 750-800 E. Northwest Highway and legally described in **Exhibit A** attached to and, by this reference, made a part of this Declaration ("**Property**").

WITNESSETH:

WHEREAS, the Property is an approximately 20.8 acre property; and

WHEREAS, the Property is currently unimproved and used in part for the storage of materials; and

WHEREAS, the Owner desires to construct on the Property: (i) 24 townhouse buildings consisting of 127 residential units; (ii) a five-story multi-family residential building consisting of 279 residential units; and (iii) a parking structure containing 467 off-street parking spaces and a surface parking lot containing 73 off-street parking spaces (collectively, the "**Development**"); and

WHEREAS, on April 17, 2015, Buckingham Properties, Inc. ("**Buckingham**"), then the contract purchaser of the Property, submitted an application to the City of Des Plaines ("**City**") for: (i) a zoning map amendment rezoning the Property from the M-2 General Manufacturing District of the City to the R-4 Central Core Residential District of the City; (ii) approval of a preliminary plat of planned unit development of the Property; and (iii) approval of a preliminary plat of subdivision of the Property; and

WHEREAS, on July 27, 2015, the Plan Commission of the City of Des Plaines approved the preliminary plat of subdivision of the Property; and

WHEREAS, on October 19th, 2015, the City Council of the City of Des Plaines ("**City Council**"), adopted Ordinance No. Z-25-15 ("**Preliminary Approval Ordinance**"), which: (i) rezoned the Property from the M-2 General Manufacturing District of the City to the R-4 Central Core Residential District of the City; and (ii) approved a preliminary plat of planned unit development of the Property ("**Preliminary PUD Approval**"); and

WHEREAS, construction of the Development on the Property must comply with all applicable requirements of law, including, without limitation, the applicable provisions of the City Code of the City of Des Plaines, as amended ("**City Code**"), and the Des Plaines Zoning Ordinance of 1998, as amended ("**Zoning Ordinance**"); and

WHEREAS, pursuant to Section 12-3-5.D.3 of the Zoning Ordinance and Section 7 of the Preliminary Approval Ordinance: (i) the Preliminary PUD Approval does not authorize or entitle construction of the Development on the Property; and (ii) the Owner will not be authorized or entitled to construct the Development on the Property unless and until the City Council approves, by ordinance or resolution duly adopted (as applicable): (a) a conditional use permit for a planned unit development on the Property, pursuant to Section 12-3-5.D.5 of the Zoning Ordinance ("**Final PUD Approval**"); and (b) a final plat of subdivision of the Property, pursuant to Section 13-2-8 of the City Code ("**Final Subdivision Approval**") (collectively, the Final PUD Approval and the Final Subdivision Approval are the "**Final Development Approvals**"); and

UNOFFICIAL COPY

WHEREAS, Buckingham is no longer the contract purchaser of the Property, and the Owner desires to assume all of Buckingham's rights, responsibilities, and obligations under the Preliminary Approval Ordinance, the City Code, the Zoning Ordinance, and all other applicable City codes and ordinances in connection with the construction of the Development on the Property; and

WHEREAS, on February 16, 2016, the Owner submitted to the City final engineering plans for the Development ("**Engineering Plans**") and is preparing to submit all other materials necessary to apply for the Final Development Approvals ("**Application Materials**"); and

WHEREAS, the City has not yet completed its review of the Engineering Plans; and

WHEREAS, the Owner desires to commence Grading Work (as defined in Paragraph 3 of this Declaration) on the Property necessary for construction of the Development prior to: (i) review by the City of the Engineering Plans and Application Materials; (ii) approval by the City of the Final Development Approvals; and (iii) issuance by the City of the building permits necessary for construction of the Development (collectively, "**Permits**"); and

WHEREAS, the City has agreed to allow Owner to perform the Grading Work prior to completion of the City's review of the Engineering Plans and Application Materials, approval of the Final Development Approvals, and issuance of the Permits, but only after the execution and recordation by the Owner of this Declaration against the Property; and

WHEREAS, the Owner voluntarily desires to execute this Declaration and to record this Declaration against the Property in order to commence the Grading Work on the Property;

NOW, THEREFORE, the Owner voluntarily declares that the Property, all portions thereof, and all improvements constructed thereon or therein (including, without limitation, the Development), are and shall be held, transferred, sold, conveyed, used, and occupied subject to the following restrictions and provisions:

1. The Owner acknowledges and agrees that the Owner: (a) has assumed and will perform all of Buckingham's rights, responsibilities, and obligations under the Preliminary Approval Ordinance, the City Code, the Zoning Ordinance, and all other applicable City codes and ordinances; (b) proceeds with the Grading Work at its sole and absolute risk; and (b) shall not be entitled to the approval of the Final Development Approvals or issuance of any building permits, including, without limitation, the Permits, by the City regardless of expenditures incurred by the Owner in proceeding prior to the date of, or pursuant to, this Declaration, unless and until the Owner has satisfied all of the terms and conditions of this Declaration or required by all other applicable City codes and ordinances.

