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**PREPARED BY AND
AFTER RECORDING,
RETURN TO:**

Anthony Bergamino, Esq.
Bronson & Kahn, LLC
150 North Wacker Drive
Suite 1400
Chicago, IL 60606

Doc#: 0511818027
Eugene "Gene" Moore Fee: \$46.50
Cook County Recorder of Deeds
Date: 04/28/2005 11:28 AM Pg: 1 of 12

Address:

1416-1418 South Michigan Avenue
Chicago, Illinois

P.I.N. 17-22-107-027-0000

AGREEMENT OF COVENANTS AND RESTRICTIONS

THIS AGREEMENT OF COVENANTS AND RESTRICTIONS (this "Agreement") is made and entered into this 9th day of April, 2004, by and between **1400 South Michigan, LLC**, an Illinois limited liability company ("Developer") and **Matthew A. O'Malley, John D. Hartigan, and John P. Wrenn, Jr.** (collectively, "Seller").

WITNESSETH.

WHEREAS, Developer is the owner of the property legally described on Exhibit "A", which is attached hereto and made a part hereof ("1400 Property"), and

WHEREAS, Seller is the owner of the property legally described on Exhibit "B", which is attached hereto and made a part hereof ("Seller Property"); and

WHEREAS, the improvements located upon the Seller Property currently have a floor area (as defined by the Chicago Zoning Ordinance) of four hundred ten thousand, ninety-eight (410,098) square feet ("Current Floor Area"), and do not have any residential units located thereon; and

WHEREAS, Developer desires to acquire from Seller, by the effect of these restrictive covenants, the right to use the balance of the floor area and the residential minimum lot area available for the Seller Property to be utilized for the intended development of a multi-story development on the 1400 Property; and

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WHEREAS, Seller has agreed to bind the Seller Property with the covenants and restrictions provided herein, which covenants and restrictions are intended to benefit the 1400 Property and will protect the 1400 Property; and

WHEREAS, Seller has agreed to bind the Seller Property with the terms of this Agreement and the terms of this Agreement shall benefit the 1400 Property and the owners thereof.

NOW, THEREFORE, in consideration of the terms and provisions of this Agreement, the sum of Ten and 00/100 Dollars (\$10.00), in hand paid and other good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **Recitals.** The above Recitals are hereby incorporated herein as if fully set forth in their entirety.

2. **Restrictions.**

A. With respect to the Seller Property, no improvements shall be constructed upon the Seller Property which will either (i) utilize more than the Current Floor Area, (ii) contain any residential units, or (iii) increase the height of the existing building on the Seller Property above the height existing as of the date of this Agreement, which is approximately 32 feet above ground level.

B. For purposes of construction by Developer of certain improvements on the 1400 Property as is now currently contemplated by Developer, that being a multiple-story building that will be owned in the form of a condominium having commercial, residential and parking units (the "Condominium") and its related improvements, the Seller Property and the 1400 Property shall be bound by a planned development as will be enacted by the city of Chicago Seller has entered into an agreement with the Developer which provides, among other things, for Seller to cooperate with the Developer, and its successors and assigns, for purposes of the Developer's efforts to obtain the said planned development, in accordance with the planned development application attached hereto as Exhibit C.

3. **Mortgages to Subordinate Agreement.** Any mortgage or deed of trust affecting any portion of the Seller Property shall at all times be subject and subordinate to the terms of this Agreement and any party foreclosing any such mortgage or deed of trust shall acquire title to the Seller Property subject to the terms and conditions of this Agreement.

4. **Term.** The term of this Agreement shall commence as of the date this Agreement is recorded with the Office of the Recorder of Deeds of Cook County, Illinois and shall continue in perpetuity unless sooner terminated by (i) a release executed by the then current owner or owners (as the case may be) of the 1400 Property, or (ii) a release executed by Seller and Developer in accordance with the agreement between Developer and Seller referenced in paragraph 2 above.

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5. Nature of Agreement.

A. Each covenant, term, condition, restriction and obligation (collectively "Covenants") set forth herein is binding upon the Seller Property and all shall benefit the 1400 Property, shall run with the land, and shall be binding upon each owner of the Seller Property, and any owners' association, their tenants, subtenants, licensees and concessionaires and their heirs, personal representatives, successors and assigns thereof. The Covenants hereunder shall inure to the benefit of the owners of the 1400 Property, their successors and assigns.

B. This Agreement may be amended or modified only by an amendment in writing, executed by all the owners of the 1400 Property and the Seller, or their respective successors and assigns. No other amendment or modification shall be of any effect.

C. This Agreement may be terminated at any time only by a declaration in writing, executed by all the owners of the 1400 Property or its successors and assigns. No other termination shall be of any effect.

