

UNOFFICIAL COPY

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

Daniel R. Bronson, Esq.
Bronson & Kahn, LLC
150 North Wacker Drive
Suite 1400
Chicago, Illinois 60606



Doc#: 0632645015 Fee: \$46.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 11/22/2006 10:36 AM Pg: 1 of 12

Address:

2033 South Indiana Avenue
Chicago, Illinois

P.I.N. 17-22-314.024

4312827 MJ

AGREEMENT OF COVENANTS AND RESTRICTIONS

THIS AGREEMENT OF COVENANTS AND RESTRICTIONS (this "Agreement") is made and entered into this 21st day of November, 2006, by and between **Rokas Tower and Private Residences, LLC**, an Illinois limited liability company ("Developer") and **2033 THC LLC** ("Seller").

WITNESSETH:

WHEREAS, Developer is the under contract to purchase the property commonly known as 2016-50 South Prairie Avenue, Chicago, Illinois ("2016 Prairie Property"); and

WHEREAS, Seller is the owner of the property commonly known as 2033 South Indiana Avenue, Chicago, Illinois and which property is legally described on Exhibit "A", which is attached hereto and made a part hereof ("2033 Indiana Property"); and

WHEREAS, the improvements located upon the 2033 Indiana Property, once completed, will have a floor area (as defined by the Chicago Zoning Ordinance) of no more than 107,543 square feet ("Maximum Floor Area"); and

WHEREAS, Developer has acquired from Seller, by the effect of these restrictive covenants, all of Seller's right, title and interest in and to: (i) the amount of square feet of floor area, including any bonus floor area earned in connection with the Developer's affordable housing contribution and adopt a landmark contributions, in excess of the amount of square feet of floor area used, or to be used, by Seller in connection with its development of 2033 Indiana Property, which amount shall not exceed the Maximum Floor Area and (ii) all dwelling units attributable to the lot area of the 2033 Indiana Property based on minimum lot area per dwelling unit requirements including bonus dwelling units from reduction of minimum lot area per

UNOFFICIAL COPY

dwelling unit requirements for affordable housing contribution and adopt a landmark contributions that would otherwise be allowed to be constructed and used on the 2033 Indiana Property ("Seller's Development Rights"), all in accordance with the terms and conditions of this Agreement, to be utilized by Developer or its successors or assigns for the intended development of a multi-story development on the 2016 Prairie Property; and

WHEREAS, Seller has agreed to bind the 2033 Indiana Property with the covenants and restrictions provided herein, which covenants and restrictions are intended, upon the acquisition of the 2016 Prairie Property by Developer or its successors or assigns, to benefit the 2016 Prairie Property and protect the 2016 Prairie Property.

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 and Transfer of Development Rights.** The above Recitals are hereby incorporated herein as if fully set forth in their entirety. Seller hereby transfers, conveys and assigns all of the Development Rights to Developer. The conveyance of the Development Rights to Developer is a permanent and irrevocable forbearance by Seller of all of its right, title and interest to use such Development Rights for or in connection with the 2033 Indiana Property.
2. **Restrictions.**
 - A. With respect to the 2033 Indiana Property, neither Seller nor any subsequent owner of all or any part of the 2033 Indiana Property shall construct any improvements upon the 2033 Indiana Property which will (i) utilize more than the Maximum Floor Area, or (ii) increase the height of the building currently being constructed by Seller on the 2033 Indiana Property above the height of approximately 75 feet above ground level.
 - B. For purposes of construction by Developer of certain improvements on the 2016 Prairie 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 residential and parking units and its related improvements, the 2033 Indiana Property and the 2016 Prairie 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, in connection with Developer's efforts to obtain said planned development. As between and among the respective owners of the 2033 Indiana Property and the 2016 Prairie Property, the property shall, upon acquisition of the 2016 Prairie Property by Developer or its successors and/or assigns, be considered one (1) zoning lot under the City of Chicago Zoning Ordinance.
3. **Mortgages to Subordinate Agreement.** Any mortgage or deed of trust affecting any portion of the 2033 Indiana 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 2033 Indiana Property subject to the terms and conditions of this Agreement.

UNOFFICIAL COPY

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 a release executed by the Developer, or its successors or assigns.

5. **Nature of Agreement.**

A. Each covenant, term, condition, restriction and obligation (collectively "Covenants") set forth herein is binding upon the 2033 Indiana Property and shall, upon Developer or its successors or assigns acquiring title to the 2016 Prairie Property, benefit the 2016 Prairie Property, shall run with the land, and shall be binding upon each owner of the 2033 Indiana 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 Developer and its successors and assigns.