2. The Owner acknowledges and agrees that the City's agreement to allow commencement of the Grading Work, and its consent to this Declaration, will not be deemed or construed as requiring the City to approve any plans or issue any further permits or approvals, including, without limitation, the Final Development Approvals or the Permits, for any portion of the construction of the Development on the Property.

3. The Grading Work may consist solely of land balancing, soil remediation, soil removal, equipment mobilization, erosion control, tree removal, preparation of a construction entrance, and providing a staging area for vehicles. The Grading Work may not consist of any

UNOFFICIAL COPY

other work, including, without limitation, installation of utilities, pouring foundations, or any other similar or related work.

4. The Development shall not be constructed except in strict compliance with the terms of: (a) the Final Development Approvals; (b) any and all Permits issued by the City; and (c) this Declaration.
5. The City shall have the right to enter on the Property at all times from and after the execution of this Declaration to ascertain compliance with the terms, conditions, restrictions, and limitations contained in this Declaration.
6. The Owner must diligently, continuously, and promptly apply for and pursue every approval and permit required for any and all construction on the Property.
7. In the event that the Owner's applications for the Final Development Approvals and the Permits, or any other approval or permit required for any and all construction on the Property, do not, for any reason, comply with any applicable provision of the Preliminary Approval Ordinance, the City Code, or the Zoning Ordinance, or are not, for any reason, approved by the City, the Owner shall, at its sole cost and expense: (a) submit to the City an alternative plan showing methods and facilities that comply with all applicable provisions of the Preliminary Approval Ordinance, the City Code, and the Zoning Ordinance; or (b) if the Owner does not submit such an alternative plan, or if the City does not approve an alternative plan, perform, or cause to be performed, all remedial actions necessary to remove the Development, or any part thereof that has been constructed prior to any decision by the City regarding the Owner's applications for the Final Development Approvals and the Permits, and to either (i) bring the Property and the Development into compliance with the Preliminary Approval Ordinance, the City Code, and the Zoning Ordinance, in a manner satisfactory to the City, or (ii) perform site restoration and modification activities on the Property necessary to establish a park-like setting suitable for passive outdoor recreational activities on the Property (collectively, "**Required Remediation**").
8. The Owner acknowledges and agrees that the Required Remediation may include, without limitation: (a) the partial or complete demolition of the Development or any part thereof; or (b) modification of portions of the Development constructed prior to or after the date of this Declaration.
9. As security to the City for the performance by the Owner of the Owner's obligations pursuant to and in accordance with this Declaration, including, without limitation, performance of the Required Remediation, Developer must deliver to the City a letter or letters of credit, in a total amount equal to the sum of \$100,000.00 ("**Performance Security**"). The Performance Security must be in a form provided by and acceptable to the City. If and after the City approves the Final Development Approvals, the Permits, and the Grading Work, and the Owner has performed all of its obligations pursuant to, and in accordance with, this Declaration (including, without limitation, any Required Remediation), and the Owner has provided the performance security required by the Final Development Approvals, the City will promptly either (a) release any remaining amount of the Performance Security, or (b) apply this amount toward the security the Owner must provide as a condition of the Final Development Approvals; provided, however, that the City will only be required to release that portion of the Performance Security that remains after any deductions have been made by the City to cause the Owner's obligations under this Declaration, including, without limitation, the Required Remediation, to be completed; and provided further that the City

UNOFFICIAL COPY

will have no obligation to release any portion of the Performance Security prior to completion of any Required Remediation.

10. The Owner expressly acknowledges and agrees that it shall have sole and absolute liability and responsibility, and the City shall have no liability or responsibility whatsoever, for the costs and expenses incurred in connection with any Required Remediation.

11. In the event that the Owner fails to perform, or cause to be performed, any Required Remediation, the City will have the right, but not the obligation, to: (a) enter upon the Property and cause the Required Remediation to be performed; (b) charge the Owner for all costs incurred by the City in the course of performing the Required Remediation, which costs shall be a lien upon the Property; and (c) if the Owner does not fully reimburse the City for such costs promptly after receipt of a written demand for payment, draw from the Performance Security an amount of money sufficient to defray the entire cost incurred by the City related to the Required Remediation, including, without limitation, legal fees and administrative expenses. The rights and remedies provided in this Paragraph 11 are in addition to, and not in limitation of, any other rights and remedies otherwise available to the City pursuant to this Declaration, at law, and/or in equity.