6. Remedies.

A. In the event of a breach, or attempted or threatened breach of any of the Covenants of this Agreement by either party to this Agreement, the non-defaulting party shall be entitled forthwith to full and adequate relief by injunction and all such other remedies as may be available at law or at equity. All costs and expenses incurred by the non-defaulting party in enforcing this Agreement (including, but not limited to, reasonable attorneys' fees and court costs) shall be due and owing to the non-defaulting party from the defaulting party.

B. No delay or omission of the owners of the 1400 Property in the exercise of any right accruing upon a default of any defaulting party shall impair any such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by the owner of the 1400 Property of a breach or a default of any of the Covenants of this Agreement by any party shall not be construed to be a waiver of any subsequent breach or default of the same provision of this Agreement. Except as otherwise specifically provided in this Agreement, no remedy provided in this Agreement shall be exclusive, each shall be cumulative with all other remedies provided in this Agreement and at law or at equity.

7. Miscellaneous.

A. Each provision of this Agreement and the application thereof to the 1400 Property and the Seller Property are hereby declared to be independent of and severable from the remainder of this Agreement. If any provision contained herein shall be held to be invalid or unenforceable or not run with the land, such holdings shall not affect the validity or enforceability of the remainder of this Agreement.

B. This Agreement shall be construed in accordance with the laws of the State of Illinois.

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C. Time is of the essence of this Agreement.

D. The paragraph headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and should not be considered in construction or interpretation of this Agreement or any part thereof.

E. This Agreement contains the complete understanding and agreement of the parties hereto with respect to the express subject matter hereof.

8. **Estoppel Certificate.** Each party upon request shall deliver to the other an estoppel certificate stating whether there are any defaults or sums of money due and owing under this Agreement

9. **Notices.** All notices and other communications under this Agreement shall be in writing and may be given by any of the following methods: (a) personal delivery; (b) facsimile transmission; (c) registered or certified mail, postage prepaid, return receipt requested; or (d) overnight delivery service. Notices shall be sent to the appropriate party at its address or facsimile number given below (or at such other address or facsimile number for such party as shall be specified by notice given hereunder):

If to the Developer:

1400 South Michigan, LLC
7880 North Lincoln Avenue
Skokie, IL 60077
Mr. Alex Vaisman
Telecopy: (847) 679-4699

With a copy to:

Bronson & Kahn, LLC
150 North Wacker Drive
Suite 1400
Chicago, IL 60606
Attn: Daniel R. Bronson, Esq.
Telecopy: (312) 553-1733

If to the Seller:

c/o Mr. Matthew A. O'Malley
Grace O'Malley's
1416 South Michigan Avenue
Chicago, Illinois 60605
Telecopy: (312) 588-1800

With a copy to:

Law Office of Thomas F. O'Connor
77 West Washington
Suite 1112
Chicago, Illinois 60602
Patrick J. O'Connor, Esq.
Telecopy: (312)726-9040

All such notices and communications shall be deemed received upon the earlier of: (a) actual receipt thereof by the addressee, or (b) actual delivery thereof to the appropriate address,

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or (c) in the case of a facsimile transmission, upon transmission thereof by the sender and issuance by the transmitting machine of a confirmation slip confirming that the number of pages constituting the notice have been transmitted without error. In the case of notices sent by facsimile transmission, the sender shall contemporaneously mail a copy of the notice to the addressee at the address provided for above. However, such mailing shall in no way alter the time at which the facsimile notice is deemed received.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the day and year first written above.

SELLER

Matthew A. O'Malley

 Matthew A. O'Malley

John D. Hartigan

 John D. Hartigan

John P. Wrenn, Jr.

 John P. Wrenn, Jr.

DEVELOPER

1400 South Michigan, LLC,
an Illinois limited liability company

By: Russland Capital Development Group, Inc.
an Illinois corporation

By: *[Signature]*

Its: *Secretary*

Cook County Clerk's Office

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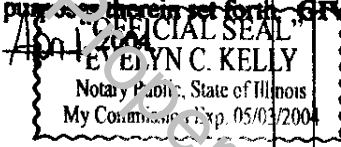
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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Evelyn Kelly, a Notary Public in and for said County and State, DO HEREBY CERTIFY that Alex Vasman the Secretary of Rusland Capital Development Group, Inc., as Manager of 1400 S. MICHIGAN, LLC appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act, and as the free and voluntary act of said company, for the uses and purposes therein set forth. GIVEN under my hand and notarial seal this 7th day of April, 2004.



Evelyn Kelly
Notary Public

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Patrick O'Connor, a Notary Public in and for said County and State, DO HEREBY CERTIFY that Matthew A. O'Malley came before me this day in person and acknowledged that he signed, sealed and delivered said instrument as his free and voluntary act, for the uses and purposes therein set forth. GIVEN under my hand and notarial seal this 9 day of April, 2004.