B. This Agreement may be amended or modified only by an amendment in writing, executed by the Developer and the Seller, or their respective successors and assigns. Notwithstanding the above, Developer or its successors or assigns is hereby granted the unilateral right and power to record at any time such amendment to this Agreement as may be necessary to add the legal description for the 2016 Prairie Property to the Agreement so that upon Developer's acquisition of the 2016 Prairie Property, the 2016 Prairie Property is benefited by the terms and covenants contained in this Agreement. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Developer to make such amendment on behalf of the Seller and its successors and assigns, including but not limited to any future condominium association and any unit owners constituting and belonging to said association. 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 the Developer 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 2016 Prairie 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 2016 Prairie 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

UNOFFICIAL COPY

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 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.

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. **Rules Against Perpetuities and Restraints on Alienation.** If any of the provisions of this Agreement would otherwise be unlawful or void for violation of (i) the rule against perpetuities or some analogous statutory provisions, (ii) the rule restricting restraints on alienation, or (iii) any other statutory or common law rule imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of all survivors of the now living lawful descendants of Richard M. Daley, Mayor of the City of Chicago.

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:

Rokas Tower and Private Residences, LLC
c/o Rokas International Inc.
1 East Wacker Drive, Suite 3100
Chicago, Illinois 60601
Attention: Andrius Augunas
Telecopy: (312) 396-0201

If to the Seller:

2033 THC LLC
333 South DesPlaines, Suite 207
Chicago, Illinois 60661
Attention: Mark Ordower
Telecopy: (312) 441-0624

UNOFFICIAL COPY

With a copy to:

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

With a copy to:

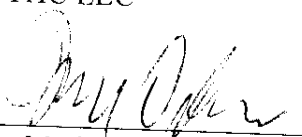
Bluestone Development
1915 South Michigan
Chicago, Illinois 60616
Attention: Roby Frankel
Telecopy: (312) 949-0001

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, 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

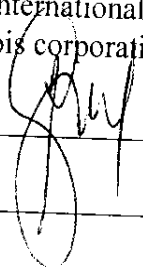
2033 THC LLC

BY: 
Mark Ordower, manager

DEVELOPER

Rokas Tower and Private Residences, LLC,
an Illinois limited liability company

By: Rokas International, Inc.
an Illinois corporation

By: 

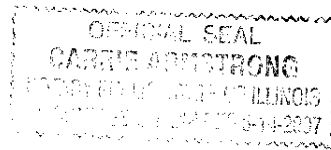
Its: _____

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, ~~CAROL ANN ARMSTRONG~~ a Notary Public in and for said County and State, **DO HEREBY CERTIFY** that Andrius Augustas the _____ of Rokas International, Inc., as manager of **Rokas Tower and Private Residences, 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 21 day of November, 2006.

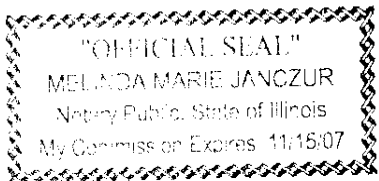
Carol Ann Armstrong
Notary Public



STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Melinda Janeczur, a Notary Public in and for said County and State, **DO HEREBY CERTIFY** that Mark Ordower, as manager of **Bluestone Development LLC** appeared before me this day in person and acknowledged that he signed, sealed and delivered said instrument as his 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 21 day of Nov, 2006.

Melinda Janeczur
Notary Public



Property of Cook County Clerk's Office

UNOFFICIAL COPY

MORTGAGEE CONSENT

BRIDGEVIEW BANK AND TRUST _____, holder of a note secured by a mortgage on the property dated January 13, 2005, hereby consents to the execution and recording of the above and foregoing Agreement of Covenants and Restrictions, and hereby submits said mortgage recorded on Jan 27, 2005, as Document Number 0502702088, to the provisions of the above and foregoing Declaration.

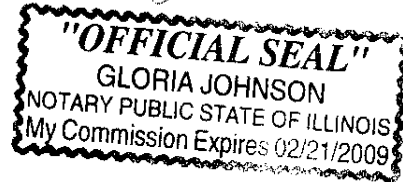
IN WITNESS WHEREOF, Bridgeview Bank & Trust has caused this instrument to be signed by its duly authorized officers on its behalf; all done at Chicago, Illinois, on this 27th day of July, 2006.