12. The Owner hereby agrees to release, indemnify, and hold harmless the City, its agents, servants, officials, attorneys, and employees from and against any and all injuries, damages, claims, liabilities, demands, causes of action, losses, suits, expenses, liabilities, and judgments of any and all nature and kind whatsoever, including without limitation costs, expenses, and attorneys' fees, arising out of, occasioned by, connected with, or in any way attributable to: (a) this Declaration; (b) any action taken by the City pursuant to or in connection with this Declaration; (c) the review and approval by the City of any plans for the Property and the Development; or (d) any other approval, permit, certificate, or acceptance for the Property or the Development., including, without limitation, the Final Development Approvals and the Permits.

13. The Owner acknowledges and agrees that: (a) the costs and expenses incurred by the City, including, without limitation, legal fees, in connection with the drafting and execution of this Declaration are fees for which the Owner is liable to pay; and (b) the Owner will reimburse the City, promptly upon receipt of an invoice, for all such costs and expenses.

14. This Declaration may not be modified, amended or annulled without the express, prior written approval of the City Manager.

15. The provisions of this Declaration shall run with and bind the Property, and shall be binding upon the Owner, and its heirs, successors, assigns, agents, licensees, invitees and representatives, including, without limitation, all subsequent owners of any portion of the Property or of the Development, and all persons claiming under them. If any of the rights or restrictions imposed by this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until 21 years after the death of the survivor of the now living lawful descendants of the current President of the United States as of the date of this Declaration.

16. This Declaration shall be recorded with the Recorder of Deeds of Cook County, Illinois, and all deeds of conveyance relating to the Property, or any part thereof, shall be subject to the provisions of this Declaration.

UNOFFICIAL COPY

IN WITNESS WHEREOF, the Owner has caused this Declaration to be executed by a duly authorized representative on the date first above written.

ATTEST:

FOUR PEAKS, LLC,
an Illinois limited liability company

By: *N. G. Papanicolaou*
Its: MANAGER

By: *Mark Papanicolaou*
Its: PARTNER

Accepted this 11 day of MAY, 2016.

MM
Michael Bartholomew
City Manager
City of Des Plaines

Property of Cook County Clerk's Office

UNOFFICIAL COPY

ACKNOWLEDGEMENTS

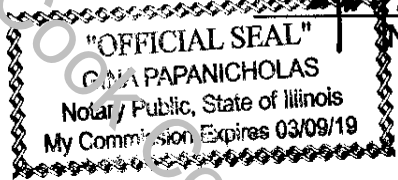
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, GINA PAPANICHOLAS, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that NICK PAPANICHOLAS JR the PARTNER of FOUR PEAKS, LLC, an Illinois limited liability company, and NICK PAPANICHOLAS, the MANAGER of said FOUR PEAKS, LLC, who are 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 to me that they, being thereunto duly authorized, signed and delivered said instrument as their own free and voluntary acts, for the uses and purposes set forth therein.

GIVEN under my hand and notarial seal this 22~~th~~ day of MAY, 2016.