Patrick O'Connor
Notary Public

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Patrick O'Connor, a Notary Public in and for said County and State, DO HEREBY CERTIFY that John D. Harrigan came before me this day in person and acknowledged that he signed, sealed and delivered said instrument as his free and voluntary act, for the uses and purposes therein set forth. GIVEN under my hand and notarial seal this 9 day of April, 2004.

Patrick O'Connor
Notary Public



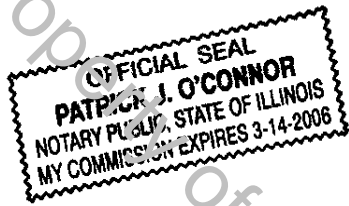
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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Patricia O'Connor, a Notary Public in and for said County and State, **DO HEREBY CERTIFY** that John P. Wrenn, Jr. came before me this day in person and acknowledged that he signed, sealed and delivered said instrument as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 9 day of April, 2004.

Patricia O'Connor
Notary Public



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EXHIBIT A

DEVELOPER PROPERTY

LOTS 22 THROUGH 28 IN BLOCK 16 IN HERINGTON'S ADDITION TO CHICAGO IN THE NORTHWEST FRACTIONAL 1/4 OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER:

17-22-107-026-0000

Common address:

1400-1410 South Michigan Avenue
Chicago, Illinois

Property of Cook County Clerk's Office

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EXHIBIT B

SELLER PARCEL LEGAL DESCRIPTION

LOT 21 IN BLOCK 16 IN HERRINGTON'S ADDITION TO CHICAGO IN THE NORTHWEST FRACTIONAL $\frac{1}{4}$ OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Real Estate Index Number: 17-22-107-027

Commonly known as: 1416-18 South Michigan Avenue, Chicago, Illinois 60605

Property of Cook County Clerk's Office

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CITY OF CHICAGO

APPLICATION FOR AN AMENDMENT TO THE CHICAGO ZONING ORDINANCE

1. ADDRESS of the property Applicant is seeking to rezone:
1400-1410 S. Michigan Ave., and 1416-18 S. Michigan Ave.
2. APPLICANT 1400 South Michigan, LLC
ADDRESS 7880 N. Lincoln Ave.
CITY Skokie STATE IL ZIP CODE 60677
PHONE 847/679-4680 CONTACT PERSON Jacob Bleznitsky
3. Is the Applicant the owner of the property? YES _____ NO X
If the Applicant is not the owner of the property, please provide the following information regarding the owner and attach written authorization from the owner allowing the applicant to proceed.
- As to 1400-1410 S. Michigan Ave.: North Star Trust Company as successor Trustee to Banco Popular, not personally, but*
OWNER as Trustee under that certain Trust Agreement dated April 15, 1999, and known as Trust No. 26812
ADDRESS Attn: Debra Wolfe as custodian, 770 N. LaSalle St., 4th Fl.
CITY Chicago STATE IL ZIP CODE 60601
PHONE _____ CONTACT PERSON Debra A. Wolfe
OWNER *As to 1416-1418 S. Michigan Ave.:* Matthew A. O'Malley, John D. Hartigan, and John P. Wrenn, Jr.
ADDRESS see attached Economic Disclosure Statement
CITY _____ STATE _____ ZIP CODE _____
PHONE _____ CONTACT PERSON Matthew A. O'Malley
4. On what date did the owner acquire legal title to the subject property?
As to 1400-1410 S. Michigan Ave.: April 15, 1999
As to 1416-1418 S. Michigan Ave.: May 16, 2001
5. Has the present owner previously rezoned this property? If Yes, when?
No
6. Present Zoning District C3-5 - Proposed Zoning District Residential Planned Development
7. Current Use of the property: 1400-1410 S. Michigan: vacant; 1416-1418 S. Michigan: commercial

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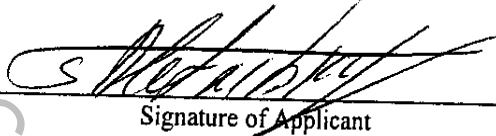
Reason for rezoning the subject property: Residential and Commercial

9. What will be the actual use of the property after the rezoning? (BE SPECIFIC)

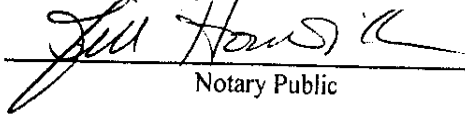
The applicant will construct a high rise building containing commercial space and approximately 220 indoor parking spaces on the lower floors, and approximately 210 dwelling units above, at 1400-10 S. Michigan Ave. The existing commercial building will remain at 1416-1418 S. Michigan Ave.

COUNTY OF COOK
STATE OF ILLINOIS

I, ^{JACOBS} ~~BIETNITSKY~~ being first duly sworn on oath, states that all of the above statements and the statements contained in the documents submitted herewith are true and correct.


Signature of Applicant

Subscribed and Sworn to before me this
6th day of February, 2004.


Notary Public



For Office Use Only

Date of Introduction: _____

File Number: _____

Ward: _____