By: [Signature]
Its: [Signature]

[Signature]

ATTEST:

[Signature]



Property of Cook County Clerk's Office

UNOFFICIAL COPY

MORTGAGEE CONSENT

JOHN KAMYSZ, LORETTA KAMYSZ AND MICHAEL KAMYSZ, holders of a note secured by a mortgage on the property dated December 2, 2004, hereby consent to the execution and recording of the above and foregoing Agreement of Covenants and Restrictions, and hereby submit said mortgage recorded on January 27, 2005, as Document Number 0502702089, to the provisions of the above and foregoing Declaration.

IN WITNESS WHEREOF, we have signed this instrument at Chicago, Illinois, on this 27th day of July, 2006.

John Kamysz
Loretta Kamysz
Michael Kamysz

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

I, *Mark Ordower*, a Notary Public in and for the County and State aforesaid, do hereby certify that JOHN KAMYSZ, LORETTA KAMYSZ, and MICHAEL KAMYSZ, 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 jointly and severally acknowledged that they signed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27th day of July, 2006.

Mark Ordower

Notary Public



UNOFFICIAL COPY

MORTGAGEE CONSENT

BRIDGEVIEW BANK & TRUST, holder of a note secured by a mortgage on the property dated November 18, 2005, hereby consents to the execution and recording of the above and foregoing Agreement of Covenants and Restrictions, and hereby submits said mortgage recorded on November 18, 2005, as Document Number 0532219073, to the provisions of the above and foregoing Declaration.

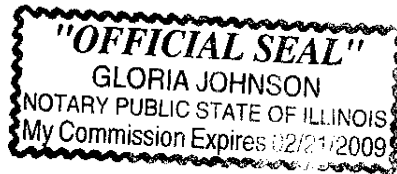
IN WITNESS WHEREOF, BRIDGEVIEW BANK & TRUST has caused this instrument to be signed by its duly authorized officers on its behalf; all done at Chicago, Illinois, on this 27th day of July, 2006.

By: [Signature]
Its: AVP

[Signature]

ATTEST:

[Signature]



Property of Cook County Clerk's Office

UNOFFICIAL COPY

MORTGAGEE CONSENT

BRIDGEVIEW BANK AND TRUST, holder of a note secured by a mortgage on the property dated Nov. 18, 2006, hereby consents to the execution and recording of the above and foregoing Agreement of Covenants and Restrictions, and hereby submits said mortgage recorded on Nov 18, 2005 as Document Number 0532219075, to the provisions of the above and foregoing Declaration.

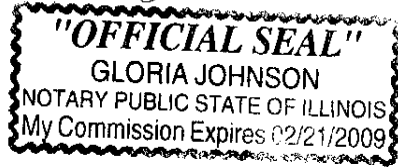
IN WITNESS WHEREOF, BRIDGEVIEW BANK & TRUST has caused this instrument to be signed by its duly authorized officers on its behalf; all done at Chicago, Illinois, on this 27th day of July, 2006.

By: [Signature]
Its: [Signature]

[Signature]

ATTEST:

[Signature]



Property of Cook County Clerk's Office

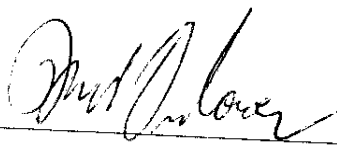
UNOFFICIAL COPY

LESSEE CONSENT

LAKESIDE LOFTS DEVELOPMENT CORP., an Illinois corporation, lessee of the property under Ground Lease Agreement dated December 28, 2004, hereby consents to the execution and recording of the above and foregoing Agreement of Covenants and Restrictions, and hereby submits said Lease, a memorandum of which was recorded on November 18, 2005, as Document Number 0532219074, to the provisions of the above and foregoing Declaration.

IN WITNESS WHEREOF, LAKESIDE LOFTS DEVELOPMENT CORP. has caused this instrument to be signed by its duly authorized officers on its behalf, all done at Chicago, Illinois, on this 27 day of June, 2006.

LAKESIDE LOFTS DEVELOPMENT CORP., an Illinois corporation


By: 

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Georgette Phillos, a Notary Public in and for the County and State aforesaid, do hereby certify that Mark R. Ordower, Vice President of Lakeside Lofts Development Corp., personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own 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 _____ day of July, 2006.




Notary Public

UNOFFICIAL COPY

EXHIBIT A 2033 INDIANA PROPERTY

LOTS 10 (EXCEPT THE NORTH 11.38 FEET THEREOF), 11, 14, 15 AND 18 IN BLOCK 4 IN GEORGE SMITH'S ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL $\frac{1}{4}$ OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 17-22-314-024-0000

Common address: 2025 and 2035 South Indiana Avenue
Chicago, Illinois 60605

Property of Cook County Clerk's Office