GINA PAPANICHOLAS

Notary Public



My Commission expires
3/9/19

Property of Cook County Clerk's Office

UNOFFICIAL COPY**EXHIBIT A****LEGAL DESCRIPTION OF THE PROPERTY****PARCEL 1:**

THAT PART OF LOT "A" IN BENJAMIN CONSOLIDATION OF THAT PART OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF THE CENTER LINE OF SEEGER'S ROAD AND NORTH OF THE NORTHERLY LINE OF THE CHICAGO AND NORTHWESTERN RAILWAY RIGHT OF WAY, ALSO ALL THAT PART OF THE NORTHWEST 1/4 OF SECTION 17, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE PRINCIPAL MERIDIAN, LYING NORTHERLY OF THE NORTHERLY LINE OF THE DES PLAINES VALLEY RAILWAY RIGHT OF WAY AND WESTERLY OF THE WESTERLY LINE OF THE ST. PAUL, MINNEAPOLIS AND SAULTE ST MARIE RAILROAD RIGHT OF WAY AND SOUTH OF THE CENTER OF ELK GROVE ROAD, RECORDED IN THE OFFICE OF THE RECORDER OF COOK COUNTY, ILLINOIS, ON APRIL 7, 1922 IN BOOK 169 OF PLATS PAGE 16, AS DOCUMENT 7455426 BOUNDED BY A LINE DESCRIBED AS FOLLOWS; TO WIT: COMMENCING AT THE INTERSECTION OF THE WEST LINE OF THE NORTHWEST 1/4 OF SAID SECTION 17 WITH THE NORTHEASTERLY LINE OF THE NORTHWEST HIGHWAY, BEING A LINE 66 FEET NORTHEASTERLY OF AND PARALLEL WITH THE NORTHEASTERLY LINE OF THE CHICAGO AND NORTHWESTERN RIGHT OF WAY; THENCE SOUTH 58 DEGREES 58 MINUTES 20 SECONDS EAST ALONG THE NORTHEASTERLY LINE OF THE NORTHWEST HIGHWAY 587.70 FEET; THENCE NORTH 31 DEGREES EAST DISTANCE OF 25 FEET; THENCE NORTH 31 DEGREES 03 MINUTES 40 SECONDS EAST A DISTANCE OF 150 FEET; THENCE SOUTH 58 DEGREES 58 MINUTES 20 SECONDS EAST A DISTANCE OF 25 FEET; THENCE NORTH 31 DEGREES 03 MINUTES 40 SECONDS EAST A DISTANCE OF 1015.48 FEET TO THE CENTER OF WELLER CREEK; THENCE NORTH 48 DEGREES 17 MINUTES 20 SECONDS WEST ALONG THE CENTER OF WELLER CREEK A DISTANCE OF 51.52 FEET; THENCE SOUTH 88 DEGREES 33 MINUTES 40 SECONDS WEST ALONG THE CENTER OF WELLER CREEK, A DISTANCE OF 666.38 FEET; THENCE SOUTH 31 DEGREES 03 MINUTES 40 SECONDS WEST, A DISTANCE OF 817.07 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS,

PARCEL 2:

THAT PART OF LOT "A" IN BENJAMIN CONSOLIDATION OF PART OF THE NORTHWEST 1/4 OF SECTION 17 AND PART OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 7, 1922 AS DOCUMENT 745526, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE WEST LINE OF THE NORTHWEST 1/4 OF SAID SECTION 17 WITH THE NORTHEASTERLY LINE OF THE NORTHWEST HIGHWAY, BEING A LINE 66.0 FEET NORTHEASTERLY OF AND PARALLEL WITH THE NORTHEASTERLY LINE OF THE CHICAGO AND NORTHWESTERN RAILWAY RIGHT OF WAY; THENCE ALONG THE NORTHEASTERLY LINE OF THE NORTHWEST HIGHWAY, BEING A LINE SOUTH 58 DEGREES 57 MINUTES 00 SECONDS EAST, A DISTANCE 59.83 FEET FOR A POINT OF BEGINNING, SAID POINT BEING THE SOUTHWESTERLY CORNER OF THAT PART OF SAID LOT "A" CONVEYED BY THOMAS INDUSTRIES, INC., TO LITTLEFUSE, INC, BY DEED

UNOFFICIAL COPY

RECORDED AS DOCUMENT 18478096; THENCE NORTH 31 DEGREES 03 MINUTES 00 SECONDS EAST ALONG THE NORTHWESTERLY LINE OF SAID PROPERTY, A DISTANCE OF 816.97 FEET TO THE NORTHWESTERLY CORNER THEREOF; THENCE SOUTH 88 DEGREES 33 MINUTES 00 SECONDS WEST, A DISTANCE OF 165.65 FEET; THENCE SOUTH 82 DEGREES 15 MINUTES 00 SECONDS WEST, A DISTANCE OF 364.94 FEET; THENCE SOUTH 72 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 457.54 FEET; THENCE SOUTH 31 DEGREES 03 MINUTES 00 SECONDS WEST, A DISTANCE OF 151.63 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF LOT "A" BEING ALSO THE NORTHEASTERLY LINE OF THE CHICAGO AND NORTHWESTERN RAILWAY RIGHT OF WAY; THENCE ALONG THE SOUTHWESTERLY LINE OF LOT "A" BEING A LINE SOUTH 58 DEGREES 57 MINUTES 00 SECONDS EAST, A DISTANCE OF 619.31 FEET TO AN INTERSECTION WITH A LINE DRAWN AT RIGHT ANGLES TO THE SOUTHWESTERLY LINE OF SAID LOT "A" AND PASSING THROUGH THE POINT OF BEGINNING, THENCE NORTH 31 DEGREES 03 MINUTES 00 SECONDS EAST, ALONG THE LAST DESCRIBED LINE, A DISTANCE OF 66.0 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

Commonly known as: 750-800 E. Northwest Highway, Des Plaines, Illinois.

PINS: 09-18-215-004-0000, 09-17-100-038-0000, 09-17-100-039-0000.